

AUSTIN COMMUNITY COLLEGE



UNITED STATES GOVERNMENT



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Photo of the United States Capitol Building. (Credit: Carol M. Highsmith 2007, LOC)

UNITED STATES GOVERNMENT: THE BASICS OF GOVERNMENT FUNCTION, STRUCTURE, AND PROCESS

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Table of Contents

- **Chapter 1: Government 5**
  - 1.1 Purpose and Type 5
  - 1.2 Who Governs? 18
  - 1.3 Civic Participation in a Democratic Representative Republic 24
- **Chapter 2: Constitutions 29**
  - 2.1 Establishing Rules 29
  - 2.2 *Articles of Confederation*: The First Constitution 36
  - 2.3 A New Contract in 1787: Developing the *U.S. Constitution* 40
  - 2.4 Ratification of the *U.S. Constitution* 51
  - 2.5 Amending the *U.S. Constitution* 59
- **Chapter 3: Federalism 68**
  - 3.1 Basic Structure of Government 68
  - 3.2 Structural Division of Power 74
  - 3.3 How is revenue shared? 86
- **Chapter 4: Public Opinion, Political Culture, and Political Ideology 96**
  - 4.1 Public Opinion and Political Socialization 96
  - 4.2 Political Culture and Political Ideology 104
  - 4.3 Public Opinion: How is it measured? 119
  - 4.4 What is the connection to political institutions? 128
- **Chapter 5: Interest Groups 136**
  - 5.1 Who or what are they? 136
  - 5.2 Pathways to Participation and Influence 147
  - 5.3 How are they regulated? 162
- **Chapter 6: Political Parties 167**
  - 6.1 Organization and Function 167
  - 6.2 The Party-in-the-Electorate 188
  - 6.3 The Party-in-Government and Divided Government 202
- **Chapter 7: Political Participation, Elections, and Voting 215**
  - 7.1 How do citizens become engaged in a democratic representative republic? 215
  - 7.2 Voter Turnout and Registration 225
  - 7.3 How do we choose our representatives through elections and voting? 241
  - 7.4 How do we select and elect a president? 249
  - 7.5 Fundraising, Campaign Finance, and Elections 258
  - 7.6 Campaigns and the Voting Process 264
  - 7.7 Direct Democracy in the United States 276
- **Chapter 8: Media 282**
  - 8.1 Purpose and Function 282
  - 8.2 Evolutionary Change and Development 288
  - 8.3 What is their impact 300
  - 8.4 How are they regulated? 310
- **Chapter 9: Congress 318**
  - 9.1 Making Laws Under the Contract 318
  - 9.2 What does legislative procedure look like? 332
- **Chapter 10: The President 342**
  - 10.1 Upholding, Implementing, and Enforcing the Law 342
  - 10.2 The Public Presidency 372
- **Chapter 11: The Bureaucracy 377**
  - 11.1 What are its functions? 377
  - 11.2 How is it structured? 385
  - 11.3 Who is in control? 392

- **Chapter 12: Domestic Policy** **399**
  - 12.1 Categorizing Public Policy 399
  - 12.2 Who are the policymakers? 410
  - 12.3 How are budgeting and tax policy implemented? 417
- **Chapter 13: Foreign Policy** **425**
  - 13.1 Basics & International Actors 425
  - 13.2 Approaches 437
- **Chapter 14: U.S. Courts** **444**
  - 14.1 Purpose and Function 444
  - 14.2 Structure and Procedure 454
  - 14.3 Due Process and Equality Under the Law 470
- **Chapter 15: Civil Liberties** **477**
  - 15.1 What does the *U. S. Constitution* protect? 477
  - 15.2 Securing Basic Freedoms 488
  - 15.3 Protecting the Rights of Accused Persons 507
  - 15.4 The Bill of Rights and Protecting Privacy of Person and Property 517
- **Chapter 16: Civil Rights** **524**
  - 16.1 How are rights identified? 524
  - 16.2 The struggle for equality? 533
  - 16.3 How has the fight for women's rights progressed? 549
  - 16.4 Native Americans, Alaska and Hawaii Native Americans 559
  - 16.5 Hispanics, Asian Americans and Other Groups 567
- **Liberty v. Security: Wrapping it Up in Review** **582**
  - Liberty v. Security: A Short Review 582

Appendices **583**

- Appendix A: *Declaration of Independence* 583
- Appendix B: *The Articles of Confederation* 586
- Appendix C: *The Constitution of the United States* 591
- Appendix D: *Federalist Papers Nos. 1, 9, 10, 11, 12, 14, 51, 57, and 78* 605
- Appendix E: *Obergefell v. Hodges* Dissenting Opinion by Associate Justice Antonin Scalia 626
- Appendix F: Electoral College Votes by State, 2012–2020 629
- Appendix G: Selected Supreme Court Cases 630
- Appendix H: U. S. Department of Justice Legal Terms Glossary 634
- Appendix I: What is an Open Educational Resource? 644
- Appendix J: About the Resources, Authors, and Reviewers 645
- Appendix K: Survey of Instructor Resources 650
- Appendix L: Student Resources 651
- Appendix M: Charts and Diagrams for Instructors and Students 653
- Appendix N: Information on .PDF 654
- Appendix O: Example of Cooperative Federalism: Balcones Canyonlands Conservation Plan 655
- Appendix P: Excerpts from "*The Souls of Black Folk*" by W.E.B. Du Bois 660
- Appendix Q: Excerpts from "*Narrative of the Life of Frederick Douglass*" by Frederick Douglass 682
- Appendix R: Excerpt from "*Up from Slavery: An Autobiography*" and "*The Atlanta Exposition Speech*" by Booker T. Washington 691
- Appendix S: Excerpts from *"Second Treatise of Government"* by John Locke 697
- Appendix T: "*Apology*" by Plato, Translated by Benjamin Jowett 702
- Appendix U: Excerpts from "*Dred Scott v. Sandford*," "*Plessy v. Ferguson*," "*Brown et al. v. Board of Education*," and "*Griswold et al. v. Connecticut*" from the Library of Congress 714
- Appendix V: Excerpts from the Anti-federalists (George Mason Speech, Brutus I, and Federal Farmer) 726
- Appendix W: October 15, 1858 Debate Between Lincoln and Douglas, Debate 7 735

1.1 Government: Purpose & Type

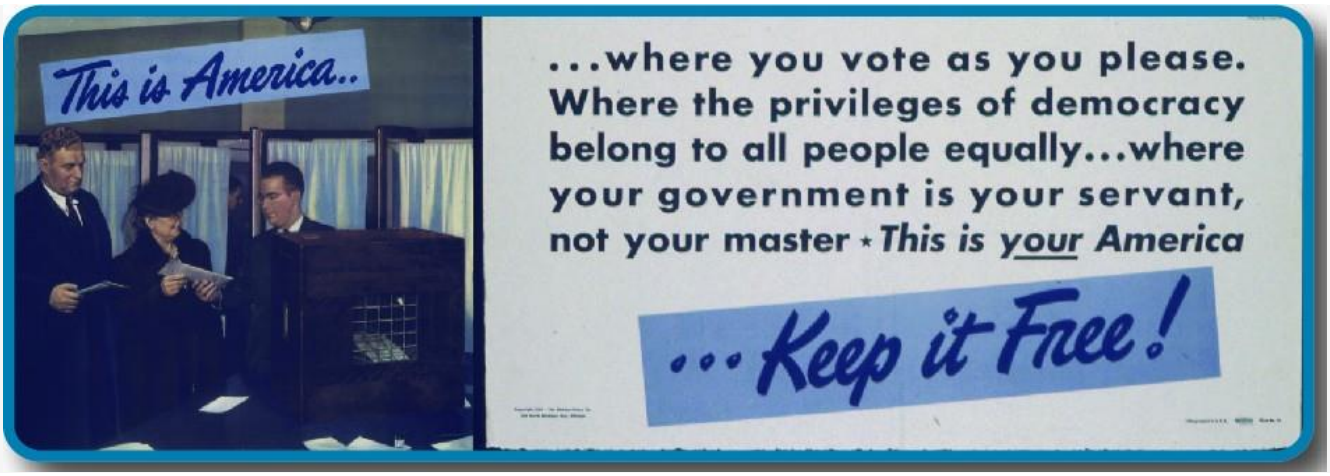


Image 1.1 Photo of Citizens Voting

The right to vote is an important feature of the nation's system of government; and, over the years, many people have fought and sacrificed to obtain or maintain this right. Why do people often ignore this means of civic participation?
(Credit: modification of work–National Archives and Records Administration)

Learning Objectives

- Explore the purpose of government.
- Examine the functions of government and understand the relationship between government and economic systems.
- Define and examine various forms/types of government as well as various structures of government.
- Consider the level of order/control exerted over citizens by various forms and structures of government.

Chart 1.1 Learning Objectives: government purpose, structure, and functions

Government of some form is necessary when people cease to live in isolation. Government can provide protection for individual life and individual liberties. Government by consent of the people rather than by force or coercion is a core idea of governing in the United States of America. Under this concept, government can be characterized by its purpose of protecting not only the lives and property of individual citizens but also the protection of individual liberties. The people give their consent to governmental functions designed to achieve these purposes of securing life, liberty and property while maintaining the maximum level of freedom. The United States of America have relied on citizen consent and participation to govern at the local, state, and national level--as a **representative republic** where voters elect representatives to make decisions and pass laws on their behalf. The right to participate in government is an important pillar of this republic. The people have known and valued that right enough to fight for and then defend it over nearly two and a half centuries. Active citizen participation is at once foundational to a free society, yet it is taken for granted by too many.

The World War II poster shown above depicts voting as an important part of the fight to keep the United States free. Voting is a right worth protecting and a key means for citizen involvement, which ensures that the government serves the people rather than the reverse.

The founders of the United States originally focused on freedom from the **tyranny** that is excessive and oppressive control of a remote and imperious monarchy (rule of one) denying basic political rights and civil liberties. While forming a new independent government, they realized an opportunity to draw on the wisdom of revered political philosophers and centuries of experience with governance. Perhaps most importantly, the resulting representative republic is centered on **civic participation** and control of government through the consent of the governed, meaning citizens influence governmental policy decisions through the exercising of rights (vote, assembly, petition, etc.) without government interference.

Consider the issue of civic participation. At the founding, only free white males participated in voting. In fact, some states further restricted voting participation by requiring ownership of property. Over time, these voting restrictions gradually gave way to full political equality of participation for all citizens. Only a government structured for ultimate control by the people, would be able to evolve the very definition of the people governing themselves. The definition of the people has changed over time. The struggle, to include more groups of people able to participate on equal footing, has been long and difficult. The fact that each disenfranchised group continued the struggle is evidence of the value placed on our representative republic and the opportunities equal participation affords.

Thomas Jefferson writes in the ***Declaration of Independence*** that "political bands" of government connect citizens of a nation and that governments are formed for the purpose of securing citizens' rights of "[…] Life, Liberty and the pursuit of Happiness."[iii] He states that people agree to give power and authority to a government and to abide by agreed upon rules in order to achieve these objectives of protecting rights. While people hope the government will provide the proper balance between protecting their liberties, providing for their personal security and safety, and promoting opportunities to achieve personal happiness, no government is perfect. The balance between governmental purposes is constantly debated and discussed. Debate is ongoing over what government should do to assist citizens in pursuing happiness while at the same time treating citizens equally in such pursuits. Government sometimes regulates what we eat, where we go to school, what kind of education we receive, how our tax money is spent, and what we do in our free time. Americans are often *unaware* of the extent of government intervention in their lives.

What is government and why would we even want one?

Government is how a society organizes itself to allocate and exercise authority in order to accomplish purposes, goals and functions. These government functions typically include defense, education, law enforcement, a judiciary, and an infrastructure for transportation and trade for their citizens. They may include additional functions such as healthcare and possibly a broad range of social welfare services. Countries provide such benefits via different governmental types/forms and structures.
The form and structure of governmental organization a country chooses should not be confused with politics**. Politics** is a competitive struggle for gaining and exercising control over the governmental processes or organizational structures that carry out the goals, purposes, or functions of the country.

Government	Politics
Organization to Accomplish Purposes, Goals & Functions	Competitive Struggle for Power To Influence Policy and Government Actions
EXAMPLES… Congress Supreme Court Presidency U.S. Department of State Texas Department of Transportation Local Police Department Local Public Schools… etc.	**EXAMPLES…** Political Parties Elections Interest Groups Protests Petitions Mass Media Social Media… etc.

Chart 1.2 Examples of Government and Politics

John Locke, a 17th century political philosopher, put forward as an argument, that all people have natural rights of life, liberty, and property that are viewed as inseparable or unalienable freedoms that cannot be taken away. Thus, people have natural rights of self-determination or control of their own life and property. According to Locke, people sacrifice some portion of freedom in exchange for government protection of life, liberty, and property based upon their own consent.

Does it then follow that all governments should involve individual consent from the people? By the time of the American revolution, this political thought had developed into the idea that people should govern themselves through elected representatives; and, only representatives chosen by the people should make laws and institute control over citizens' lives.

Where did this idea arise? Why would we want any other individual or government to have any type of control over our lives or property? Individuals would not need to band together for order or control if everyone respected each other's lives, liberty and property 100% of the time.

As James Madison stated, "If men were angels, no government would be necessary."[2] Unfortunately, this is not the case with some individuals who will seek to take away others' lives, curtail others' liberty, or deprive others of property; therefore, governments are established to protect against such unrestrained breakdowns of order in society.

Consider the Original

From James Madison, Federalist No. 51

The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments
From the New York Packet, Friday, February 8, 1788

"[…] but what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place obliges it to control itself."

Credit: Congress.gov, Resources, The Federalist Papers; www.congress.gov

Chart 1.3 Excerpt from Federalist No. 51

The individuals organizing governmental authority and powers for the new United States of America clearly stated the goals of good government in the *Preamble* to the U.S. Constitution for a new republic based on consent of the governed. They sought balance in government between maintaining order while preserving and not abusing the liberty of citizens. While most governments want to establish order and control, not all seek to protect liberty or property. Throughout history, the most common form of government–**monarchy** (one person rule, typically hereditary; or one family in control; power concentrated at the top)–saw order and control as the highest priority. Several hundred years before the U. S. *Constitution* was written and before John Locke wrote about people governing themselves through representatives, Thomas Hobbes wrote a political thesis titled *Leviathan*. He argues in *Leviathan* that a strong ruler is necessary to prevent a constant state of war of people among themselves.[3] Imagine there is no government, no police, no court, no rules—a state known as **anarchy**. Hobbes concludes such a situation would make life "[…] poore, nasty, brutish, and short."[4] He believed a strong ruler would keep people physically safe from attack. While Hobbes argued in his time for **absolute monarchy**, similar arguments for an extremely powerful ruler or dictator have been made in more recent times under a form of government known as **authoritarianism**. Under these forms of government, the ruler has unrestricted power and citizens have limited opportunity to participate in government decisions since there is significant limitation on political rights and civil liberties.

Consider the Original

Excerpt from *Leviathan* by Thomas Hobbes (1651)

Out Of Civil States, "[…] it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man… the nature of War, consisteth not in actuall fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary […]."
The Incommodites Of Such A War, "Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man… wherein men live without other security, than what their own strength, and their own invention shall furnish them… In such condition, there is no place for Industry; because the fruit thereof is uncertain; and consequently… no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short […]"[6]

Chart 1.4 Excerpt from Thomas Hobbes' *Leviathan*

The power of most of today's monarchs is limited by law or constitution; and, kings and queens, in such countries as Great Britain, Sweden, or the Netherlands are classified as ceremonial "heads of State" only, with the real governing authority and power in a democratically elected legislature or Parliament. With citizens having strong opportunities to freely participate in electing representatives, these countries are known as **parliamentary democracies** despite having monarchs. However, this is not always the case. Kingdoms such as Saudi Arabia, Qatar, and the United Arab Emirates have absolute monarchs with unrestricted powers with significant limitation on a citizen's political rights or civil liberties. Also, many cases of very strong authoritarian non-democratic governments still exist–with virtually dictatorial leaders where citizens have very limited opportunity to participate in governmental decisions.[7] Some non-democratic countries are also totalitarian and tyrannical in nature. Under **totalitarianism**, the government controls all aspects of citizens' lives—including social and private matters such as the number of children a family may have. Citizens' rights are limited, and the government does not allow political criticism or opposition. North Korea is an example of a totalitarian government. Another nondemocratic form of government is **oligarchy** (power concentrated in a handful of elite members of society). This identifiable, permanent elite group of rulers frequently shares characteristics of wealth, social status, military might, business, or political connections. For example, in countries such as Paraguay, Ecuador, or the Ukraine, a wealth and social status elite exists. In China, only members of the Communist Party can vote or hold public office, and the party's most influential members make all governmental decisions, virtually characteristic of an authoritarian political system.

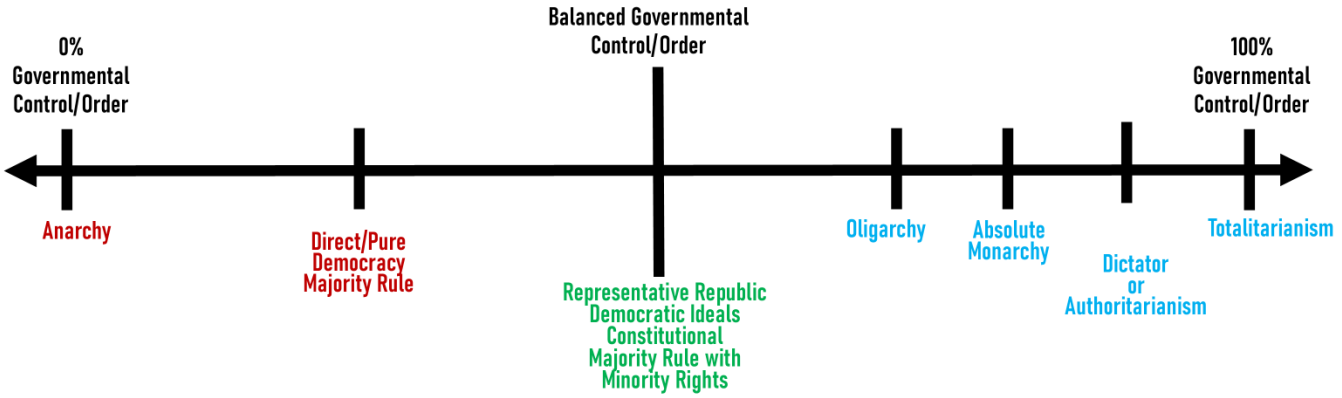


Chart 1.5 Scale of Governmental Order and Control

The Freedom House Annual Survey of political rights and civil liberties shares information on the political form of government of some 154 countries ranking countries as "Free," "Partially Free," and "Not Free," based upon the level of political rights and civil liberties protected in those countries.

Check it out at **https://freedomhouse.org/countries/freedom-world/scores.** Also, the CIA website provides information about the types of government across the world in a section called "World Factbook." **https://www.cia.gov/the-world-factbook/countries**.

A **representative government** (either in the form of a **republic, representative democracy**, or parliament-dominated, constitutionally limited monarchy) is indirect rule of citizens through representatives and the rule of law.

U.S. citizens vote for members of Congress, the president and vice president, members of state legislatures, governors, mayors, and members of town councils and school boards to act on their behalf. Most representative governments favor **majority rule**: the opinions of the majority of the people have more influence with government than those of the minority. If the number of elected representatives who favor a proposed law is greater than those who oppose it, the law will be enacted. However, in representative governments like the United States, **minority rights** are protected--people cannot be deprived of certain rights even if an overwhelming number of people think that they should be deprived. For example, even though the numbers of Americans who believe in the authority of a Higher Power far outweigh the number who do not, the minority is still protected, and no imposition of religious belief or practice is forced on this minority group. Because decisions are mainly made through majority rule, making your opinions known and voting (for individuals who make decisions affecting all citizens) are influential forms of civic engagement in a republic.

Form of Government	Description of Governmental Form
totalitarianism	total governmental control including over private lives and social relationships
authoritarianism	strong ruler with unrestricted power; citizens lack political rights and civil liberties
monarchy	rule of one; typically hereditary rule; backed by oligarchical power (aristocracy)
Oligarchy	rule of few (well-connected, socially, financially, politically powerful)
representative republic or democracy	rule of law; rule of citizens is indirect through representatives
direct democracy	citizen decision makers; simple majority rule; no restraint on majority
anarchy	no order/control; no government structure; power vacuum

Chart 1.6 Forms of Government and Their Descriptions

In a **direct democracy**, unlike a republic or representative democracy, people participate directly in government decisions. In ancient Athens, the most famous example of a direct democracy, all male citizens could attend meetings of the Assembly. Here they debated and voted for or against all proposed laws. Americans vote for people to represent them and make laws on their behalf. They may sometimes vote directly on issues.

For example, a referendum or proposed law may be placed on the ballot for citizens to vote on directly, taking the matter out of the hands of the state legislature. At New England town meetings, all residents can debate decisions affecting the town. Such occasions provide additional opportunities for civic engagement. Direct control is often more effective at local levels of government, becoming unmanageable as populations increase. Accordingly, there are no direct democracy referenda at the U.S. national level.



Image 1.2 Photo of Town Meeting Venue

Residents of Boxborough, Massachusetts, gather in a local hotel to discuss issues affecting their town. New England town meetings provide an opportunity for people to experience direct democracy. This tradition has lasted for hundreds of years.
(Credit: OpenStax; modification of work by Liz West)

Consider the Original

"Society in every state is a blessing, but Government, even in its best state, is but a necessary evil; in its worst state an intolerable one: for when we suffer, or are exposed to the same miseries BY A GOVERNMENT, which we might expect in a country WITHOUT GOVERNMENT, our calamity is heightened by reflecting that we furnish the means by which we suffer."

Thomas Paine[8]

Chart 1.7 Excerpt from Thomas Paine

Form of Government	The Good Thing About...	The Bad Thing About...	The Ugly Thing About...
totalitarianism	decisiveness	people have no say in the government and usually in their own lives	ruler or rulers may take everything away from the people
authoritarianism or monarchy	one person in charge means quick decisions	on person in charge means the ruler has power & people do not	a really bad ruler can hurt the people because of their power
oligarchy elite	a group of people are less likely to be exploited by a single bad ruler	various leaders may not agree; indecisiveness may leave the people vulnerable	a bad group of rulers may take advantage of the people for their own benefit
representative republic or democracy	government exists because people choose and replace representatives themselves	if the people do not pay attention to leaders, bad ones may take power	representatives may become corrupt and hurt the people; may try to overthrow the rule of law
direct democracy	people are completely in control of their government	people can be divided and indecisive or take advantage of minority groups	majority always gets its way and may oppress some of the people
anarchy	everyone can do whatever they want whenever they want	people have no protection from each other or other nations	people can be hurt by whichever person or group has power

Chart 1.8 Forms of Government with Good, Bad, and Ugly Points for Each

Basic Purposes, Goals, and Functions of Government

The framers of government in the new United States of America understood the dangers of **anarchy** (absence of government order), the problems of **monarchy,** the oppression of a distant aristocratic elite and the impracticality of **direct democracy**. Not only did they believe the new country was already too large and diverse for direct democracy, but they were also concerned that in direct democracies, minority views and rights might be poorly protected from majority rule. A **representative republic** was their choice–citizen control via elected representatives. They also had a clear understanding of the functions they wished the republic's representatives to implement on behalf of citizens as stated in the Preamble to the written Constitution.

Consider the Original

The preamble to the *Constitution* clearly outlines the basic purposes of government expected to be achieved with the *Constitution* stating, "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."[9]

Chart 1.9 Preamble to the U.S. Constitution

What are these six (6) purposes or goals of the United States' government?

1. **(*form a union*)** unify to maintain order and liberty; strengthen and provide enough power to the government to carry out listed goals
2. **(*establish justice*)** formulate rules to establish order; a fair and impartial justice system to ensure equality before the law
3. **(*domestic tranquility*)** make sure the new rules and punishments provide an environment of law and order to preserve physical security for citizens and their property
4. **(*common defense*)** make sure the union protects its citizens from foreign invasion & threats–military, political, and economic–through creation of a national military force
5. **(*general welfare*)** promote social, political, and economic prosperity for the entire nation
6. **(*secure liberty*)** maintain individual liberties against excessive government encroachment (intrusion)

These goals, listed in the *Constitution's* preamble, outline difficult tasks requiring delicate balance. Tension exists between the government's responsibilities to maintain order while upholding the commitment to protect liberties, such as freedom of speech and the right to assemble to protest governmental actions. Moreover, we continue to debate and redefine what is meant by each of these purposes. For example, debate exists over the extent to which the government, in promoting the general welfare, may obligate taxpayers to provide a safety net for those unable to provide for themselves. Debate over the role of the national government, in facilitating an environment of equal opportunity versus a commitment to equal outcome through various fiscal and economic policies, is one of the most hotly contested issues of modern U.S. politics.

Politics is a competitive power struggle for gaining and exercising control over the governmental processes or organizational structures that set or carry-out social, political, and economic policy of the country. **Representative governments** provide a means for citizens to participate and make their opinions known to those in positions of power to make policy decisions. Moreover, in a representative government, voting allows citizens to decide who will be in those positions of power. In addition, representative governments like the United States, Britain, France, and others protect citizens' **civil liberties** including freedom of speech, a free press, and the citizens' right to join organized groups or political parties. These civil liberties provide an essential operating environment for the exercise of civic participation in a representative government. **Civic participation** or engagement that connects citizens to their **representative government** is a vital ingredient of politics. In the United States, citizens play an important role in influencing what policies are pursued, what values the government chooses to support, what initiatives are granted funding, and who gets to make the final decisions. Civic participation can take many forms besides voting such as reading about politics, listening to news reports, discussing politics, attending (or watching televised) political debates, donating money to political campaigns or favored interest groups, handing out flyers promoting a candidate, voting, joining protest marches, and writing letters to or meeting with elected representatives. Politics is the process of who gets what and how; that is, what policy or benefits and how it is carried out. These policy decisions involve trade-offs. If government policy chose to support an ideal such as individualism, the policy may involve loosening regulations on business and industry or cutting taxes so that people have more money to invest in business.

If government policy supports an ideal such as egalitarianism or equality, it may raise taxes in order to be able to spend more on public education, public transportation, housing for the poor, and care for the elderly. If, for example, the government policy is more concerned with national security than with individual liberty, the policy may authorize the tapping of people's phones. If liberty is more important, then government will place greater restrictions on the extent that law enforcement agencies can intrude upon citizens' private communications. The political process and the input of citizens through their civic participation thus helps determine the answers when protection of liberty and provision of security conflict or for other policy questions.

Government and the Economic Framework

Governments work to achieve their goals and purposes while balancing governing tasks within specific but differing economic frameworks. The United States government has long worked primarily in a capitalist, free-market system. In fact, representative democracy and the free-market capitalism framework developed together in the U.S. from the early days of the republic. Under this framework, the market–through privately owned and operated businesses and companies–provides many needed goods and services to those living within a society.



Image 1.3 Photo of Hoover Dam

A rainbow hovers in the distance above Hoover Dam, which is an example of a critical infrastructure project to provide water to 23 million people in the southwestern U.S. as well as irrigation for 2.5 million acres of agriculture–a public sector service. (Credit: Richard Stewart, Hoover Dam Visitor Services; WhiteHouse.gov.)

Profit is earned in return for products and services. Under this system, a majority supply of food, clothing, housing, and other goods and services are provided by what may be called **private sector goods and services**. Economists have formally labeled these goods and services as "**private goods**."[5]

However, the market cannot provide everything (in enough quantity or at low enough prices) to meet everyone's needs or to meet all the goals and purposes of government. Therefore, some goods, services, and activities are provided by the government itself, or what may be called **public sector goods and services** or "**public goods**."[6] Two such goods are public roads and education. Some representative democracies—such as Sweden and Denmark--use more public sector goods and services than the United States. These countries tend toward **socialism**, an economic system with a much higher expectation of goods, services, and activities being provided by the government and are known as social democracies. Socialism is typically viewed as an economic system and may be associated with social democracies such as Sweden and Denmark as well as authoritarian regimes such as Venezuela and Cuba. The economic system does not necessarily equate directly to a governmental form.

Private vs. Public Sector: Goods and Services

Economic Sector	Description of Types of Goods and Services
Private	goods and services provided by private businesses & companies, used by those who pay for them (cars, internet service, air travel, computers, food, clothing, etc.)
Public & Common Goods	goods and services provided by government—paid for by taxpayers, available to designated groups or individuals based on public policy goals (public highways, education, social welfare programs, etc.) and goods that all people may use but that are of limited supply (ocean fish, fresh water, air, natural resources, etc.)

Chart 1.10 Public and Private Goods and Descriptions

At federal, state, and local levels, government provides stability and security as well as goods and services. Security and safety require some form of military establishment, police, fire departments, and other first responders. Government provides other valuable goods and services such as public transportation, mail service, as well as food, housing, and health care for the poor. If a house catches on fire, the fire department does not demand payment before they put the fire out. If someone breaks into a

house and tries to harm the occupants, the police will try to protect them and arrest the intruder, but the police department will not request payment for services rendered.



Image 1.4 Chicago Ambulance on the Street at Night

A fire department ambulance rushes to the rescue in Chicago. Emergency medical services, fire departments, and police departments are all paid for by government through the tax base, and they provide their services without an additional charge. (Credit: OpenStax, Tony Webster)

The provision of these goods and services is funded by citizens paying into the general tax base. **Public goods** are funded by all taxpayers and available based either on need or entitlement. NO public sector goods and services are free. Public sector activities are funded by ALL taxpayers and available based either on need or entitlement–or to meet some basic public purpose, such as national defense. Yet not all public sector goods and services are fully funded by taxpayers. For example, if you wish to avoid traffic in a large metropolitan area, you may choose to pay a fee (toll) to drive on a less congested toll road, constructed under a government approved contract. Some government administered program benefits include subsidies for goods and services provided through the private sector.



Image 1.5 Fishing Boat on the Water

Fishing provides income, as well as food, for many Americans. Without government restrictions on the kinds and number of fishes that can be caught, the fish population might decline, and certain species might become extinct. (Credit: Library of Congress Prints and Photographs Division, Washington, D.C. at http://hdl.loc.gov/loc.pnp.pp.print; fsa.8a30588)

Some goods and services include activities that involve protection of what economists call "**common goods**," such as air, water, or fish in the sea–which all people may use, free of charge but are in limited supply.[17] Because everyone can use these goods, they must be protected or regulated so a few people do not take everything that is available and leave others with nothing. Government performs the important job of protecting these common goods through regulations.

Interesting Information

Governments regulate public access to common goods like natural resources, which may be of limited supply. Public lands and wildlife, however, are not goods the government can simply multiply if supply falls due to demand. If some people take too freely from the supply of common goods, there will not be enough left for others to use.

Government currently regulates access to fish (a common good of limited supply) in order to ensure against extinction and improve sustainability. Environmentalists want to set strict fishing limits. Commercial fishers resist limits. Fishing limits are set by a combination of scientists, politicians, local resource managers, and groups representing the interests of fishers.

Chart 1.11 Some Goods Government Regulates

Government: Questions to Consider

1. Why are governments necessary to society?
2. What forms of government exist?
3. What form of government exerts almost 100% control over citizens?
4. What term describes a lack of government, order, or control?
5. What are the six functions of government laid out by the *Preamble* to the *Constitution*?
6. What is the difference between a public good and a private good?
7. What is the difference between a representative democracy and a direct democracy?

1. *at a minimum the protection of life from bodily harm from others is considered necessary for society to exist and is a fundamental purpose of government*
2. *many different forms of government exist; each form of government allows for a different level of freedom for the people and control by the government; some forms include authoritarianism, communism, monarchy, republic, etc.*
3. *tyranny; totalitarianism*
4. *anarchy*
5. *form a union, set up a system of justice, keep the peace at home/domestically, provide for defense, promote the welfare of all citizens equally, and protect the maximum amount of personal liberty while achieving the previously stated goals*
6. *private goods are provided by private businesses and individuals for private purchase and use; public goods are provided by taxpayers*
7. *direct democracy ensures the majority always wins and all citizens are allowed to participate in all decision making; representative democracy allows for citizens choosing who will make decisions for all*

Terms to Remember

absolute monarchy—a political system with a hereditary, very strong or authoritarian ruler with unrestricted power and significant limitation on political rights and civil liberties

anarchy–absence of government, order, control

authoritarianism—a political system with political leaders with virtually dictatorial or unrestricted powers where citizens have very limited opportunity to participate in governmental decisions; and may have little personal rights respected by the government

civil liberties—personal or individual freedoms retained by every human being; liberties place limitations or restrains on the power of government; basic freedoms not subject to governmental interference (speech, press, religious liberty, etc.); unalienable liberties government should not take away

common goods–generally natural resources that all people may use but that are of limited supply and are protected and regulated by government, that is, by the public sector

Declaration of Independence–declares government is established by consent of the people/governed to secure unalienable/inseparable rights of life, liberty and pursuit of happiness; states reason for political, economic separation between colonies in America and Great Britain

dictatorship–very strong or authoritarian ruler of a government with excessive regulation and control over public and private lives of individuals

direct democracy–a form of government where people participate directly in making government decisions, such as through the use of referenda, instead of choosing representatives to do this for them

government–the means by which a society organizes itself and allocates and exercises authority and decision-making in order to accomplish its purposes, goals, and provisions of benefits

majority rule–a fundamental principle of democracy; the majority should have the power to make decisions binding upon the whole

minority rights–protections for those who are not part of the majority

monarchy–a form of government where one ruler, usually a hereditary one, holds political power

oligarchy–a form of government where a handful of elite society members hold political power

parliamentary democracy—political system of representative government; legislature/parliament selects the government which exercises policy leadership of the country; monarch are not actively involved in policy formation or implementation, retaining only ceremonial functions

political power–influence over a government's institutions, leadership, or policies

politics–competitive power struggle for gaining and exercising control over the governmental processes or organizational structures that set or carry-out social, political, and economic policy of the country

preamble–beginning statement; introductory paragraph of the U.S. *Constitution*, which states the purposes of the government formed by that contractual document

private sector goods and services–goods and services through the free market economy system by businesses and companies to those who pay for them; private goods

public sector goods and services–goods and services including regulation provided by government, paid for by taxpayer's dollars, public goods

representative democracy–a form of government where voters elect representatives to make decisions and pass laws on behalf of all the people instead of allowing people to vote directly on laws

republic–indirect rule by citizens' representatives; also known as representative democracy

socialism—an economic system (not governmental form) characterized by a high level of public sector goods and services provided through government and paid for by taxpayers; may result in high levels of regulation and control by government

totalitarianism–a political system where government is all-powerful and citizens have no political rights and civil liberties; government controls all aspects of citizens' lives including social and private matters

tyranny–excessive control over public and private lives of individuals by an individual ruler, group, or government, including a significant denial of political rights and civil liberties

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1.2 Government: Who governs?



Image 1.6 Migrant Worker Family in Tent

This migrant agricultural worker's family might find participating with government difficult when daily life is a struggle. Does socioeconomic status affect civic participation? (Credit: Dorothea Lange; Library of Congress Collection)

Learning Objectives

- Understand relationship between the *Declaration of Independence* and the concepts of unalienable rights and consent of the governed
- Understand which three democratic ideals are related to voting for representatives
- Understand basic theories of government—elitism and pluralism
- Understand how pluralism and elitism differ from the democratic ideals of majoritarianism

Chart 1.12 Learning Objectives of Democratic Ideals and Unalienable Rights

The United States *Constitution* guarantees its citizens the right to participate in government. In fact, the representative republic is based upon the ideas of **consent** by those who are governed and through individual participation. The Declaration of Independence states a governing creed that each individual, regardless of birth or circumstances, has value and possesses **unalienable rights** of life, liberty and pursuit of happiness. It states government is established to protect and defend these rights.

If individuals believe these rights are unalienable (inseparable) from the human condition, then no government should separate them from their rights *without their consent*.

Individuals in the new republic formed a representative government based upon the principle of consent; unfortunately, consent was not expanded to all individuals living within the borders of the new nation at the time of formation. It was only achieved over time.

Civic Participation, Political Equality, and Majoritarianism



Image 1.7 Woman Voting for the First Time

Margaret V. Lally is pictured here at the door of a voting booth during the first election where women could vote. (Credit: Bain News Service, LOC.)

If citizens wish to form a representative government, participation in choosing representatives that will make the laws is necessary. This democratic ideal of civic participation is characterized by consent of the majority through citizen voting for these representatives. Moreover, in voting booths, each person has politically equal influence–one person/one vote. Thus, voting for representatives manifests three democratic ideals–civic participation, majority rule, and political equality. This conception of representative government has been called **majoritarian** and places its reliance on individual civic participation in the electoral process to achieve consent of the governed.[11]

Elitism and Pluralism: The Alternative to Majoritarianism

Many people believe evidence indicates U.S. citizens, especially as represented by competing groups, can influence government actions. This viewpoint is called the **pluralist theory** of government, which states political power rests with competing interest groups sharing influence over governmental decisions.

The founders of the U.S. *Constitution* understood that citizens might band together in organized groups to attempt to influence elected representatives as they develop rules and laws. This form of civic participation is guaranteed in the *Bill of Rights* through the First Amendment's right to petition the government to address your concerns and the right to assemble or organize political meetings or groups.

The United States has many different levels and branches of government that any citizen or group might approach with concerns about protection of liberty and property or maintenance of order and security. Who is really in control of the government?

Some political theorists, however, argue that a minority of citizens, economic and political elite, control the government and others have no influence. This belief is called the **elite theory** of government

or **elitism**. According to this theory, the United States is, in fact, an **oligarchy** where power is concentrated in the hands of the few.



Image 1.8 Rally in Philadelphia 1917

Rally of the citizens of Philadelphia for the Home Defense Committee, March 31, 1917
(Credit: Library of Congress Panoramic Photographs Collection)

Competing Theories of Government	Descriptions
Majoritarian	⇒ a democratic model which relies on the majority of citizens *through elec*tions to exercise political power to achieve consent of the governed
Pluralist	⇒ a democratic model which relies on many competing interest groups to influence government decisions to be responsive to the general public
Elitist	⇒ a non-democratic model which suggests that a concentrated and distinct minority (an oligarchy) exercises power of governmental decision making

Chart 1.13 Competing Theories of Government and Descriptions

Pluralists argue, political power is distributed throughout society. Rather than resting in the hands of individuals, a variety of organized groups hold power, with some groups having more influence on certain issues than others. Thousands of interest groups exist in the United States.[2] Approximately 70–90

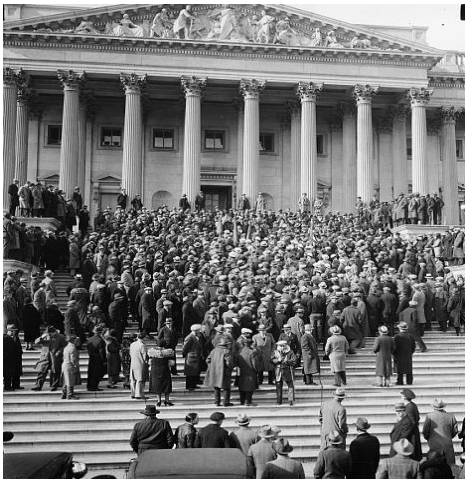


Image 1.9 Interest Group Organized Protest

A veterans' interest group protests bonus bill delay. Protesting Congress' delay in considering the soldiers' cash bonus proposal, scores of Washington veterans paraded to the Capitol in a demonstration to seek immediate action. They were met on the Capitol steps by members of the House who are war veterans, where the photograph shows them being addressed by Rep. Patman of Texas. (Credit: Library of Congress Collection)

percent of Americans report belonging to at least one group.[3] According to pluralist theory, people with shared interests will form groups to make their desires known to politicians. These groups include environmental advocates, unions, and organizations representing various business interests. Because most people lack the inclination, time, or expertise necessary to actively advocate for their interests in Washington, D.C., these groups assume this role. As groups compete with one another and find themselves opposed on important issues, government policy forms. In this way, government policy is shaped from the bottom up and not from the top down, as in elitist theory.

Robert Dahl, author of *Who Governs?* was one of the first to advance the pluralist theory and argued that politicians seeking an "electoral payoff" are attentive to the concerns of politically active citizens and through them become acquainted with the needs of ordinary people. They will attempt to give people what they want in exchange for their votes.[4] The foremost supporter of elite theory was C. Wright Mills. In his book, *The Power Elite*, Mills argued that government was controlled by a combination of business, military, and political elites.[5] Most political elites are highly educated, often graduating from prestigious universities. According to elite theory, the wealthy use their power to control the nation's economy such that those with little influence cannot advance economically. Wealth or political connections allow the elite to secure for themselves the politically important positions used to make decisions and allocate resources in ways that benefit this group. Politicians do the bidding of the wealthy instead of attending to the needs of ordinary people. Those who favor government by the elite believe the elite are better fit to govern and that average citizens are content to allow them to do so.[6] In apparent support of the elite perspective, one-third of U.S. presidents have attended Ivy League schools, a much higher percentage than the rest of the U.S. population.[7] All six of the most recent U.S. presidents attended prestigious East Coast or Ivy League schools such as Harvard, Yale, Columbia or University of Pennsylvania.



George H. W. Bush, Yale University | William J. Clinton, Georgetown University | George W. Bush, Yale University | Barack H. Obama, Columbia University | Donald J. Trump, University of Pennsylvania

Portrait of G. H. W. Bush by Herbert E. Abrams, 1994; Portrait of W. J. Clinton by Simmi Knox, 2001; Portrait of G. W. Bush by John Howard Sanden, 2012 at "Official Portraits of the U.S. Presidents"; photos of B. H. Obama and D. J. Trump from WhiteHouse.gov photo archive; D. Myles Cullen photo of Trump 30 March 2017.
The last five U.S. Presidents have all attended prestigious East Coast or Ivy League universities.

Image 1.10 Portraits of Past Presidents from Bush to Trump



Image 1.11 Photo of President Joe Biden

Joseph Biden
University of Syracuse
Credit: whitehouse.gov, 10 January 2013

Currently, more than half of the members of Congress are millionaires; their median net worth is just over $1 million, and some have much more.[8] There is considerable dispute over the validity of **elite theory**. While a clearly differentiated socio-economic group appears to exist in positions of power, members of this group often do not have the same political viewpoints. For example, while Presidents Bush, Obama and Trump all attended prestigious east coast universities, they do not share similar political views on many issues. Outside government, extremely wealthy billionaires can often be found on different sides of the issues, such as George Soros or Tom Steyer supporting Democrats and Sheldon Adelson or the Koch brothers (Charles and David) supporting Republicans. At a minimum, there seems to be at least competing elites within this high-level socio-economic group.

Representative Government: Pluralism and Elitism

Do pluralist interest groups and lobbying efforts fulfill the original concept of representative government? Pluralism can undermine some of the basic democratic ideals of representative government. Since not all groups are equally powerful–they do not fulfill precisely the principle of political equality or one person/one vote. Moreover, lobbying influence is not the same as majority rule.

Governmental responsiveness to interest groups, even when all are combined, do not represent the true majority view of the people–only the view of those organized individuals. Clearly, elitism does not fulfill the democratic principles of political equality or majority rule either. An elite is not a majority of the population–it is then the opposite of political equality.

The Center for Responsive Politics is a non-partisan research group that provides data on who gives to whom in elections. Visit **OpenSecrets.org: Center for Responsive Politics** to track campaign contributions, congressional bills and committees, and interest groups and lobbyists.

Government: Questions to Consider

1. Can you describe unalienable rights?
2. What is the difference between elite and pluralist theory?
3. From what/who/where do unalienable rights arise or originate?
4. What three democratic ideals does voting for representatives demonstrate?
5. Which of the three democratic ideals are not fulfilled by pluralist theory?

1. *rights you have as a human being including life, liberty, and property*
2. *government is controlled by a small group of powerful or well-connected individuals versus government is controlled by competing groups of individuals*
3. *right reason, because you are a human being; because a higher power gives you the rights; individual choice*
4. *civic participation, political equality, majority rule (consent of the governed)*
5. *two of the ideals are not fulfilled—political equality since not all groups are equal and majority rule since each group does not represent the majority of citizens*

Terms to Remember

consent—individual citizens of a government recognize governmental authority; individual citizens vote or give consent to be ruled by a particular elected group of representatives

elite theory (elitism)—claims political power rests in the hands of a small, elite group of people

majoritarian theory (majoritarianism)—claims the majority of citizens exercise political power and achieve consent of the governed through elections

pluralist theory (pluralism)—claims political power rests in the hands of groups of people; competing groups

unalienable rights—rights possessed by every person/human; rights not conferred by the government; individual rights to life, liberty and property

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1.3 Government:
Civic Participation in a Democratic Representative Republic



Image 1.12 Women's Suffrage Protest

Picket line in 1917 for women's suffrage (vote) from the National Woman's Party Records with the Library of Congress (Credit: Harris & Ewing, Washington, D.C.; Library of Congress Collection)

Learning Objectives

- Explain the importance of citizen engagement in a representative republic.
- Describe the primary ways Americans can influence and become engaged in a representative government.
- Understand the debate about the decline of social capital.

Chart 1.14 Learning Objectives for Citizen Engagement and Social Capital

Citizen participation in a representative republic matters. As stated earlier, the right of citizens to participate in government is an important principle of representative democratic government. The purpose of voting–and other forms of civic participation–is to ensure that the government serves the people and not the other way around. Both majoritarian and pluralist theories assert a republic cannot function without active participation by at least some citizens. No matter who we believe makes important political decisions–the majority of voters or special interest groups–participation through voting changes those who are in powerful positions of authority to make policy choices.

Government based upon the consent of the people presupposes citizen participation in the political process. One of the hallmarks of this participation is voting in elections. In fact, voting is clearly a

necessary condition–that is, you cannot have a representative republic without voting. However, voting is not sufficient for a government to be called a representative republic or representative democracy. Authoritarian governments frequently allow citizens to vote but without real and meaningful participation in governing. For example, without real opportunity for citizens to express their opinions in an open environment or to join a political party or an organization that opposes the government leaders in power, votes have no impact on the direction of governmental policy. Voting must be coupled with civil rights and protected liberties that permit meaningful participation through a broad range of opportunities.

PATHWAYS TO PARTICIPATION: How do people get involved?

People can become civically engaged in many ways, either as individuals or as members of groups. Some forms of individual engagement require little effort.

Civic Participation—Individual Opportunity and Responsibility

One of the simplest ways to participate is to stay informed about issues facing the nation. Awareness is the first step toward civic participation. Information is available from a variety of reputable media sources, such as newspapers like the *Wall Street Journal*, *The Washington Post*, and the *New York Times*; national news shows, including those offered by the Public Broadcasting Service and National Public Radio; and reputable internet sites. While the internet and social media have provided an explosion of information about political issues, the varying quality of these sites has created a challenge to achieving the awareness needed to become an informed citizen.

Representative government cannot work effectively without the participation of *informed* citizens. Engaged citizens familiarize themselves with the most important issues confronting the country and with plans different candidates have for dealing with these issues. They vote for the candidates they believe will be best suited to the job, and they may join others to raise funds or campaign for those they support. They inform their representatives how they feel about important issues by direct contact or by writing or emailing them. Through these efforts and others, engaged citizens let their representatives know what they want and thus influence policy. Only then can policy decisions of these elected representatives be responsive and accurately reflect the interests and concerns of the people.

Voting is a fundamental way to engage with government and according to majoritarian theory is a primary means for citizens to exercise political power to achieve consent of the governed. Individual votes do matter. City council members, local judges, some local law enforcement officials, mayors, state legislators, governors, and members of Congress are all chosen by popular vote. Although the president of the United States is not chosen directly by popular vote but by a group of presidential electors (informally called the Electoral College), the votes of individuals in their home states determine how these electors ultimately vote. In 2016, a change of only 78,000 votes in three states would have elected Hillary Clinton rather than Donald Trump as president.[1] In 2020, the change of 44,000 votes in threes states would have reelected Donald Trump president rather than Joe Biden.[2]



Image 1.13 Voters Waiting in Line in Ohio

Voters line up to vote early outside an Ohio polling station in 2008. (Credit: OpenStax; photography by Dean Beeler)

Voting, however, is not the only form of political engagement in which individuals may participate. Besides voting, individuals may engage by attending political rallies, donating money to campaigns, responding to public opinion polls, signing petitions, actively contributing through social media, or commenting on political issues on Facebook, Twitter or other social media platforms. People who wish to be more active often work for political campaigns. Helping people register to vote, making campaign phone calls, and driving voters to the polls on Election Day are all important activities for citizen engagement.

Civic Participation Through Groups

Some people prefer to work with groups when participating in political activities whether these are organized or informal. Group activities can be as simple as hosting a book club or a discussion group to talk about politics, while organized groups include political parties and interest groups.



Image 1.14 Dr. King Marching in Alabama

Rev. Dr. Martin Luther King, Jr. led the civil rights marchers from Selma to Montgomery, Alabama. (Credit: Prints and Photographs Division, Library of Congress. Reproduction Number LC-USZ62-111234. at http://www.americaslibrary.gov/jb/modern/ jb_modern_selma_3_e.html)

Local Democrat and Republican organizations offer many opportunities for participation including active political campaigning, extensive education programs on public policy and opportunities to meet elected officials to discuss political issues.

Individual citizens can also join interest groups promoting causes they favor. Civic engagement through organized group activity may increase the power of ordinary people to influence government actions.

For example, some website connected to various causes and interest groups encourage involvement and provide petitions that can be circulated through email to encourage elected officials to take a policy choice. These organizations also alert their members to take action in a coordinated fashion to contact policy makers at critical moments in the development of public policy to maximize the impact to influence public policy. Of course, interest group pool financial contributions from their members to make contributions to political candidate or engage in public education efforts.

Thus, even those without significant wealth or individual connections to influential people may influence the policies affecting their lives and change the direction of government through active participation in organized groups or movements.

U.S. history is filled with examples of people actively challenging the existing structure of power, gaining rights for themselves and others, and protecting their interests by mutually working together to advance the causes they believe in.

Organized groups can also utilize more active and direct forms of engagement including protest marches, demonstrations, and civil disobedience. Such tactics were used successfully in the African American civil rights movement of the 1950s and 1960s and remain in use today as the protest marches during the summer of 2020 concerning the killing of George Floyd demonstrate. Other tactics, such as boycotting businesses of whose policies the activists disapproved, are also still common practice of many interest groups.

Civic Participation: Rights and Responsibilities of Citizenship

Rights of Citizenship	Responsibilities of Citizenship
govt. will protect your right to worship as you wish as long as you do not put others in danger	support and defend the *Constitution*
govt. will protect your rights of expressing yourself as long as you do not put others in danger	inform yourself on issues affecting your community, your state, and your nation
you have the right to apply for a job that requires U.S. citizenship	participate in the democratic processes in place in the U.S. constitutional republic
govt. will protect your freedom to live your life and maintain your liberty and individualism as long as you do not put others in danger	respect and obey local, state and national laws
govt. will treat you equally to other citizens	respect the rights, opinions, and beliefs of others in your community, your state, and your nation
you have the right to run for elected office	participate at the local level
govt. will protect your right to pursue what makes you happy as long as your actions do not infringe on the rights of other	pay your taxes on time and according to local, state, and federal rules
govt. will protect your rights if you are accused of a crime—providing a fair and equitable judicial process	serve on petit or grand juries if called upon
govt. will protect your right to vote for individuals to represent you in the government	defend your country if the need arises
Remixed from U.S. Citizenship and Immigration Services; "Citizenship Rights & Responsibilities"	*https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities*

Chart 1.15 Rights and Responsibilities of Citizenship

Government: Questions to Consider

1. Are you engaged in or at least informed about actions of the federal or local government?
2. Are you registered to vote?
3. Have you considered joining some organized group to support and advance a public policy you favor?

1. *personal answer*
2. *personal opinion*
3. *personal opinion*

Government: Works Consulted

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2.1 Roots of the American Constitutional Tradition

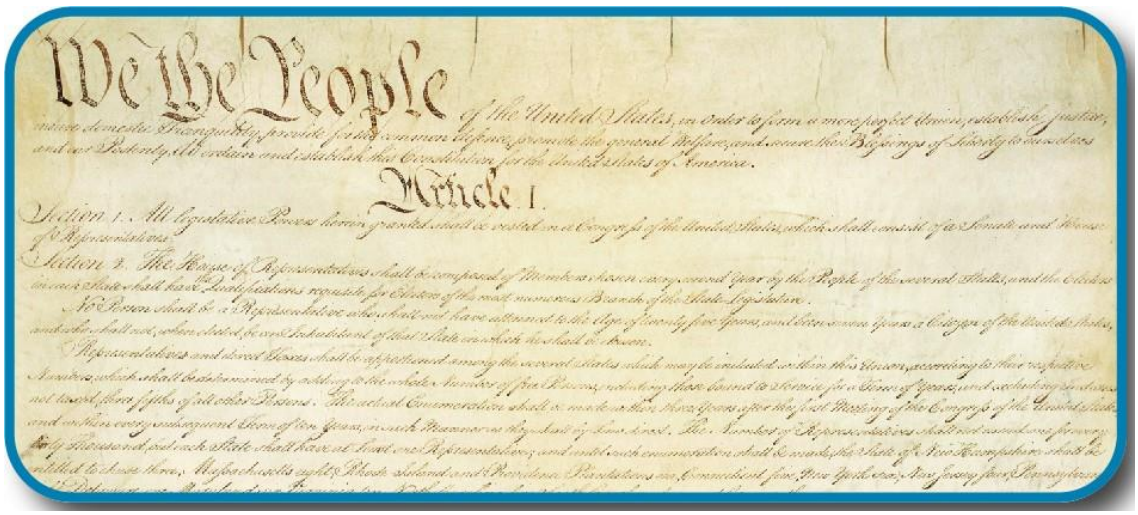


Image 2.1 Photo of the Constitution

The *U.S. Constitution* was written in 1787, ratified in 1789, and amended twenty-seven times. The *U.S. Constitution* has served as the basis for U.S. government for more than two hundred years. (Credit: modification of work by National Archives and Records Administration)

Learning Objectives
• Identify the origins of political thought leading to the development of a written constitution for the United States. • Identify some of the events related to the American Revolution that impacted the development of the U.S. constitutional tradition. • Understand the concepts of unalienable rights and consent of the governed in the writings of John Locke and Thomas Jefferson.

Chart 2.1 Learning Objectives for Constitutional Traditions and Consent

The American people *have* a contract with their government–the *Constitution of the United States of America*. Written in 1787 and amended twenty-seven times, this document is the basis for U.S. government.[1] The *Constitution* is the oldest and shortest written constitution of the modern era, the culmination of American (as well as British/European/Greek/etc.) political thought about government power. The *U.S. Constitution*, is one of the world's most enduring documents of representative democracy.

The framers of this contract were not like-minded individuals aligned in thought or purpose, and its writing and its constitutional provisions were by no means inevitable. The new 1787 Constitution was

designed largely out of necessity following the failure of the first written constitution, the Articles of Confederation. If individuals were to band together to form a new stronger government ("a more perfect union"), give their consent to this government to gain the protection of their unalienable liberties, and work to improve collective order and security, it is preferable to put the rules of consent in writing–a contract. Of all the political thinkers who influenced American beliefs about government, the most important is surely John Locke and his ideas regarding the relationship between government and natural rights or unalienable rights (whether arising from a belief in a higher power bestowing these rights or from a human ability to reason that such rights exist).

Consider the Original

From John Locke, Second Treatise of Government...

Chapter 8 OF THE BEGINNING OF POLITICAL SOCIETIES.

"MEN being, as has been said, by nature, all free, equal, and independent, no one can be [...] subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society (i.e. Government), is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another [...]."

CHAPTER. 9. ENDS OF POLITICAL SOCIETY AND GOVERNMENT.

"If man in the state of nature be so free, [...] why [...] part with his freedom? why [...] this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: [...] he seeks out, and is willing to join in society with others, [...] for the mutual preservation of their lives, liberties and estates, which I call by the general name, property [...] only with an intention in everyone the better to preserve himself, liberty and property; (for no rational creature can be supposed to change his condition with an intention to be worse) the power of the society (government), or legislative constituted by them, can never be supposed to extend farther, than the common good [...]."

Credit: Project Gutenberg, The Project Gutenberg eBook of Second Treatise Of Government By John Locke, www.gutenberg.org/files/7370/7370-h/7370-h.htm.

Chart 2.2 Excerpt from John Locke



Image 2.2 Portrait of John Locke

John Locke was one of the most influential thinkers of the Enlightenment period. His writings form the basis for many modern political ideas. (Credit: The Hermitage, Godfrey Kneller, Portraiture, 1697)

The idea of natural or unalienable rights, that no other individual or government has the right to take away life, restrict their liberty, or take property–without a particularly good reason.

According to Locke, people agree or consent to band together and form a government to protect life, liberty and property. These bonds may have a contractual agreement limiting governmental authority because individuals and governments do not always respect the life, liberty, and property of others. Throughout history few governments have recognized individual rights. John Locke, a 17th century philosopher, wrote about the relationship between government and unalienable or natural rights (whether arising from a belief in a higher power bestowing these rights or from a human ability to reason that such rights exist).

Locke was not the first to suggest such rights. The English elites sought to protect lives, liberties, and property of English freemen long before the settling of North American colonies. In 1215, King John signed *Magna*

Carta—a contract protecting life, liberty, and property–"No freemen shall be taken, imprisoned . . . or in any way destroyed . . . except by the lawful judgment of his peers or by the law of the land."[2] While *Magna Carta* afforded protections only to the English barons who were in revolt against King John in 1215, these protections were considered a cornerstone of liberty for freemen of all socio-economic conditions by the time of the American Revolution—rights always possessed by the people but begrudgingly acknowledged by King John.[3] A belief in unalienable or natural rights of all human beings indicates a belief that rights are only protected by government and not granted or conveyed by government. The problem with *Magna Carta* is significant. If a king may grant rights, a king may remove rights. If rights are unalienable--not granted by any individual or government--people may never be separated from these rights of life, liberty and property. Governments may protect the rights or infringe/restrict them, but they do not bestow or grant them.

Locke also addressed the purpose of government. For centuries monarchies claimed their authority originated from God. Locke, however, asserted that human beings created government.[4] People sacrifice some freedom in exchange for government protection of their lives, liberty, and property.

Locke called this implicit agreement between a people and their government the **social contract**. Should government deprive people of their rights by abusing its authority, the contract would be broken, and the people no longer bound by its terms. The people could thus withdraw their consent to obey and form another government for their protection–**popular sovereignty**. For Locke, withdrawing consent meant replacing one monarch with another.

In the seventeenth century, the British legislature, the Parliament removed and replaced a King and passed a English Bill of Rights which the new monarchy committed not to violate. The English Bill of Rights, heavily influenced by Locke's ideas, enumerated the natural rights of English citizens and explicitly guaranteed rights to life, liberty, and property. This document would profoundly influence the development of a written U.S. Constitution and Bill of Rights.

The desire to limit the power of government is closely related to the belief that people should govern themselves. This core tenet of American political thought was rooted in a variety of traditions. First, the British government did allow for a degree of representative self-government with laws made by Parliament voted into office by property-owning males. By the eighteenth century, all the colonies had established legislatures to which representatives were elected to make the laws for their fellow colonists. When American colonists felt that this longstanding tradition of representative self-government was threatened by the actions of Parliament and the King, the American Revolution began.

Why revolt?

How did disagreement move from thought to war? Over time the British monarchy came to treat colonists differently from other freemen living in Britain. Learned men among the colonies' leadership familiar with the works of Locke and other political philosophers boldly argued that the colonists had equal political rights with those living in Great Britain. While they sought a solution, appeals to the monarchy failed. Parliament and King George III made decisions for colonists without their

input/consent especially over taxation. The colonists objected that since they had no elected local representatives in Parliament, Parliament should have no authority to tax the colonists; that is, the cry became "no taxation without representation."

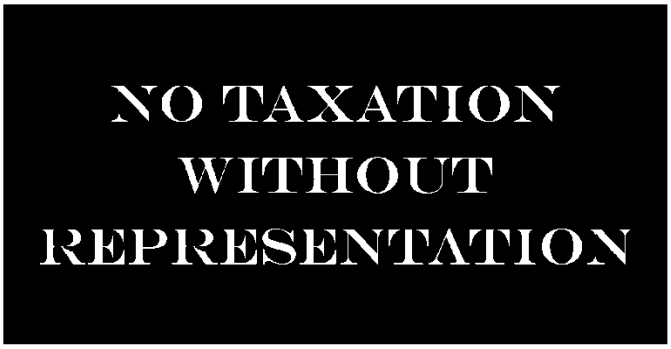


Image 2.3 Motto Statement from Revolutionary War Period

Ultimately, colonists determined that their political rights had been violated and that the social contract was broken, and they sought a means of self-government. Separation was the solution.

In December 1773, a group of Boston men boarded a ship in Boston harbor and threw a cargo of tea into the water. The protest concerned granting of a monopoly on tea to the British East India Company, which many colonial merchants resented.[5]



Image 2.4 Painting of the Boston "Tea Party"

In the iconic lithograph "The Destruction of Tea at Boston Harbor," colonists protest what they perceive as Great Britain's unfair taxation (on tea) without colonial consent through representation in the Parliament. (Credit: Library of Congress)

In 1774, Parliament responded to colonial defiance with laws called the Coercive Acts, punishing Boston for leading resistance to British rule. This assault on Massachusetts and its economy enraged people throughout the colonies, and delegates from all the colonies except Georgia formed the First Continental Congress to create a unified opposition to Great Britain and to develop a declaration of rights and grievances. King George III continued to ignore the reasoned appeals of colonial leaders for equal treatment. In 1775, delegates met again as the Second Continental Congress. Armed conflict had begun with skirmishes between colonial militiamen and British troops at Lexington and Concord, Massachusetts. Congress drafted a *Declaration of Causes* explaining the colonies' reasons for rebellion. On July 2, 1776, Congress declared American independence from Britain and two days later signed the ***Declaration of Independence***.

Britain had deprived the colonists of their political rights and civil liberties. Included among the statements in the *Declaration of Independence* documenting these abuses were the following: 1) imposing taxes without consent; 2) suspending legislatures and declaring themselves invested with power to legislate for colonies in all cases whatsoever; 3) depriving colonies of benefits of trial by jury; etc. In summary, the Declaration concluded that the King had "establish[ed] . . . an absolute Tyranny over these States." Just as their English forebears had removed King James II from the throne in 1689, the colonists now wished to establish a new rule. There was a crucial difference this time. The colonists did not want a new king. They wanted self-government.[6]

With their signing of the *Declaration of Independence*, the founders of the United States committed themselves to the creation of a new government based upon specific concepts of governance. Jefferson drafted the document which paralleled principles stated by John Locke over the purpose of government—to secure natural rights. "To secure these rights Governments are instituted…deriving their just powers from the consent of the governed."

Consider the Original

Thomas Jefferson, *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,—That whenever any Form of Government becomes destructive of these ends, its is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

(Credit: National Archives at USA.gov)

Chart 2.3 Excerpt from the Declaration of Independence

Thomas Jefferson explains in the ***Declaration of Independence*** why many colonists felt the need to form a new nation. His evocation of the natural rights of man and his list of grievances against the king also served as the model for the **Declaration of Sentiments** that was written in 1848 in favor of giving women in the United States rights equal to those of men.

Constitutions: Questions to Consider

1. What reason would you give for maintaining the written contract U.S. citizens have with the government?
2. Would you like to see the contract/constitution changed? In what way?
3. Would a verbal contract work for government?
4. What principles written in the Declaration of Independence by Thomas Jefferson match principles expressed by John Locke?
5. Is a government more accountable to the people because of a written contract or agreement? Why or Why not?
6. What key tenets of political thought influenced the decision to declare independence form Britain?
7. What action by the British government, as outlined in the *Declaration of Independence*, convinced the colonists they needed to declare independence?

1. *accountability; personal opinion question*
2. *open for discussion*
3. *open for discussion*
4. *that government must be based upon consent of the governed/people and that the purpose of government is to secure/protect natural/unalienable rights*
5. *personal opinion question*
6. *following the principles argued by John Locke, Americans believe they possessed natural rights to life, liberty and property and that government needed to have the consent of the governed and that these basic rights were being violated; the concept of natural or unalienable rights also is related to principles coming from Magna Carta and the British Bill of Rights*
7. *Britain had deprived the colonists of their political rights and civil liberties; included among the statements documenting these abuses were the following: 1) imposing taxes without consent; 2) suspending legislatures and declaring themselves invested with power to legislate for colonies in all cases whatsoever; 3) depriving colonies of benefits of trial by jury; etc.*

Terms to Remember

consent—citizens may consent to give up some liberties to governing authority/rule of law in order to receive a benefit like security/order

Declaration of Independence—declares that government is established by the consent of the governed to secure the unalienable or inseparable rights of life, liberty and pursuit of happiness. states reasons for political, economic separation between colonies in America and Great Britain

Natural rights—liberties retained by individuals such as the right to life, liberty, and property; believed to be given by a Higher Power or understood by human reasoning ability; no government may give/convey these rights; government may only protect or infringe on these rights

Social contract—an agreement between people and government in which citizens consent to be governed so long as the government protects their natural rights

Popular sovereignty—the people are sovereign/rulers rather than a monarch or oligarchy; the rule of law places people above politics

Constitutions: Works Consulted

1. credit: modification of work by National Archives and Records Administration
2. https://www.archives.gov/exhibits/featured-documents/magna-carta
3. https://www.archives.gov/exhibits/featured-documents/magna-carta
4. From Project Gutenberg at http://www.gutenberg.org/ebooks/10615
5. Bernhard Knollenberg. 1975. *Growth of the American Revolution: 1766-1775.* New York: Free Press, 95-96.
6. Declaration of Independence complete transcript available with the National Archives at USA.gov

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2.2 Constitutions: The *Articles of Confederation* —The First Constitution

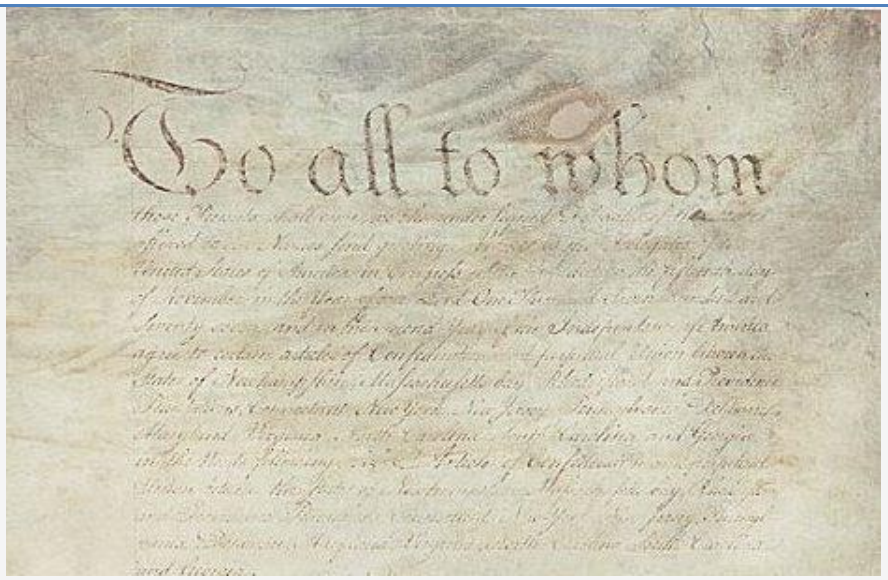


Image 2.5 Photo of Articles of Confederation

Articles of Confederation (1777) (Credit: OurDocuments.gov at https://www.ourdocuments.gov/)

Learning Objectives
• Describe the steps taken during and after the American Revolution to create a government. • Identify basic tenets of the *Articles of Confederation.* • Describe some unexpected consequences of the *Articles of Confederation.*

Chart 2.4 Learning Objectives for Articles of Confederation

Establishing a New Framework for Governing

Following their Declaration of Independence, waging a successful war against Great Britain required that the now fully sovereign and independent states (that often distrusted one another), create some form of government capable of directing their common defense. Gaining recognition and aid from foreign nations would also be easier if the new United States had a government able to borrow money and negotiate treaties. Accordingly, the Second Continental Congress called upon its delegates to create a new government strong enough to win the country's independence but not too powerful. Americans wished their new government to be a **republic**, a regime in which the people, not a monarch, held power and elected representatives to govern. Many, however, worried that even a government of representatives elected by the people might become too powerful and overbearing. In addition, Many, feared that a nation as large as the United States could not be ruled effectively as a single representative republic. In fact, following the Declaration of Independence, each of the thirteen states had drafted and ratified

separate constitutions providing for a representative form of government. Each state had a governor and an its own elected legislature. In the new nation, the independent states wished to remain free to govern their residents as they wished.

The final draft of the ***Articles of Confederation***, which formed the basis of the new nation's government and first written constitution, was accepted by Congress in 1777 and submitted for ratification by all thirteen states. Ratification, however, took some time. Maryland argued that territory west of the Appalachian Mountains, to which some states had laid claim, should instead be held by the national government as public land for the benefit of all. The last of these states, Virginia, relinquished its land claims in 1781, clearing the way for Maryland's approval and ratification of the *Articles*.[1]

The *Articles* defined a governmental structure (a confederacy) based upon a **confederation** of states–independent and self-governing entities unified in the form of an alliance for the primary purpose of common defense. Newly separated from a monarchy with a **unitary** or highly centralized power structure, the representatives sought an emphasis on decentralized power in the individual states, which they believed were best suited to manage states' unique interests. Fearful of replacing one oppressive national government with another, the framers of this confederation created an alliance of sovereign states held together by a weak central government.

View the ***Articles of Confederation*** at the National Archives. The **timeline for drafting and ratifying the *Articles of Confederation*** is available at the Library of Congress.

Under the *Articles of Confederation,* the central government had written authority to act for national defense. States were assumed to have a common interest in defense and a common desire to supply militias. In the careful balance between power for the national government and liberty for the states, the *Articles of Confederation* favored the states. Powers given to the central government were limited. The Confederation Congress had the authority to exchange ambassadors, make treaties with foreign governments and Indian tribes, declare war, coin currency, borrow money, and settle disputes between states. Each state legislature appointed delegates to the Congress. Regardless of its size or the number of delegates it chose to send, each state had one vote. To avoid an elite professional political class, delegates served for no more than three consecutive years. Nine of thirteen votes were required before the central government could act, and the *Articles of Confederation* could be changed only by unanimous approval of all thirteen states.

Under the *Articles* there was no independent chief executive nor judiciary at the national level and enforcement of decisions made by the Confederation congress were dependent on the states to be implemented.

Why did the *Articles* fail?

The *Articles of Confederation* satisfied the goal of a weak central government with limited power. It soon became apparent that, while the sovereignty of the states was protected, the *Articles* had created a central government too weak to function effectively. Fearful of creating a system no better than the oppressive monarchy they fought to escape, the men drafting the *Articles of Confederation* limited the powers of the central government. The states maintained the right to locally govern their residents, while the central

government could declare war, coin money, and conduct foreign affairs. An inability to impose taxes, regulate commerce, or raise an army hindered the defense of the nation and payment of debts. A solution had to be found. Miraculously, this confederation managed to win a war with the world's leading superpower of the 18th century despite its weaknesses.

One of the biggest problems was that the national government had no power to impose taxes. To avoid any perception of "taxation without representation," the Articles of Confederation allowed only state governments to levy taxes. To pay for its expenses, the national government had to request money from the states, which were required to provide funds in proportion to the value of the land within their borders. The states, however, were often negligent in this duty, and the national government was underfunded. Without money, it could not pay debts owed from the Revolution and had trouble conducting foreign affairs. Foreign governments were also, understandably, reluctant to loan money to a nation that might never repay it because it lacked the ability to tax its citizens.

The country's economic woes were made worse by the fact that the central government also lacked the power to impose tariffs on foreign imports or regulate interstate commerce. Compounding the problem, states often imposed tariffs on items produced by other states and otherwise interfered with their neighbors' trade.

The national government also lacked the power to raise an army or navy. Fears of a standing army in the employ of a tyrannical government had led the writers of the Articles of Confederation to leave defense largely to the states. Although the central government could declare war and agree to peace, it had to depend upon the states to provide soldiers. If state governors chose not to honor the national government's request, the country would lack an adequate defense.

Weakness	*Articles of Confederation*—Result of Identified Weakness
taxation	money requests not always honored by states; no predictable national income
trade & commerce	US hurt by foreign competition; states competing with each other
no national military	states could ignore request for militia/troops; hard to coordinate national defense
one vote per state	populous states underrepresented; lack of equal access for citizens
unanimous vote to change	problems with *Articles* not easy to fix
no national courts	no way to enforce limited central power; no way to resolve disputes between states
no executive branch	enforcing and implementing acts passed by Congress was impossible

Chart 2.5 Weaknesses of the Articles of Confederation

Constitutions: Questions to Consider

1. What are 2 reasons the *Articles of Confederation* hindered the government during the American Revolution?
2. Why would lack of a national judicial system be considered a weakness of the *Articles*?
3. What is a confederation?

1. *lack of ability to enforce taxation; interstate competition; inability to coordinate national defense effectively; unequal access of citizens; unanimous vote by all state to achieve change; lack of effective dispute resolution*
2. *no effective way to resolve disputes; especially between states*
3. *decentralized structure of government; roughly co-equal entities/states band together in an alliance for mutual protection and other agreed upon purposes*

Constitution: Terms to Remember

***Articles of Confederation*—**the first constitution for the United States of America; adopted in 1781; created an alliance of sovereign states held together by a weak central government with no chief executive

confederacy/confederation–a highly decentralized structure of government; roughly co-equal entities/ sovereign states form an alliance for purposes such as mutual defense or any other agreed purpose

unitary–a form of government in which any other level of government below the national government is dependent on the central government, where substantial authority is concentrated

Constitutions: Works Consulted

1. Stuart Bruchey. 1990. Enterprise: *The Dynamic Economy of a Free People*. Cambridge, MA: Harvard University Press, 223.

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2.3 The Development of the *U.S. Constitution*



Image 2.6 Photo of Independence Hall in Philadelphia

Independence Hall, Philadelphia, Pennsylvania (Credit: Carol M. Highsmith; Library of Congress Collection)

Learning Objectives
• Understand the controversies and compromises of the Constitutional Convention. • Understand the reasoning behind the separation of powers and checks and balances system.

Chart 2.6 Learning Objectives for the Constitutional Convention

If the *Articles* are not working, what do we do next?

Fifty-five delegates arrived at Philadelphia in May 1787 tasked with reworking the *Articles of Confederation*. It was apparent that the very loose confederation of states and the weak central government would not work as a long-term solution for governing the new nation. Throughout the long, hot Philadelphia summer, delegations from twelve states discussed, debated, and finally worked out a new blueprint for the nation–designed to resolve conflicts between small and large states, northern and southern states, and those favoring a strong national government with those arguing for state sovereignty. Many delegates to what is now called the **Constitutional Convention** wanted to strengthen the role and authority of the national government but feared allowing too much centralized power. They intended to preserve state autonomy without preventing states from working collectively. They wanted

to protect the political rights of all free men but also feared mob rule. Delegates replaced the *Articles of Confederation* rather than make revisions.

Although James Madison is known as the father of this new contract–the *Constitution*–George Washington's support gave the convention and the *Constitution* hope of success due to his perceived sense of fairness, his overall credibility, and his reputation as a non-partisan leader.

After rejecting a monarchy and living with the weaknesses of the government set up under the *Articles of Confederation* during the revolutionary period, the delegates opted for a new system with a stronger national government balanced by state and local power. The new structure would employ separation of power as well as checks and balances between branches (legislative, executive, and judicial). Division of power between branches of government and between the federal and state governments, slavery, trade, taxes, foreign affairs, representation, and even the procedure to elect a president were just a few of the contentious issues of the Convention. Diverging plans, strong egos, regional demands, and states' rights made solutions difficult. Five months of debate, compromise, and creative strategies produced a new constitution creating a federal representative republic with a stronger national government than existed under the *Articles of Confederation*, leaving considerable power with the state governments.

Ten months of public and private debate were required to secure ratification by the minimum nine states. Even then Rhode Island and North Carolina held out until after the adoption of a Bill of Rights.

Consider the Original

"For we are sent hither to consult *not* contend, with each other;
and Declaration of a fix' Opinion, and of determined Resolutions never to change it,
neither enlighten nor convince us."

Let's decipher this statement... Franklin says they come to the convention to consult on important issues and not to be contentious or argumentative with each other. Individuals who have declared their opinions to be fixed and unchangeable are not there to consult; and, they are also not likely to persuade others to their point of view when they approach all discussion from this contentious or argumentative position.

Benjamin Franklin, Speech in Congress, June 11, 1787[11] (Credit: Joseph-Siffrede Duplessis, Prints and Photographs Division of the Library of Congress)

Chart 2.7 Excerpt from Ben Franklin

No decision about structure, function, or agenda for the new Republic's government was easy. Delegates from small states did not want their interests pushed aside by populous states like Virginia. Everyone was concerned about slavery, no matter which side of this contentious issue was supported.

Representatives from southern states worried that delegates from free states might try to outlaw slavery nationwide. Conversely, free states feared southerners might attempt to make slavery permanent.

They all agreed on the election of George Washington, former commander of the Continental Army and hero of the American Revolution, to chair the convention. A core question needed to be answered. If you

intend to implement a representative republic, how do you represent all states and citizens in a fair and equitable manner regardless of the geographical size or population of each state?

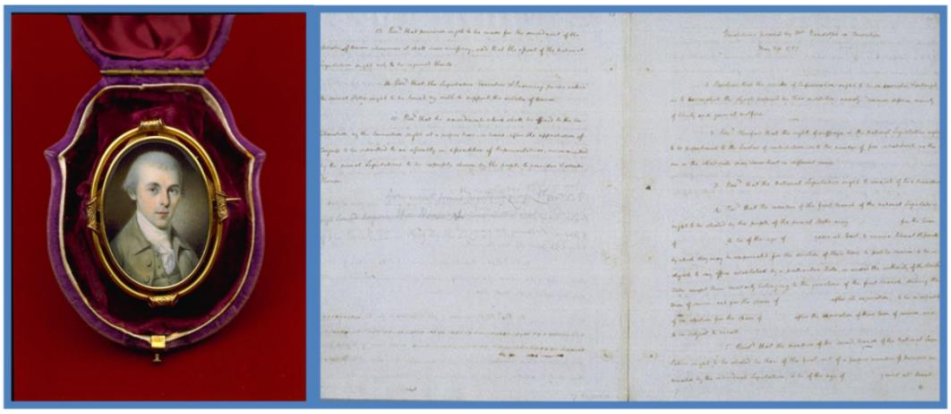


Howard Chandler Christy's interpretation of the signing of the *Constitution*, painted in 1940. (Credit: Architect of the Capitol at https://www.aoc.gov/art/other-paintings-and-murals/signing-constitution)

Image 2.7 Painting of the Constitutional Convention

How do you organize representation in a republic?

The ***Constitution*** consists of a **preamble** and seven articles. The first three articles divide the national government into three branches—the legislative branch, the executive branch, and the federal judiciary—and describe the powers and responsibilities of each, while establishing a government based upon separation of powers. In Article I, ten sections describe the structure of Congress, the basis for representation for both the House of Representatives and the Senate, the requirements for serving in Congress, the length of Congressional terms, and the powers of Congress taken together and separately for each chamber. The national legislature created by Article I reflects the compromises reached by the delegates regarding many issues discussed at the convention. Article I is much longer than the other articles describing the executive and judicial branches because the delegates were particularly concerned about lawmaking functions.



Miniature Portrait of James Madison Alongside a Portion of Notes on the Virginia Plan. (Credit: modification of images from the Library of Congress; at https://www.loc.gov/item/95522332 and http://www.loc.gov/exhibits/creating-the-united-states/Constitution/Ratification/Assets/us0056_01_enlarge.jpg)

Image 2.8 Portrait of James Madison and Picture of the Virginia Plan

James Madison came to the convention prepared. Following months of preparation and research, he developed an initial working draft of a governmental structure that was officially submitted by the Virginia delegation during the opening days of the convention. In addition to the suggestion to create some form of national executive, the delegates from Virginia called for a **bicameral legislature** consisting of two chambers, with a state's representatives in each chamber based on the state's population. The plan assumed that the national government would have greater powers and it would be wise to further divide legislative power between two chambers,

creating a second chamber we now call the Senate. Delegates from small states objected to this **Virginia Plan** and offered another proposal, the **New Jersey Plan**.

Consider the Original

The Debates in the Federal Convention of 1787; Tuesday, June 26
by James Madison

Mr. MADISON. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were,—first, to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware, that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be, to divide the trust between different bodies of men, who might watch and check each other. In this they would be governed by the same prudence which has prevailed in organizing the subordinate departments of government, where all business liable to abuses is made to pass through separate hands, the one being a check on the other. It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest; and that men chosen for a short term, and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest, that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests.

(Credit: Excerpt from The National Archives, Founders Online at https://founders.archives.gov)

Chart 2.8 Excerpt from James Madison

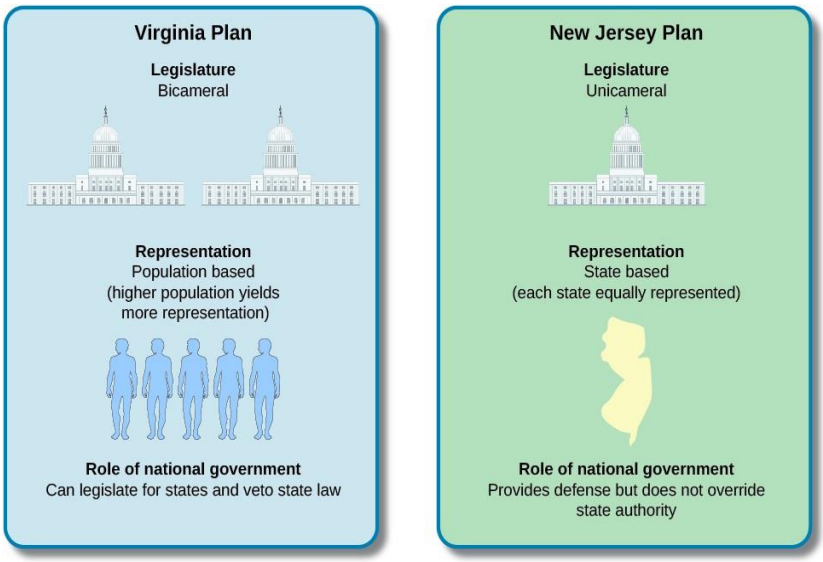


Chart 2.9 Examples of the Virginia and New Jersey Plans

The **New Jersey Plan**, called for a **unicameral legislature** with one chamber and each state possessing one vote with a weak executive committee removable by a vote of the states. Thus, smaller states would have the same power in the national legislature as larger states.

Although many at the convention viewed this entire proposal as a weakness already observed under the *Articles of Confederation*, the supporters of this plan really wanted extremely limited change from the *Articles* with its limited national power. In opposition to the New Jersey Plan, the larger states argued that because they had more residents, they should be allotted more legislators to represent their interests. They argued populations should be represented proportionally--equal access by individual citizen rather than equal share of power by states. As evidence the founders were concerned over the future under a weak alliance of

states, or confederation, examine Alexander Hamilton's concerns about state rivalry and dissension in *Federalist No. 6*.

Consider the Original

In Federalist No. 6, Alexander Hamilton states…

I shall now proceed to delineate dangers of a different and, perhaps, still more alarming kind–those which will in all probability flow from dissensions between the States themselves […] who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. To presume a want of motives for such contests as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages.

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power or the desire of pre-eminence and dominion–the jealousy of power, or the desire of equality and safety. There are others which have a more circumscribed though an equally operative influence within their spheres. Such are the rivalships and competitions of commerce between commercial nations. And there are others, not less numerous than either of the former, which take their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members. Men of this class, whether the favorites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquility to personal advantage or personal gratification.

(Credit: Alexander Hamilton, Federalist 6, The Federalist Papers; complete text at the National Archives at usa.gov https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-6)

Chart 2.10 Excerpt from Federalist Paper No. 6

Hamilton goes on to support his position with numerous historical examples of the weakness of confederations. Hamilton speaks eloquently of "dissensions between the States," which is evidenced in the controversy over representation.[1] Ultimately, compromise was achieved. The **Connecticut** or **Great Compromise** (suggested by Roger Sherman of Connecticut) effectively combined the New Jersey and Virginia Plans–a **bicameral** (two chambered) legislative body with a Senate where each state, regardless of size or population, received **equal representation** (2 senators for each state) and a House of Representatives where each state's population was counted to ensure **population-based representation** (total number of representatives divided by portion between the states based on total population and the total number of seats in the House).



Image 2.9 Painting of Roger Sherman

The Great Compromise that determined the structure of Congress soon led to another debate. When states took a census of their population for the purpose of allotting House representatives, should slaves be counted? Southern states were adamant that they should be, while delegates from northern states were vehemently opposed, arguing that representatives from southern states would not represent the interests of enslaved people. If slaves were not counted, however, southern states would have far fewer representatives in the House than northern states did. For example, if South Carolina were allotted representatives based solely on its free population, it would

receive only half the number it would have received if slaves, who made up approximately 43 percent of the population, were included.[2]

How do we reconcile slavery and unalienable rights?

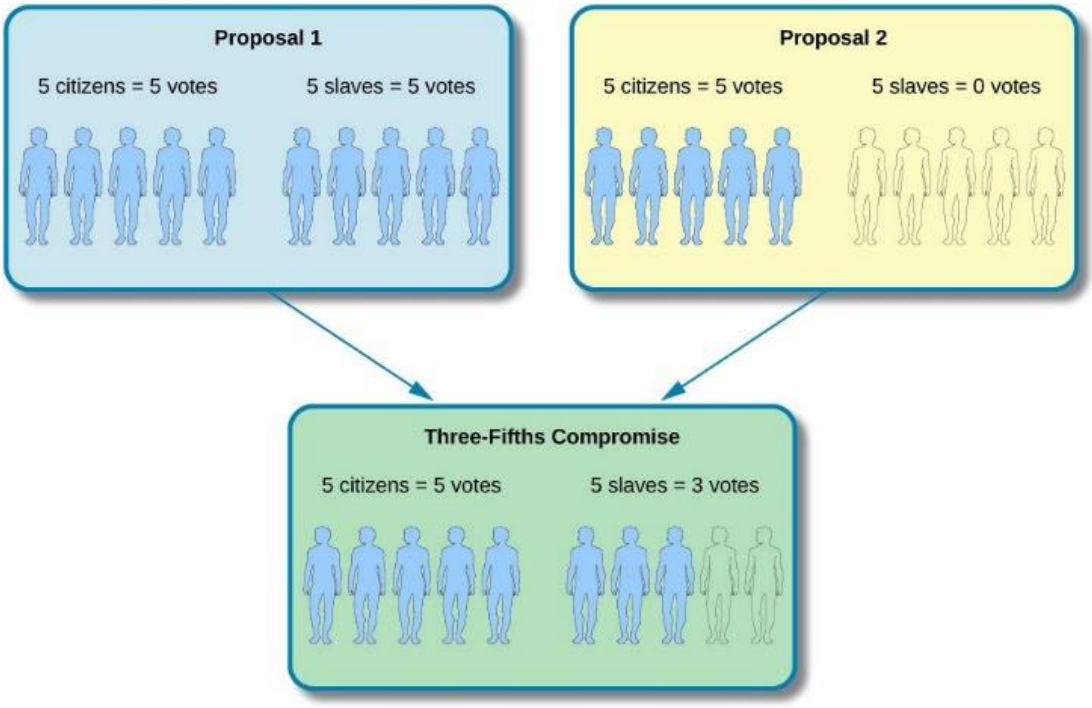


Chart 2.11 Example of the 3/5th Compromise Solution

Slavery was another fundamental division separating states. Many delegates believed slavery contradicted the ideals of the *Declaration of Independence*. How can you reconcile the idea of **unalienable rights** with the notion that some human beings are property? None of the southern states had abolished slavery and none wanted the new *Constitution* to interfere. Southern states developed their economy with dependence on slavery–the cheapest possible labor. Other states hoped to abolish slavery entirely. Again, pragmatic compromise effectively maintained the institution of slavery and pushed the controversy off to a future reckoning. The **three-fifths compromise** allowed slaves to be taxed as property and counted as population for purposes of a state's representation in the government.

This compromise resolved the impasse without truly satisfying anyone. For purposes of congressional representation, slave-holding states could count all their free population, including free African Americans and 60 percent (three-fifths) of their enslaved population. To mollify the north, the compromise allowed counting 60 percent of a state's slave population for federal taxation, although no such taxes were ever collected.

Another compromise granted Congress the right to impose taxes on imports in exchange for a twenty-year prohibition on laws attempting to ban the importation of slaves to the United States, which would hurt the economy of southern states more than that of northern states. Because the southern states, especially South Carolina, had made it clear they would leave the convention if abolition were attempted, no serious effort was made by the framers to abolish slavery in the new nation, even though many delegates disapproved of the institution.

Consider the Original

The Library of Congress in *Creating the United States: Convention and Ratification* notes,
On August 21 the debate over the issue of commerce became very closely linked to another explosive issue–slavery. When Luther Martin of Maryland proposed a tax on slave importation, the convention was thrust into a strident discussion of the institution of slavery and its moral and economic relationship to the new government. John Rutledge of South Carolina, asserting that slavery had nothing at all to do with morality, declared, "Interest alone is the governing principle with nations." Roger Sherman of Connecticut was for dropping the tender issue altogether before it jeopardized the convention.

George Mason of Virginia expressed concern over unlimited importation of slaves but later indicated that he also favored federal protection of slave property already held. This nagging issue of possible federal intervention in slave traffic, which Sherman and others feared could irrevocably split northern and southern delegates, was settled by, in Mason's words, "a bargain." Mason later wrote that delegates from South Carolina and Georgia, who most feared federal meddling in the slave trade, made a deal with delegates from the New England states. In exchange for the New Englanders' support for continuing slave importation for 20 years, the southerners accepted a clause that required only a simple majority vote on navigation laws, a crippling blow to southern economic interests.

The bargain was also a crippling blow to those working to abolish slavery. Congregationalist minister and abolitionist Samuel Hopkins of Connecticut charged that the convention had sold out: "How does it appear . . . that these States, who have been fighting for liberty and consider themselves as the highest and most noble example of zeal for it, cannot agree in any political *Constitution*, unless it indulge and authorize them to enslave their fellow men . . . Ah! these unclean spirits, like frogs, they, like the Furies of the poets are spreading discord, and exciting men to contention and war." Hopkins considered the *Constitution* a document fit for the flames.

On August 31 a weary George Mason, who had 3 months earlier written so expectantly to his son about the "great Business now before us," bitterly exclaimed that he "would sooner chop off his right hand than put it to the **Constitution** as it now stands." (Credit: https://www.loc.gov/exhibits/creating-the-united-states/convention-and-ratification.html)

The *Constitution* contained protections for slavery. Article I postponed the abolition of the foreign slave trade until 1808 (the **importation clause**); and, in the interim, those in slaveholding states were allowed to import as many slaves as they wished. (Credit: U.S. Const. art. I, § 9.)

Furthermore, the *Constitution* placed no restrictions on the domestic slave trade, so residents of one state could still sell enslaved people to other states. Article IV of the *Constitution*—which, among other things, required states to return fugitives to the states where they had been charged with crimes—also prevented slaves from gaining their freedom by escaping to states where slavery had been abolished–clause 3 of Article IV (known as the **fugitive slave clause**) allowed slave owners to reclaim their human property in the states where slaves had fled. (Credit: U.S. Const. art. IV, § 2.)

Chart 2.12 Notes from the Constitutional Convention

The *Constitution* also gave the federal government control over all "Territory or other Property belonging to the United States." This would prove problematic when, as the United States expanded westward and population growth led to an increase in the power of the northern states in Congress, the federal government sought to restrict the expansion of slavery into newly acquired territories. Realizing that flaws in the *Articles of Confederation* could harm the new country and recognizing that the *Articles* could not easily be revised as originally intended, delegates from the states who met in Philadelphia from May

through September 1787 set about drafting a new governing contract. The United States that emerged from the Constitutional Convention in September was not a confederation. It was a federal republic with a strengthened national government. Congress had been transformed into a bicameral legislature with additional powers, and a national judicial system had been created. A distinct single executive was created. Moreover, each of these functions, the law-making function, the law-implementing function, and the law-interpreting function were assigned to separate branches of government–**separation of powers**. To satisfy the concerns of those fearing a strong central government, the framers of the Constitution created a system with separation of powers and checks and balances. Although such measures satisfied many, concerns still lingered that the federal government remained too powerful.

Separation of Powers and Checks and Balances

Although debates over slavery and representation in Congress occupied many at the convention, the chief concern was the challenge of increasing the authority of the national government while ensuring that it did not become too powerful. The framers resolved this problem through a **separation of powers**, dividing the national government into three separate branches and assigning different responsibilities to each one, as shown in the figure below. They also created a system of **checks and balances** by giving each of three branches of government the power to restrict the actions of the others, thus requiring them to work together. In adopting this separation of powers concept, the framers drew upon the theories of the political philosophy of Montesquieu who had warned: "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty."[3] To satisfy the concerns of those fearing a strong central government, the framers of the Constitution created a system with separation of powers and checks and balances. Although such measures satisfied many, concerns still lingered that the federal government remained too powerful.

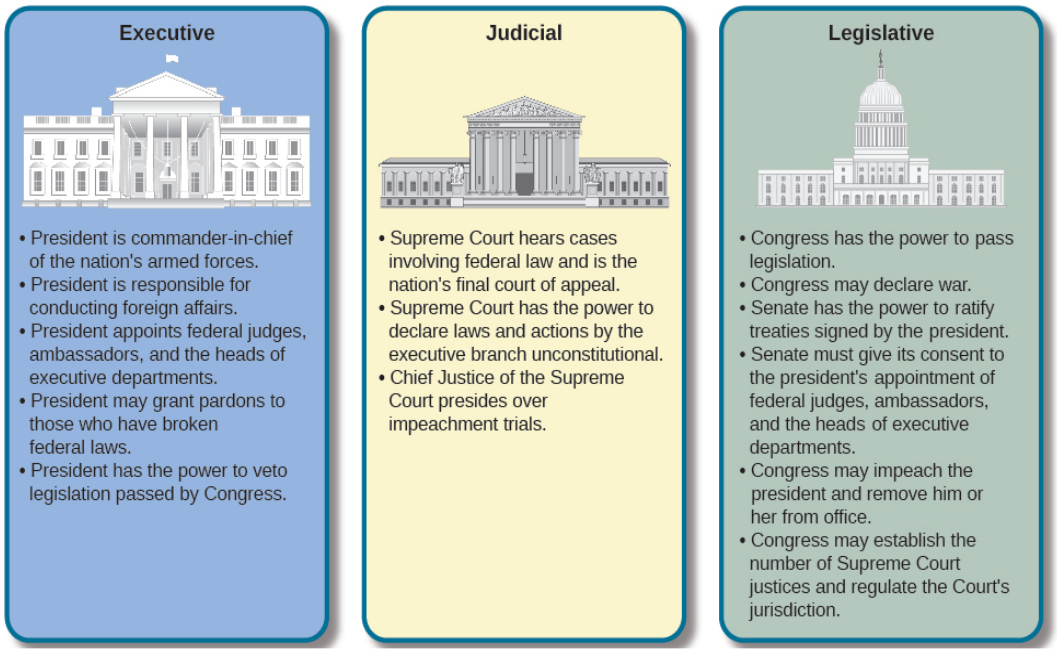


Chart 2.14 Visual of the Three Branches of Government

Congress was given the power to make laws, but the executive branch, consisting of the president and the vice president, and the federal judiciary, notably the Supreme Court, were created to, respectively, enforce laws and try cases arising under federal law. Neither of these branches had existed under the Articles of Confederation.

Thus, Congress can pass laws, but its power to do so can be checked by the president, who can **veto** potential legislation so that it cannot become a law. Later, in the 1803 case of *Marbury* v. *Madison*, the U.S. Supreme Court established its own authority to rule on the constitutionality of laws, a process called judicial review.

A growing number of institutes and study centers focus on the *Constitution* and the founding of the republic. Examples such as the **Institute for the American Constitutional Heritage** and the **Bill of Rights Institute** have informative public websites with documents and videos. Another example is the **National Constitution Center** that also holds programs related to aspects of the enduring U.S. Constitution. You can also access a free-online course offered by Hillsdale College at **Constitution 101: The Meaning and History of the Constitution.**

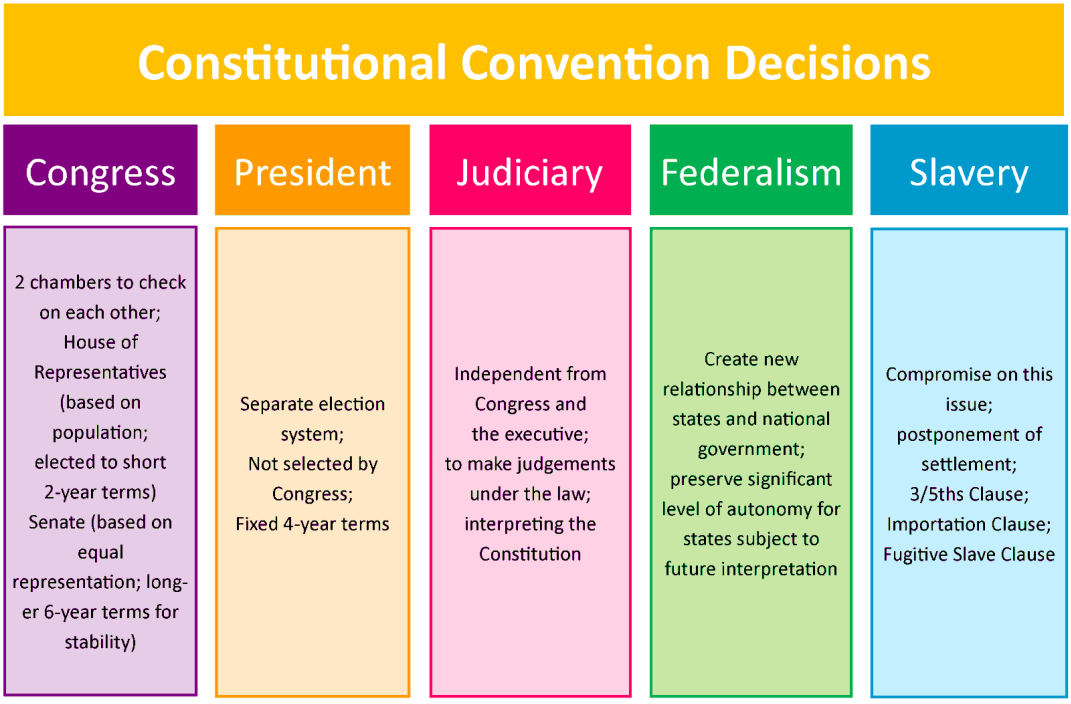


Chart 2.14 Image of the Decisions Made at the Constitutional Convention

Congress is also able to limit the president's power as commander-in-chief of the armed forces by refusing to declare war or provide funds for the military. To date, the Congress has never refused a president's request for a declaration of war, but they have withdrawn funds for the military to impact presidential discretion in use of military. The president must also seek the advice and consent of the Senate before appointing members of the Supreme Court and ambassadors, key Executive Department officials and the Senate must approve the ratification of all treaties signed by the president.

Congress may even remove the president from office. To do this, both chambers of Congress must work together. The House of Representatives impeaches the president by bringing formal charges against him or her, and the Senate tries the case in a proceeding overseen by the Chief Justice of the Supreme Court. The president is removed from office if found guilty.

Consider the Original

From Federalist 51: The Structure of Government Must Furnish the Proper Checks and Balances Between the Departments,

Author: James Madison

> TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power ..... The only answer that can be given is, that....., by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. .....
>
> But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the *necessary constitutional means* and *personal motives* to resist encroachments of the others..... Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights...

Credit: Library of Congress at https://guides.loc.gov/federalist-papers/text-51-60

Chart 2.15 Excerpt from Federalist Paper No. 51

Constitutions: Questions to Consider

1. How was the controversy over representation resolved?
2. Why was slavery not abolished with the *Constitution*?
3. What does separation of powers mean?

1. *bicameralism; two chambers in the national legislature; one population based and the other with equal representation for each state*
2. *open for discussion; but southern states made it clear they would not agree to the constitution if it contained the full abolition of slavery; the potential for slave trade abolition was put into the constitution and southern representation in the House of Representatives was weakened by the 3/5ths Compromise*
3. *executive, legislative, and judicial powers were divided into separate branches of government with each branch acting as a check on the other in the hope of making abuse of power by one branch more difficult*

Terms to Remember

bicameral legislature–a legislature with two houses, such as the U.S. Congress

equal representation–legislative representatives for each state to be exactly equal regardless of population

federal–a structure of government in which power is divided between state governments and a national government

Great Compromise–a compromise between the Virginia Plan and the New Jersey Plan that created a two-house Congress; representation based on population in the House of Representatives and equal representation of states in the Senate

New Jersey Plan–a plan that called for a one-house national legislature; each state would receive one vote

Population-based representation–legislative representatives for each state based upon the state's population rather than geographical size or any other factor

separation of powers–the sharing of powers among three separate branches of government

Three-Fifths Compromise–a compromise between northern and southern states that called for counting of all a state's free population and 60 percent of its slave population for both federal taxation and representation in Congress

unicameral–a legislature with only one house, like the Confederation Congress or the legislature proposed by the New Jersey Plan

Virginia Plan–a plan for a two-house legislature; representatives would be elected to the lower house based on each state's population; representatives for the upper house would be chosen by the lower house

Constitutions: Works Consulted

1. Hamilton, Alexander, Federalist 6, The Federalist Papers; National Archives at USA.gov.
2. U.S. Department of Commerce; Bureau of the Census, 1790. Statistical Abstract of the United States;; Washington, D.C.; Department of Commerce.
3. Baron de Montesquieu, Charles de Secondat; The Spirit of the Laws, Book XI, 1748.

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PUBLIC DOMAIN CONTENT

The Declaration of Independence: A Transcription. **Authored by**: Thomas Jefferson. **Provided by**: Second Continental Congress at usa.gov. **Located at**: http://www.archives.gov/exhibits/charters/declaration_transcript.html. **License**: *Public Domain: No Known Copyright*

2.4 The U.S. Constitution: Ratification

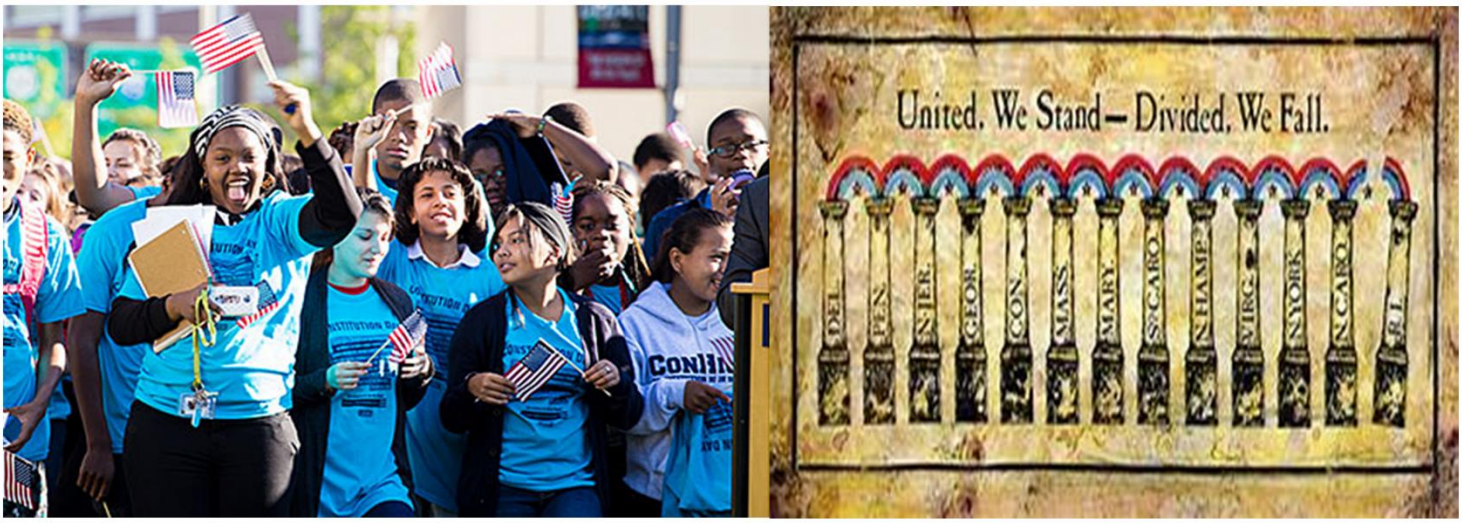


Image 2.10 Photo of Children Celebrating Constitution Day and Drawing of Motto "United. We Stand. Divided. We Fall.

Students celebrate Constitution Day. The original constitution day was September 17, 1787, when the ratification process began. The process took over 10 months to achieve the objective of establishing a new system of national government for the United States of America. The ratification process was hotly debated in state ratifying conventions (pictured below as individual pillars). (Credit: The Constitution Center at https://www.constitutioncenter.org/constitution-day/) and Credit: Library of Congress; Prints and Photographs Online Catalog (PPOC) at loc.gov.

Learning Objectives

- Identify the steps required to ratify the *Constitution*.
- Describe arguments the framers raised in support of a strong national government.
- Discuss counterpoints raised by the Anti-Federalists.

Chart 2.16 Learning Objectives on the Anti-Federalists

On September 17, 1787, the delegates to the Constitutional Convention in Philadelphia voted to approve the document they had drafted over the course of many months. Before it could become the law of the land, the *Constitution* faced another hurdle. It had to be **ratified** by the states.

What is the process of approval?

Article VII, the final article of the *Constitution*, required that before the *Constitution* could become law and a new government could form, the document had to be **ratified** by nine of the thirteen states. Eleven days after the delegates at the Philadelphia convention approved it, copies of the *Constitution* were sent to each of the states, which were to hold **ratifying conventions** to either accept or reject. This approach to **ratification** was unusual. Authority under the *Articles of Confederation* and the Confederation Congress had rested on the consent of the states; changes to the nation's government should also have

been ratified by the state legislatures. *Instead, by calling upon state legislatures to hold ratification conventions to approve the Constitution, the framers avoided asking the legislators to approve a document that would require them to give up a degree of their own power.* The men attending ratification conventions would be delegates elected by their neighbors. Delegates were not being asked to relinquish their own power; in fact, they were being asked to place limits upon the power of their state legislators.

Consider the Original

John Adams and Thomas Jefferson carried on a lively correspondence regarding the ratification of the *Constitution*. In the following excerpt (reproduced as written) from a letter dated March 15, 1789, after the *Constitution* had been ratified by nine states but before it had been approved by all thirteen, Jefferson reiterates his previously expressed concerns that a bill of rights to protect citizens' freedoms was necessary and should be added to the *Constitution*:

"In the arguments in favor of a declaration of rights, . . . I am happy to find that on the whole you are a friend to this amendment. The Declaration of rights is like all other human blessings alloyed with some inconveniences, and not accomplishing fully its object. But the good in this instance vastly overweighs the evil. . . . This instrument [the *Constitution*] forms us into one state as to certain objects, and gives us a legislative & executive body for these objects. It should therefore guard us against their abuses of power. . . . Experience proves the inefficacy of a bill of rights. True. But tho it is not absolutely efficacious under all circumstances, it is of great potency always, and rarely ineffacacious. . . . There is a remarkable difference between the . . . Inconveniences which attend a Declaration of rights, & those which attend the want of it. . . . The inconveniences of the want of a Declaration are permanent, afflicting & irreparable: they are in constant progression from bad to worse."

(Credit: Letter from Thomas Jefferson to James Madison, March 15, 1789, https://www.gwu.edu/~ffcp/ exhibit/p7/p7_1text.html)

Chart 2.17 Excerpt from Letter Between Thomas Jefferson and James Madison

Because the new nation was a republic with power held by the people through elected representatives, it was appropriate to leave the ultimate acceptance or rejection of the *Constitution* to the nation's citizens. If convention delegates, who were chosen by popular vote, approved it, then the new government could rightly claim that it ruled with the **consent** of the people. The greatest sticking point when it came to ratification, as it had been at the Constitutional Convention itself, was the relative power of the state and federal governments. The framers believed the central government needed power to maintain and command an army and a navy, to impose taxes, and to force the states to comply with laws passed by Congress. Many people resisted increasing the powers of the national government at the expense of the states. Edmund Randolph of Virginia disapproved of the *Constitution* because it created a new national judicial system. The fear was that the federal courts were too far away. State courts were located closer to the homes of both plaintiffs and defendants, and it was believed that judges and juries in state courts could better understand the actions of those who appeared before them. In response to these fears, federal courts were created in each of the states.[11] Perhaps the greatest source of dissatisfaction with the *Constitution* was that it did not guarantee protection of individual liberties. State governments

had given jury trials to residents charged with violating the law and allowed their residents to possess weapons for their protection. Some had practiced religious tolerance. The *Constitution* did not contain reassurances that the national government would do so. This led opponents to call for a bill of rights and the refusal to ratify the document without one. The lack of a bill of rights was especially problematic in Virginia, as the V*irginia Declaration of Rights* was the most extensive rights-granting document among the states. The promise that a bill of rights would be drafted for the *Constitution* persuaded delegates in many states to support ratification.[2]

Citizens quickly separated into two groups: **federalists** and **anti-federalists**. The **federalists** believed a strong government was essential for both national defense and economic growth. A national currency would ease business transactions. The central authority to regulate trade and place tariffs on imports would protect merchants from foreign competition. Furthermore, the power to collect taxes would allow the national government to fund internal improvements like roads, which would also help commerce.

Opponents of ratification were called **anti-federalists**. Anti-federalists feared the power of the national government and believed more accessible state legislatures could better protect freedoms. Some anti-federalists, like Patrick Henry, feared that the centralization of power would lead to the creation of a political aristocracy, to the detriment of state sovereignty and individual liberty. Many distrusted the formation of an elite and believed a strong national government would favor the rich over those of "the middling sort."[3]

Related to these concerns were fears that the strong central government would levy taxes on farmers and planters, who lacked the hard currency needed to pay them. Many also believed Congress would impose tariffs on imports making American agricultural products less welcome in Europe and in European colonies in the western hemisphere. Some anti-federalists believed that a large federal republic could not work as intended. Americans had long held that virtue was necessary in a nation where people governed themselves (i.e., putting self-interest and petty concerns aside for the good of the larger community). In small republics, similarities among community members would naturally lead them to the same positions and enable those in power to understand the needs of their neighbors. In a larger republic, encompassing nearly the entire Eastern Seaboard and running west to the Appalachian Mountains, people would lack such a strong commonality of interests.[4]

Concern	*Description of a Few Concerns of Anti-Federalists*
protecting liberties	no Bill of Rights—no written guarantee that national government will protect individual liberties
large republic	no real common interests in such a large republic; people's interests overlooked
states v. national	state power will be eroded by Constitution; supremacy clause; etc.
national government	too powerful; congressional power to levy taxes and tariffs may hurt general public; citizens might be harassed by a standing army; elected officials had no term limits
slavery	some argued the *Constitution* gave too much power to slave states

Chart 2.18 Concerns of the Anti-Federalists

For obvious reasons, smaller and less populous states favored the *Constitution* and the protection of a strong central government. Delaware and New Jersey ratified the document within a few months after it was sent to them for approval in 1787. Connecticut ratified it early in 1788. Some of the larger states like Pennsylvania and Massachusetts also voted for the new government. New Hampshire became the ninth state to ratify the Constitution in the summer of 1788.


States—like the gen'rous vine ſupported live,
The ſtrength they gain is from th'embrace they giv
THE FEDERAL PILLARS.
DEL. PEN. N.JER. GEO. CON. MASS.
UNITED THEY STAND—DIVIDED FALL.
A veſſel arrived at Cape-Ann, after a ſhort paſſage from Georgia, confirms the pleaſing intelligence announced in our laſt, that that State has unanimouſly ratified the Federal Conſtitution. Thus is a FIFTH PILLAR added to the glorious fabrick. May Maſſachuſetts rear the SIXTH.
As we predicted in our laſt, ſo it happened—Monday morning, was uſhered in with the ringing of bells in this metropolis, on account of the pleaſing intelligence received by Saturday night's mail, that the State of Connecticut had added a FOURTH PILLAR to the GRAND REPUBLICAN SUPERSTRUCTURE, the FEDERAL CONSTITUTION.

(a)


On the glorious ſixth of February, 1788.
Hail the DAY, and MARK it well,
Then Old ANARCH's Kingdom fell——
Then our dawning GLORY ſhone,
Mark it, FREEMEN, 'tis our own.
DEL. PEN. N.JER. GEO. CON. MASS.
Ratification of the FEDERAL CONSTITUTION, by Maſſachuſetts!

(b)

Image 2.11 Pillars of the Republic Political Drawings

This *Massachusetts Sentinel* cartoon (a) encourages the state's voters to join Georgia and neighboring Connecticut in ratifying the Constitution. Less than a month later, on February 6, 1788, Massachusetts became the sixth member of the newly formed federal union (b). (Credit: Library of Congress)

Although the *Constitution* went into effect following ratification by New Hampshire, four states remained outside the newly formed union.

Two were the wealthy and populous states of Virginia and New York. In Virginia, James Madison's active support and the intercession of George Washington, who wrote letters to the convention, changed the minds of many. Some who had initially opposed the *Constitution*, such as Edmund Randolph, were persuaded that the creation of a strong union was necessary for the country's survival and changed their position. Other Virginia delegates were swayed by the promise that a bill of rights like the *Virginia Declaration of Rights* would be added after the *Constitution* was ratified.

On June 25, 1788, Virginia became the tenth state to grant its approval. Although arguments of the Federalists were persuasive, it is unclear whether they succeeded in changing the minds of New Yorkers.

Once Virginia ratified the *Constitution* on June 25, 1788, New York realized that it had little choice but to do so as well. If it did not ratify the *Constitution*, it would be the last large state that had not joined the union. A year later, North Carolina became the twelfth state to approve. Alone and realizing it could not hope to survive on its own, Rhode Island became the last state to ratify, nearly two years after New York.

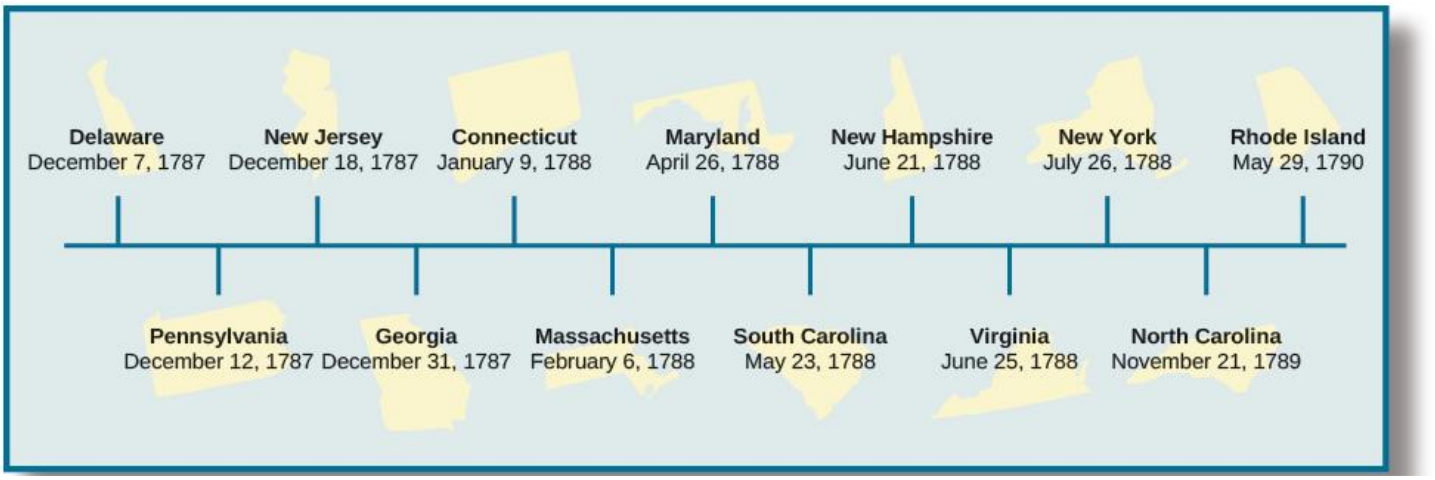


Chart 2.19 Timeline for Ratification of the U.S. Constitution

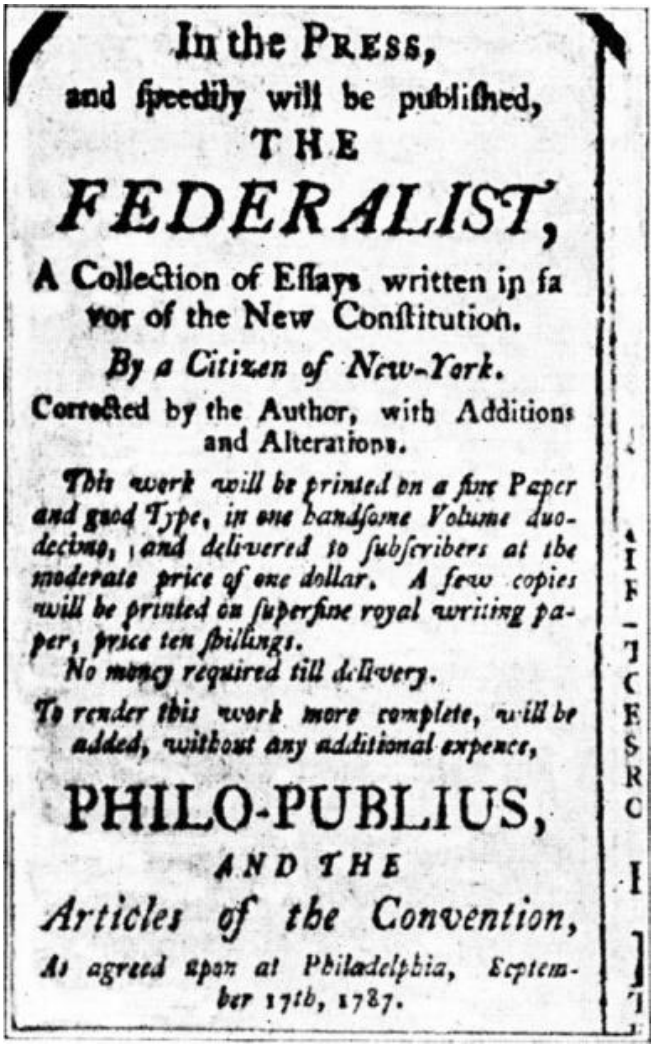

In the PRESS,
and ſpeedily will be publiſhed,
THE
FEDERALIST,
A Collection of Eſſays written in fa vor of the New Conſtitution.
By a Citizen of New-York.
Corrected by the Author, with Additions and Alterations.
This work will be printed on a fine Paper and good Type, in one handſome Volume duodecimo, and delivered to ſubſcribers at the moderate price of one dollar. A few copies will be printed on ſuperfine royal writing paper, price ten ſhillings.
No money required till delivery.
To render this work more complete, will be added, without any additional expence,
PHILO-PUBLIUS,
AND THE
Articles of the Convention,
As agreed upon at Philadelphia, September 17th, 1787.

Image 2.12 Photo of Newspaper and Federalist Paper

From 1787 to 1788, Alexander Hamilton, James Madison, and John Jay authored a series of essays intended to convince Americans, especially New Yorkers, to support the new *Constitution*. These essays, which originally appeared in newspapers, were collected and published together under the title *The Federalist* in 1788. They are now known as *The Federalist Papers*. (Credit: Library of Congress)

The last major hurdle was New York's approval. Facing considerable opposition, Alexander Hamilton, James Madison, and John Jay wrote a series of essays, beginning in 1787, arguing for a strong national government and support of the *Constitution*. Later compiled as *The Federalist* and now known as ***The Federalist Papers***, these eighty-five essays were originally published in newspapers in New York and other states under the name of Publius, a supporter of the Roman Republic.

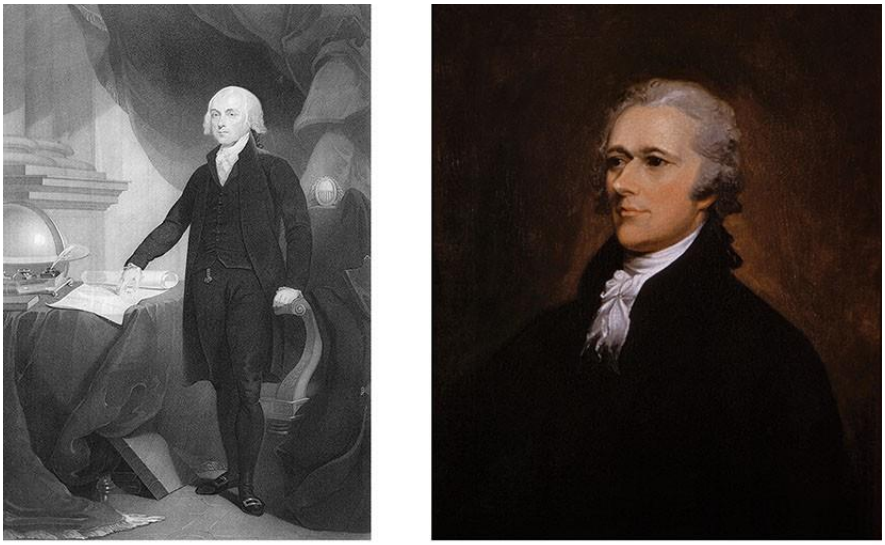
The essays addressed a variety of issues that troubled citizens. In *Federalist* No. 51, attributed to James Madison, the author assured readers they did not need to fear that the national government would grow too powerful. The federal system, in which power was divided between the national and state governments and the division of authority within the federal government into separate branches, would prevent any one part of the government from becoming too strong.

Furthermore, tyranny could not arise in a government in which "the legislature necessarily predominates." Finally, the desire of office holders in each branch of government to exercise the powers given to them, described as "personal motives," would encourage them to limit any attempt by the other branches to overstep their authority.

According to Madison, "Ambition must be made to counteract ambition." This goal was to be achieved with the separation of powers between various levels of government (local to national) and by the checks and balances between the branches of government (legislative, executive, and judicial) at each level.

In *Federalist* No. 35, Hamilton argued that people's interests *could* be represented by men who were not their neighbors. Hamilton asked rhetorically, would American citizens best be served by a representative "whose observation does not travel beyond the circle of his neighbors and his acquaintances" or by someone with more extensive knowledge of the world?

To those who argued that merchant and land-owning elite would come to dominate Congress, Hamilton countered that the majority of men currently sitting in New York's state senate and assembly were landowners of moderate wealth and that artisans usually chose merchants, "their natural patron[s] and friend[s]," to represent them.



(a) (b)

Image 2.13 Portraits of James Madison and Alexander Hamilton

James Madison (a) and Alexander Hamilton (b) who played a vital role in the formation of the *Constitution*. Madison was an important participant in the Constitutional Convention and authored many of *The Federalist Papers*.
(Credit: Library of Congress; National Archives and Records Administration)

An aristocracy would not arise, and if it did, its members would have been chosen by lesser men.

Similarly, Jay reminded New Yorkers in *Federalist* No. 2 that union had been the goal of Americans since the time of the Revolution.

A desire for union was natural among people of such "similar sentiments" who "were united to each other by the strongest ties," and the government proposed by the *Constitution* was the best means of achieving that union.

Madison also addressed fears of elite dominance in *Federalist* No. 10. Americans need not fear the power of factions or special interests, he argued, for the republic was too big and the interests of its people too diverse to allow the development of large, powerful political parties. Likewise, elected representatives, who were expected to "possess the most attractive merit," would protect the government from being controlled by "an unjust and interested [biased in favor of their own interests] majority." For those who worried that the president might indeed grow too ambitious or king-like, Hamilton, in *Federalist* No. 68, assured placing the leadership of the country in the hands of one person was not dangerous. Electors from each state would select the president. Because these men would be members of a "transient" body called together only for the purpose of choosing the president and would meet in separate deliberations in each state, they would be free of corruption and beyond the influence of the "heats and ferments" of the voters. Indeed, Hamilton argued in *Federalist* No. 70, instead of fearing a tyrannical president,

Americans should realize that it was easier to control one person than it was to control many. Furthermore, one person could also act with an "energy" that Congress did not possess. Making decisions alone, the president could decide what actions should be taken faster than could Congress, whose deliberations, because of its size, were necessarily slow. At times, the "decision, activity, secrecy, and dispatch" of the chief executive might be necessary.

The Library of Congress has ***The Federalist Papers*** on their website. The Anti-Federalists also produced a body of writings, less extensive than *The Federalists Papers*, which argued against the ratification of the *Constitution*. However, these were not written by one small group of men as *The Federalist Papers* had been. A collection of the writings that are unofficially called **The Anti-Federalist Papers** is also available online.

Although arguments of the Federalists were persuasive, it is unclear whether they succeeded in changing the minds of New Yorkers. Once Virginia ratified the *Constitution* on June 25, 1788, New York realized that it had little choice but to do so as well. If it did not ratify the *Constitution*, it would be the last large state that had not joined the union. A year later, North Carolina became the twelfth state to approve. Alone and realizing it could not hope to survive on its own, Rhode Island became the last state to ratify, nearly two years after New York.

Interesting Information

One of the objections raised to the *Constitution*'s new government was that it did not set term limits for members of Congress or the president. Those who opposed a strong central government argued that this failure could allow a handful of powerful men to gain control of the nation and rule it for as long as they wished. Although the framers did not anticipate the idea of career politicians, those who supported the *Constitution* argued that reelecting the president and reappointing senators by state legislatures would create a body of experienced men who could better guide the country through crises. A president who did not prove to be a good leader would be voted out of office instead of being reelected. In fact, presidents long followed George Washington's example and limited themselves to two terms. Only in 1951, after Franklin Roosevelt had been elected four times, was the Twenty-Second Amendment passed to restrict the presidency to two terms.

Chart 2.20 The Issue of Term Limits

Constitutions: Questions to Consider

1. What were the steps required to ratify the 1787 Constitution after the convention ended?
2. Why did so many people oppose ratification of the *Constitution*, and how was their opposition partly overcome?
3. Are term limits a good idea and should we extend term limits to members of the U.S. Congress? Why or why not?
4. Should term limits be added to the *Constitution*? Why or why not?

1. *each state had to ratify the constitution through a separate ratifying convention elected by the people of each state and nine states were required to ratify by this method before the U.S. Constitution went into effect; the ratification process differs from the amendment process in that state legislatures may take the final step of approval*
2. *the anti-federalists made many arguments against what they considered a far too powerful central government, but the promise to pass a bill of rights partly overcame this strong opposition*
3. *open to opinion*
4. *open for debate*

Constitution: Terms to Remember

Anti-federalists–those who did not support ratification of the *Constitution*

Federalists–those who supported ratification of the *Constitution*

Federalist Papers–a collection of eighty-five essays written by Alexander Hamilton, James Madison, and John Jay in support of ratification of the *Constitution*

ratification–method of formal acceptance of the U.S. *Constitution*; gaining the consent of the citizens

Term Limits–limiting the president and members of Congress to a specified number of terms of office; no

Constitutions: Works Consulted

1. Pauline Maier. 2010. *Ratification: The People Debate the Constitution*, 1787-1788. New York: Simon & Schuster, 464.
2. Maier, *Ratification*, 431.
3. Isaac Krannick. 1999. "The Great National Discussion: The Discourse of Politics in 1787." In *What Did the Constitution Mean to Early Americans?* ed. Edward Countryman. Boston: Bedford/St. Martins, 52.
4. Krannick, *Great National Discussion*, 42-43.

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2.5 Constitutions: Amending the U.S. Constitution

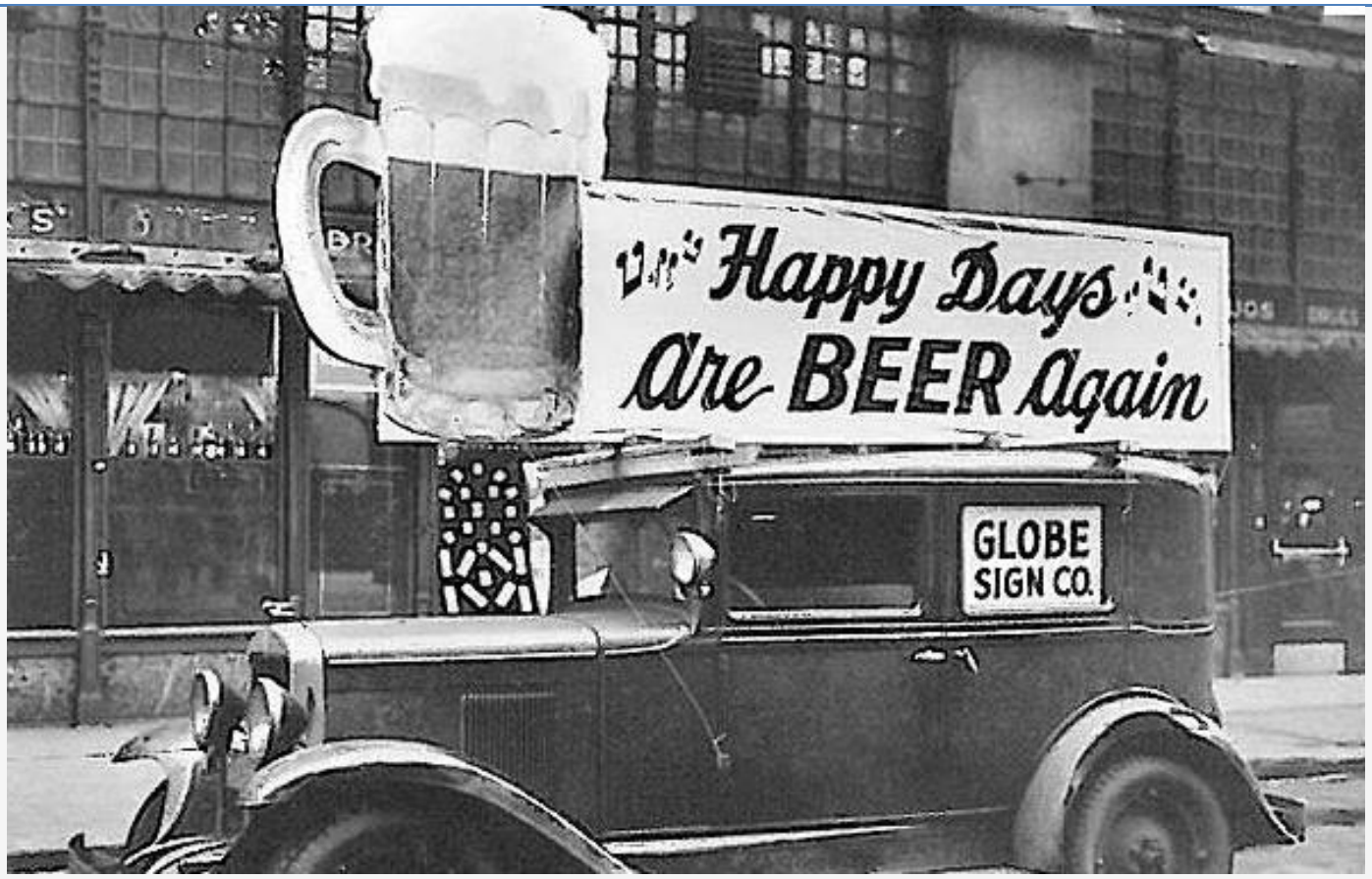


Image 2.14 Photo of Beer Truck at the End of Prohibition

The Twenty-First Amendment overturned prohibition, the 18th Amendment, thus ending Prohibition. (Credit: The National Constitution Center at https://constitutioncenter.org/blog/happy-birthday-21st-amendment)

Learning Objectives

- Describe how the *Constitution* may be formally amended/changed.
- Explain the contents and significance of the Bill of Rights.
- Discuss the importance of amendments.

Chart 2.21 Learning Objectives on Amending the Constitution

A major problem with the *Articles of Confederation* was the inability to adapt and change without unanimous consent. The framers learned this lesson well. One of the strengths they built into the *Constitution* was the ability to **amend** it to meet the nation's needs and address concerns or structural elements they had not anticipated.

Since ratification in 1789, the *Constitution* has changed only 27 times. The first 10 amendments were added in 1791. Responding to charges by anti-federalists that the *Constitution* made the national

government too powerful and provided no protections for the rights of individuals, the newly elected federal government tackled the issue of guaranteeing liberties for American citizens. James Madison, a member of Congress from Virginia, took the lead in drafting nineteen potential changes to the *Constitution*.

Madison followed the procedure outlined in Article V that says **amendments** can originate from one of two sources. First, they can be proposed by Congress and approved by a two-thirds majority in both the House and the Senate before being sent to the legislatures in all the states. If three-quarters of state legislatures vote to approve an amendment, it becomes part of the *Constitution*. A second method allows for the petitioning of Congress by the states: Upon receiving such petitions from two-thirds of the states, Congress must call a convention for the purpose of proposing amendments, which would then be forwarded to the states for ratification by the required three-quarters. All the current constitutional amendments were created using the first method.

Article V: Procedures for Amending the *Constitution*

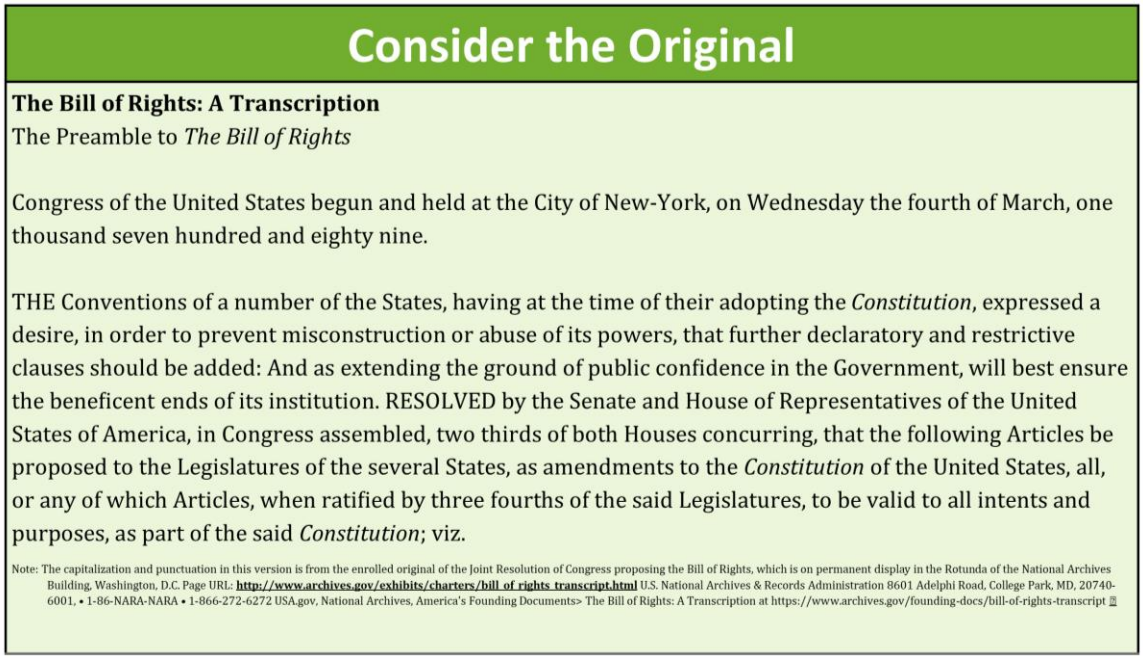
Origination	**Origination**
Proposed by Congress	Petitioned by 2/3 of States
Approval	**Approval**
2/3 majority in the House	Congress calls convention to propose amendment
2/3 majority in the Senate	forwarded to states for ratification
3/4 vote of all state legislatures required	3/4 vote of all state legislatures required

Chart 2.22 Methods for Amending the U.S. Constitution

Having drafted nineteen proposed amendments, Madison submitted them to Congress. Only twelve were approved by two-thirds of both the Senate and the House of Representatives and sent to the states for ratification. Of these, only ten were accepted by three-quarters of the state legislatures. In 1791, these first ten amendments were added to the *Constitution* and became known as the **Bill of Rights**. As ratified, the Bill of Rights only applied to actions of the national government. Only after the ratification of the 14th amendment could the Bill of Rights potentially be applied to actions of state and local government.

The ability to change the *Constitution* has made it a flexible document. Framers made amending the document sufficiently difficult that it has not been changed repeatedly; only seventeen amendments have been added since the ratification of the first ten (one of these, the Twenty-Seventh Amendment, was among Madison's original 12 proposals sent to the states for ratification).

Learn more about the formal **process of amending the *Constitution*** and view exhibits related to the passage of specific amendments at the National Archives website.



Consider the Original

The Bill of Rights: A Transcription
The Preamble to *The Bill of Rights*

Congress of the United States begun and held at the City of New-York, on Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their adopting the *Constitution*, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution. RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the *Constitution* of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said *Constitution*; viz.

Note: The capitalization and punctuation in this version is from the enrolled original of the Joint Resolution of Congress proposing the Bill of Rights, which is on permanent display in the Rotunda of the National Archives Building, Washington, D.C. Page URL: **http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html** U.S. National Archives & Records Administration 8601 Adelphi Road, College Park, MD, 20740-6001, • 1-86-NARA-NARA • 1-866-272-6272 USA.gov, National Archives, America's Founding Documents> The Bill of Rights: A Transcription at https://www.archives.gov/founding-docs/bill-of-rights-transcript

Chart 2.23 Excerpt from the Bill of Rights

Defining Civil Liberties

For language precision, political scientists and legal experts distinguish between civil liberties and civil rights, even though the *Constitution* has been interpreted to protect both. We often envision **civil liberties** as limitations on government power, intended to protect freedoms from illegal government intrusion. For example, the First Amendment denies the government the power to prohibit "the free exercise" of religion; the states and the national government cannot forbid people to follow a religion of their choice, even if politicians and judges think the religion is misguided, blasphemous, or otherwise inappropriate. You are free to create your own religion and recruit followers to it (subject to the U.S. Supreme Court deeming it a religion), even if both society and government disapprove of its tenets. That said, the way you practice your religion may be regulated if it impinges on the rights of others. Similarly, the Eighth Amendment says the government cannot impose "cruel and unusual punishments" on individuals for their criminal acts. Although the definitions of cruel and unusual have expanded over the years, the courts have generally and consistently interpreted this provision as making it unconstitutional for government officials to torture suspects.

Civil rights are guarantees that government officials will treat people equally and base decisions on the law rather than race, gender, or other personal characteristics. The *Constitution*'s civil rights guarantee makes it unlawful for a school or university run by a state government to treat students differently based on their race, ethnicity, age, sex, or national origin. In the 1960s and 1970s, many states had separate schools where only students of a certain race or gender were able to study. The courts determined that these policies violated the civil rights of students refused admission because of those rules.[2] The idea that Americans—indeed, people in general—have fundamental rights and liberties was a core argument for independence. Writing the *Declaration of Independence* in 1776, Thomas Jefferson drew on the ideas

of John Locke to express the colonists' belief in certain inalienable or natural rights that no ruler had the power or authority to deny them. It was a scathing legal indictment of King George III for violating the colonists' liberties.



Image 2.15 Photo of Sidney Poitier, Harry Belafonte and Charlton Heston

Although the *Declaration of Independence* does not guarantee specific freedoms, its language fundamentally inspired many states to adopt protections for civil liberties and rights in their own constitutions. It also expressed principles of the founding era that have resonated in the United States since its independence. Jefferson's words "all men are created equal" became the centerpiece of struggles for the rights of women and minorities.

Actors and civil rights activists Sidney Poitier (left), Harry Belafonte (center), and Charlton Heston (right) on the steps of the Lincoln Memorial on August 28, 1963, during the March on Washington. (Credit: National Archives and Records Administration)

How has the 1787 Constitution changed via amendment?

The Bill of Rights, the first ten amendments, was intended to quiet the fears of anti-federalists that the *Constitution* did not adequately protect individual liberties from actions of the national government and thus encourage their support of the new national government.

Bill of Rights	
1st Amendment	protected right to free speech, press, assembly, religion, and petition of government
2nd Amendment	protected right to bear arms
3rd Amendment	no quartering of soldiers during peace time in private homes without consent
4th Amendment	right to be secure in your property & person against unreasonable search or seizure
5th Amendment	grand jury, against double jeopardy & self incrimination, due process, eminent domain
6th Amendment	criminal procedure—speedy & public trial, impartial jury, counsel, etc.
7th Amendment	civil procedure—jury trial according to rules of common law
8th Amendment	no excessive bail or fine, no cruel and unusual punishment
9th Amendment	rights not enumerated still exist and belong to the people
10th Amendment	powers not delegated to US belong to the states & the people

Chart 2.24 First 10 Amendments to the U.S. Constitution

Protections for religion, speech, press, and assembly did not exist under English law–the right to petition the government did, however. The prohibition in the First Amendment against the establishment of an official church differed significantly from both English precedent and the practice of several states. The Fourth Amendment, protecting Americans from unwarranted search and seizure of their property, was also new.

GUARANTEEING YOUR FIRST AMENDMENT RIGHTS

The liberties of U.S. citizens are protected by the Bill of Rights, but potential or perceived threats to these freedoms arise constantly. This is especially true regarding First Amendment rights. Read about some of these threats at the American Civil Liberties Union (ACLU) website and let people know how you feel about these issues or check out American Center for Law and Justice (ACLJ) at http://aclj.org/news.

The Ninth and Tenth Amendments were intended to provide yet another assurance that people's rights would be protected, and the national government would not become too powerful. The Ninth Amendment guarantees that liberties and rights extend beyond those described in the preceding eight amendments of the Bill of Rights. This was an important acknowledgment that the protected rights were extensive, and the government should not attempt to interfere with them. The Supreme Court, for example, has held that the Ninth Amendment protects the right to privacy even though none of the preceding amendments explicitly mentions this right. The Tenth Amendment, one of the first submitted to the states for ratification, ensures that states possess all powers not assigned to the national government by the *Constitution*. This guarantee protected states' reserved powers. While covering the state regulation of areas such as marriage, divorce, intrastate transportation, education, public health and safety, Supreme Court decisions have concluded that these areas are not exclusive areas of state regulation. The Thirteenth Amendment abolished slavery in the United States. The Fourteenth Amendment granted citizenship and equal protection under the law regardless of race. It also prohibited states from depriving their residents of life, liberty, or property without a fair legal proceeding, known as "due process." Over the years, the Fourteenth Amendment has been used to require states to protect most of the same freedoms granted by the Bill of Rights. The Fifteenth Amendment was intended to guarantee the right to vote to the newly freed male slaves immediately after the Civil War, but this was undermined for decades by various state restrictive laws.

13th Amendment	abolition of the institution of slavery
14th Amendment	citizenship rights/responsibilities; equal protection; due process of law; protections
15th Amendment	extends voting rights to male citizens regardless of race; Native Americans not included

Chart 2.25 13th, 14th, 15, Amendments

After many years of campaigns for suffrage, the Nineteenth Amendment finally gave women the right to vote in 1920 after a tie vote in Tennessee. A 24-year old representative (Harry Burn, a Republican) cast the tie-breaking vote after a little push from his mother.[11]



Image 2.16 Photo of Women Working for the Vote

Suffragists encourage Ohio men to support votes for women. Before the Nineteenth Amendment was added to the Constitution in 1920, only a few western states such as Wyoming gave women the right to vote. These women seem to be attracting a primarily female audience to hear their cause. (Credit: The Library of Congress)

Subsequent amendments further extended suffrage. The Twenty-Third Amendment (1961) allowed residents of Washington, DC to vote for the president. The Twenty-Fourth Amendment (1964) abolished the use of poll taxes. Many southern states had used a poll tax, a tax placed on voting, to prevent poor persons from voting. The last extension of the suffrage occurred in 1971 during the Vietnam War. The Twenty-Sixth Amendment reduced the voting age from twenty-one to eighteen. Many people complained that the young people who were serving in Vietnam should have the right to vote for or against those making decisions that might literally meant life or death. Other amendments have been proposed, including an amendment to guarantee equal rights to women, but all have failed.

19th Amendment	women guaranteed the right to vote
23rd Amendment	residents of the District of Columbia (Washington, D. C.) may vote for president of US
24th Amendment	poll taxes abolished; no poll tax stopping citizens from exercising right to vote
26th Amendment	all citizens over the age of eighteen years old may register and cast their vote

Chart 2.26 of 19th, 23rd, 24th, and 26th Amendments

Of the later amendments only one, the Twenty-First, repealed another amendment, the Eighteenth, which had prohibited the manufacture, import, export, distribution, transportation, and sale of alcoholic beverages.

Other amendments rectify problems that have arisen over the years or that reflect changing times.

For example, the Twelfth Amendment supersedes clause 3 of § 1 of Article II of the *Constitution*. According to the Article II, Section 1 of the *Constitution*, if two candidates each received a majority of the electoral votes but are tied, the House of Representatives would determine which one would be President. This amendment was enacted after the Election of 1800 when both the intended presidential candidate, Thomas Jefferson, was tied with the vice-presidential candidate, Aaron Burr. The amendment created our current system of electing the U.S. president, which now precludes this possibility.

The Seventeenth Amendment, ratified in 1913, gave voters the right to directly elect U.S. senators. The Twentieth Amendment, which was ratified in 1933 during the Great Depression, moved the date of the presidential inauguration from March to January. In a time of crisis, like a severe economic depression,

the president needed to take office almost immediately after being elected. The Twenty-Second Amendment, added in 1955, limits the president to two terms in office, and the Twenty-Seventh Amendment, first submitted for ratification in 1789, regulates the implementation of laws regarding salary increases or decreases for members of Congress.

The Eleventh Amendment, the first amendment adopted after the Bill of Rights, is extremely complicated from the judicial perspective, with federal courts taking multiple paths for interpretation of the language. Essentially, it deals with the issue of sovereign immunity (Is the government immune from prosecution?). Most attorneys understand that suits in the federal court system are more likely to achieve impartial results rather than suits filed against a state within the state's system.

In 1909 progressives in Congress attached a provision for an income tax to a tariff bill. Conservatives, hoping to kill the idea for good, proposed a constitutional amendment enacting such a tax; they believed an amendment would never receive ratification by three-fourths of the states. Much to their surprise, the amendment was ratified by one state legislature after another, and on February 25, 1913, with the certification by Secretary of State Philander C. Knox, the Sixteenth Amendment took effect. Yet in 1913, due to generous exemptions and deductions, less than 1 percent of the population paid income taxes at the rate of only 1 percent of net income. This document settled the constitutional question of how to tax income and, by so doing, effected dramatic changes in the American way of life.[2]

11th Amendment	regarding lawsuits against states; may states be sued in court
12th Amendment	presidential election procedures
16th Amendment	individual income tax
17th Amendment	voters may directly elect United States Senators
18th Amendment	prohibition of alcohol manufacture, sales, and distribution
20th Amendment	inauguration day moved from March to January after election of previous year
21st Amendment	repeal of 18th Amendment prohibiting alcohol manufacture, sales, and distribution
22nd Amendment	president is limited to two (2) terms of office
25th Amendment	presidential succession; vice presidential succession; unable to serve
27th Amendment	regulation of congressional salaries

Chart 2.27 11th, 12th, 16th, 17th, 18th, 20th, 21st, 22nd, 25th, and 27th Amendments

The possibility of amending the *Constitution* helped ensure its ratification, although many feared the powerful federal government it created would deprive them of their rights. To allay their anxieties, the Framers promised that a Bill of Rights safeguarding individual liberties would be added following

ratification. These ten amendments were formally added to the document in 1791 and other amendments followed over the years. One of the problems with the *Articles of Confederation* was the difficulty of change. To prevent this difficulty from recurring, the Framers provided a method for amending the *Constitution* that required a two-thirds majority in both houses of Congress and in three-quarters of the state legislatures to approve a change.

Constitutions: Questions to Consider

1. Briefly explain the difference between civil liberties and civil rights.
2. Was the Bill of Rights a necessary addition to the Constitution? Defend your answer.
3. What new amendments should be added to the Constitution? Why?
4. What issue regarding First Amendment protections causes you the most concern?

1. *liberties are personal freedoms; rights are guarantees the government will not treat individuals unequally with respect to liberties*
2. *Written contracts that are specific are typically better than implied language or verbal promises*
3. *personal opinion*
4. *personal opinion*

Terms to Remember

amendment–ability to change or add to the U.S. *Constitution;* formal method of changing or adapting the rules for governing

Bill of Rights–the first ten amendments to the U.S. *Constitution*; most were designed to protect fundamental rights and liberties

civil liberties–limitations on the power of government, designed to ensure personal freedoms

civil rights–guarantees of equal treatment by government authorities

due process clause–provisions of the Fifth and Fourteenth Amendments that limit government power to deny people "life, liberty, or property" on an unfair basis; procedural rules designed to ensure equal treatment of all individuals

habeas corpus–present the body; government may not suspend due process protections; government may not hold an individual indefinitely without acknowledging charges against the individual

Constitutions: Works Consulted

1. National Archives, https://www.archives.gov
2. https://www.ourdocuments.gov/doc.php?doc=57

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3.1 Federalism: Basic Structure of Government

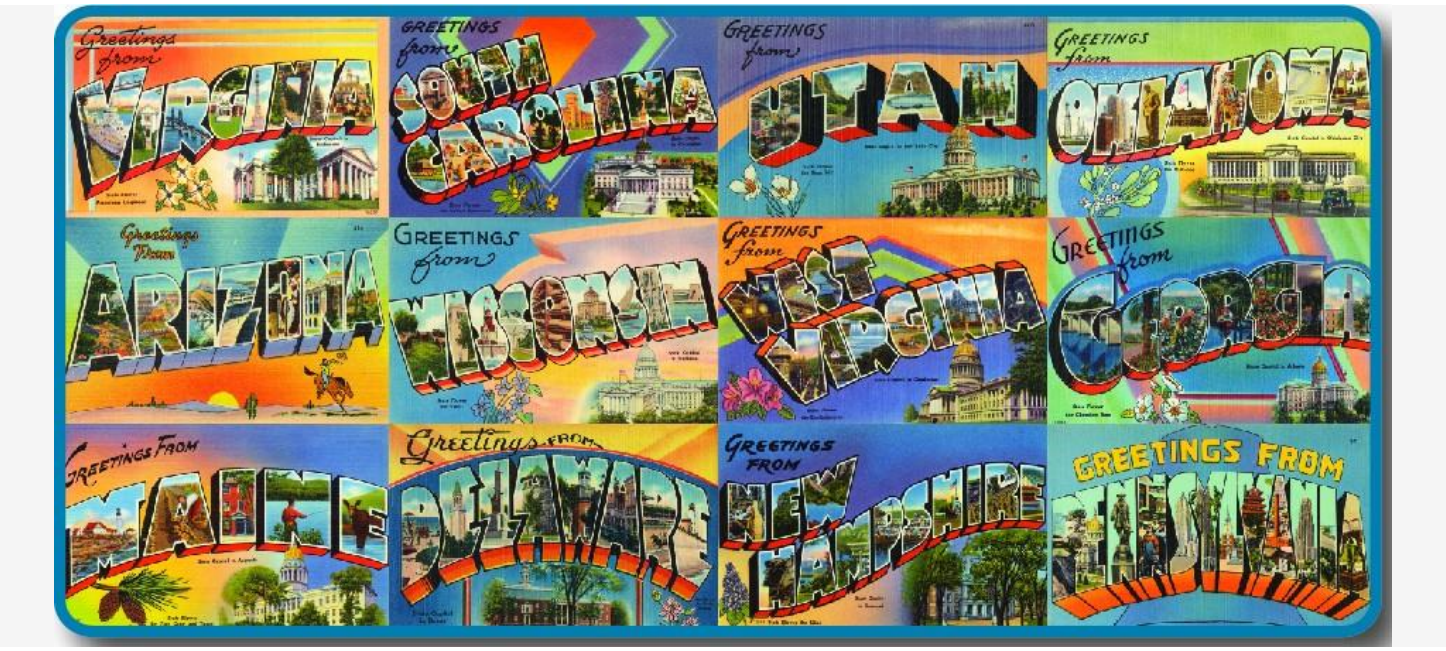


Image 3.1 Postcards of Various States

Your first encounter with differences across states may have come from a childhood experience—perhaps visiting relatives in another state or on a cross-country trip during summer vacation. The distinct postcard images of different states are symbolic of American federalism. (Credit: OpenStax; modification of work by Boston Public Library)

Learning Objectives

- Understand the difference structures of governments, including unitary, confederation, and federal structures.
- Explain the basics of U.S. federalism.
- Discuss forces of centralization and decentralization in the U.S. federal structure

Chart 3.1 Learning Objectives on Structures of Government and the Basics of Federalism

Part of the discussion at the 1787 Constitutional Convention focused on basic governmental structures. In declaring independence in 1776, highly centralized **unitary** government under a king was clearly rejected. In sharp contrast, the first U.S. constitution, The *Articles of Confederation,* promoted a **confederation** of the states with much decentralized power concentrated at the state level and a weak central government.

As previously discussed, the *Articles* were not successful, and the 1787 Constitutional Convention convened to make changes in our governmental structure. Rather than tweaking the confederation structure, a third option was essentially invented–what we call today a **federal system** or **federalism**.

The federal design divides power between multiple levels of government–often state and national. As defined, **federalism** is an institutional arrangement creating relatively autonomous levels of government, each able to act directly on behalf of the people with granted authority.

As shown in the chart below, under a federal system, the authority is divided between the national government and state governments, with authority to act derived directly from the people. In contrast, a confederation vests power and authority in state governments with national authority delegated by the states. Under a unitary system, authority to act is concentrated with the national government alone–any authority delegated to lower levels of government is exercised at the discretion of the national government.

At the time of the 1787 convention, there were examples of both unitary governments and confederations; however, no examples of the middle option–which we now call a federal system. Among government systems today, there are examples of all three kinds of governmental structures.

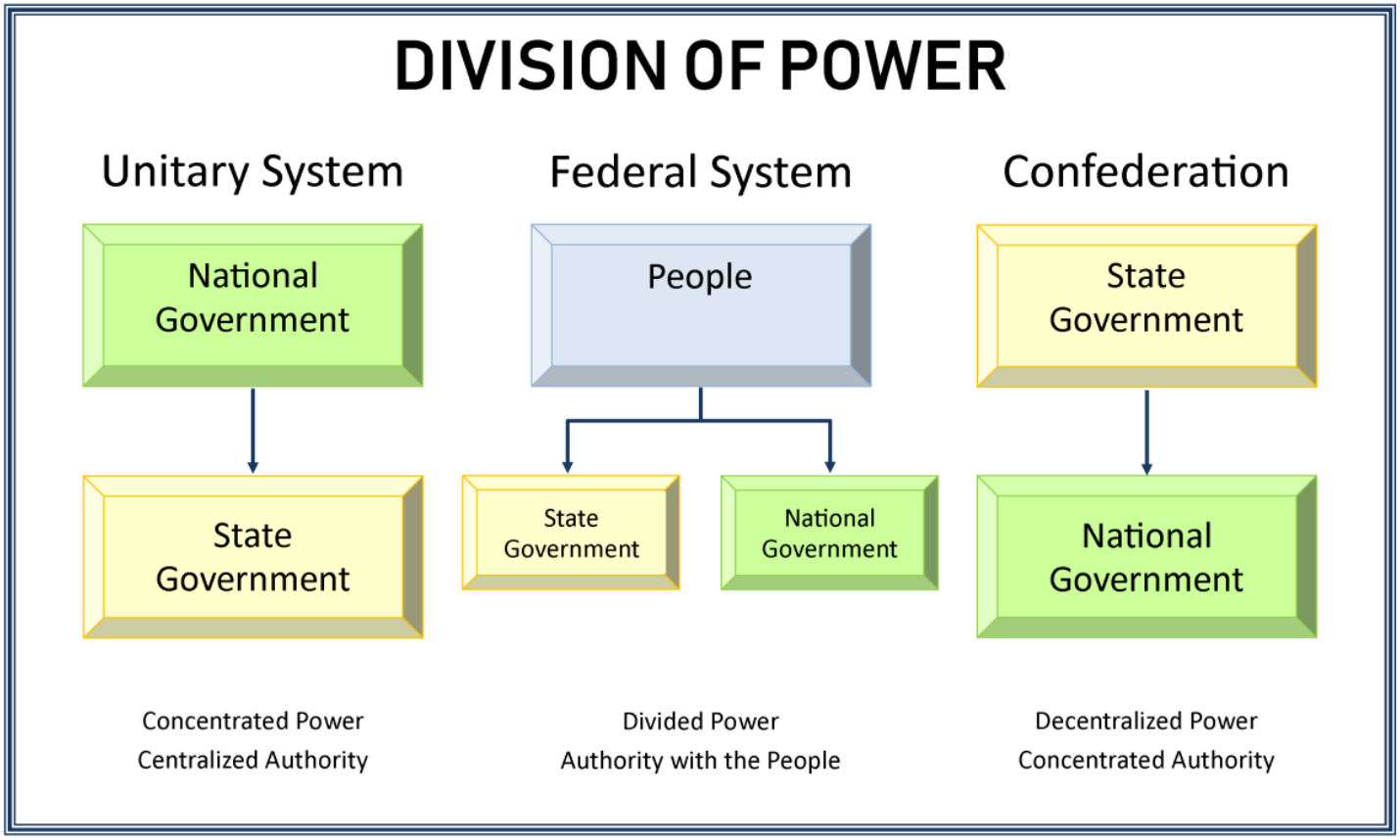


Chart 3.2 Division of Power in Three Structures of Government

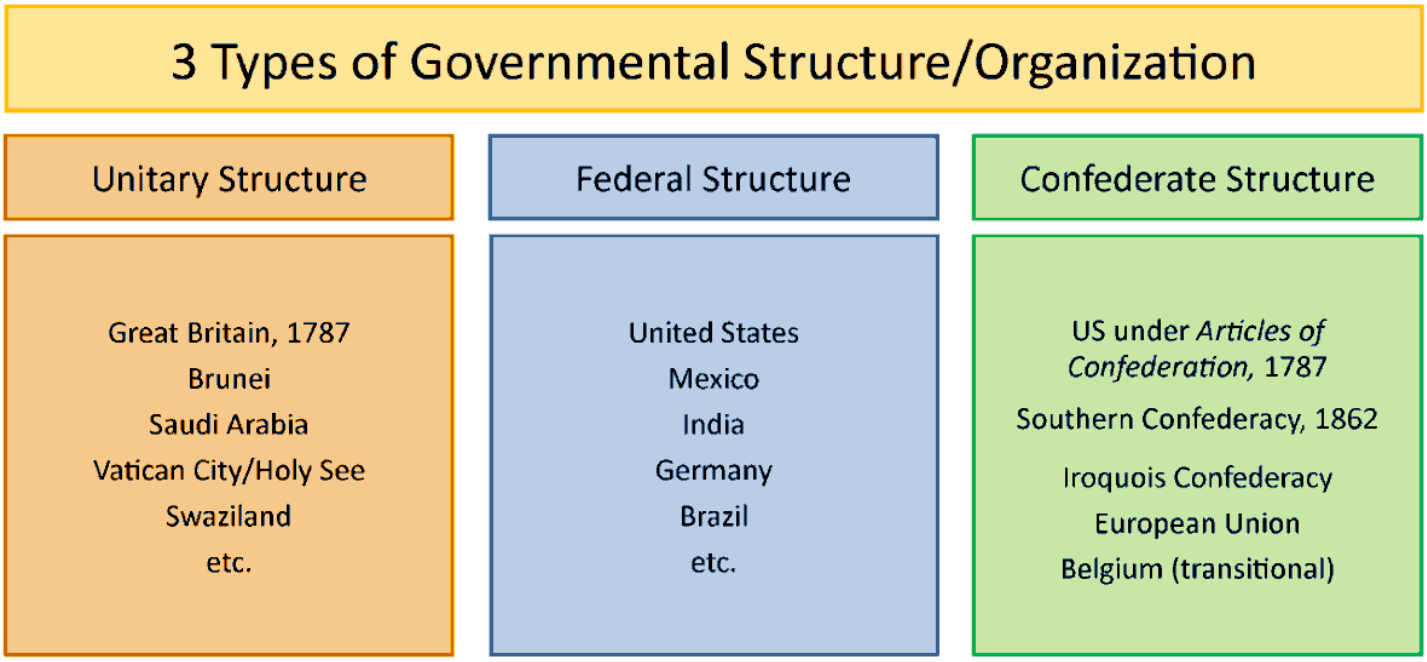


Chart 3.3 Real-World Examples of Countries with Differing Structures of Government

American federalism seeks to balance **decentralization** and **centralization** forces. We see decentralization when we cross state lines and encounter different taxation levels and voting regulations. Centralization is apparent with the federal government's unique authority to print money. State border crossings may greet us with colorful billboards, but behind them lays a complex federal design that has structured relationships between states and the national government since the late 1700s.

DIVISION OF POWERS AND SEPARATION OF POWERS

A unique feature of the American governmental structure is a balance of both horizontal and vertical division of powers. As an institutional/ structural design, **federalism** is intended to both safeguard state interests while creating a strong union led by an effective centralized national government.

Federalism divides power between multiple vertical layers or levels of government—national, state, county, parish, local, special district–allowing for multiple access points for citizens. The governments, by design at the national and state levels, check and balance one another.

At each level of the U.S. federal structure, power is further divided horizontally by branches–legislative, executive, and judicial. This **separation of powers** feature makes the U.S. federal system even more distinct, since not all federal systems have such separation of powers.

Federalism: Questions to Consider

1. What are the central differences between unitary, confederation, and federal governmental structures?

2. How is power divided and how is it separated at the various levels?

1. unitary power is centralized at the top, confederate power is decentralized usually among several roughly co-equal entities/states, and federal powers are a mix with some centralized power delegated to the national government, some reserved to the states/sub-national entities and, in the United States
2. power is divide vertically between national, state, and local governments; and, power is separated between branches at the various levels—legislative, executive and judicial

Federalism: Terms to Remember

centralization–power is concentrated at one level of government such as the national level in a unitary system

confederation–highly decentralized structure of government with roughly co-equal entities/sovereign states forming an alliance for purposes such as national defense and/or other agreed purposes

decentralization–power is divided or shared between various levels of government

federal system/federalism–institutional arrangement creating relatively autonomous division of governmental powers by level, with each level of government able to act directly on behalf of the people; authority granted to act—granted by the people

separation of powers–a horizontal division of power between the executive, legislative, and judicial powers, allowing each branch of government to act as a check and balance on the other branches

unitary system–highly centralized governmental authority in which any other level of government below the national government is dependent upon the central/national government; centralized power or substantial authority is concentrated with national government

Federalism: Works Consulted

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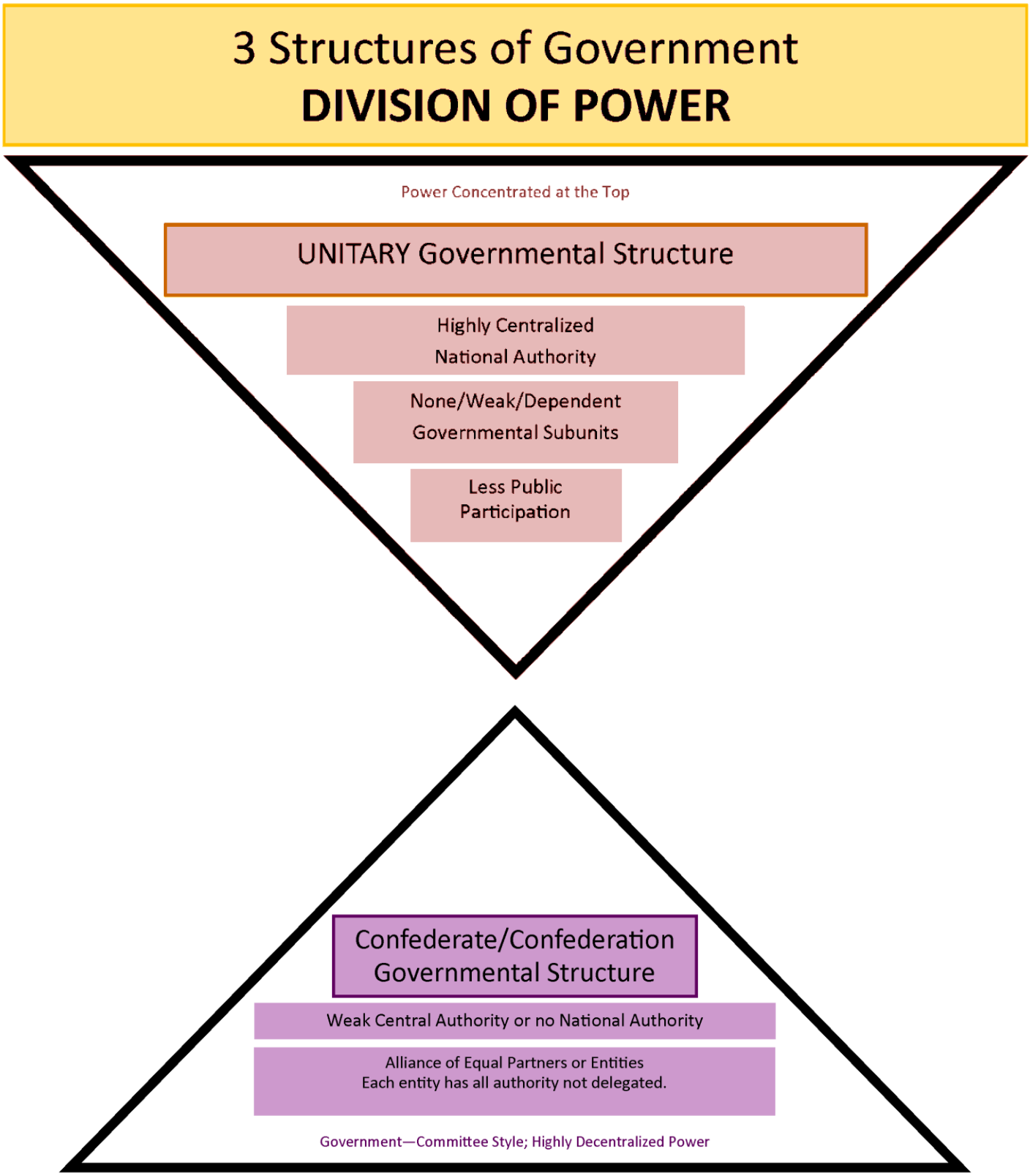
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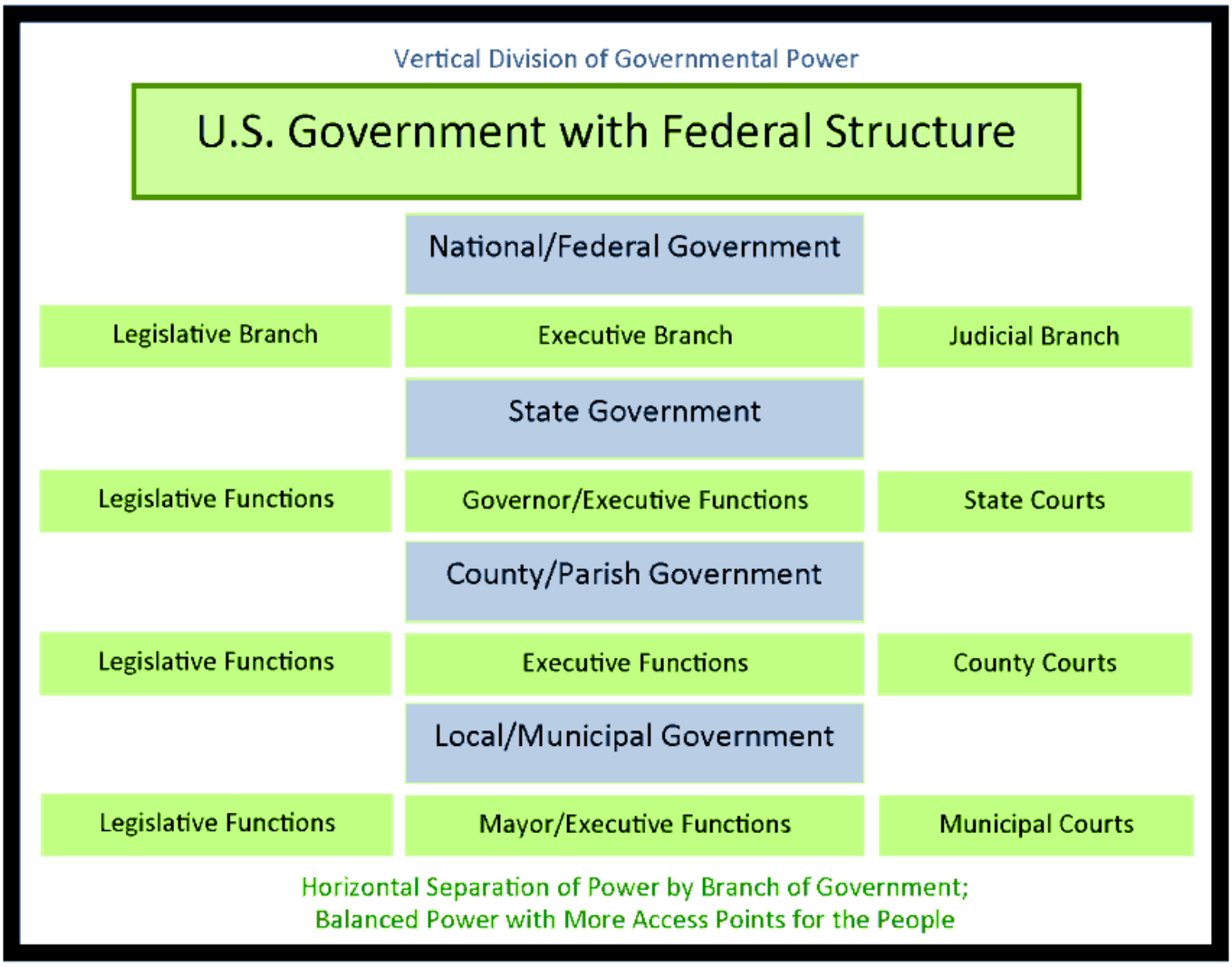
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EXAMPLES FOR FURTHER STUDY

The structure of government impacts the function (day-to-day business) of government. Countries must make this important decision about which structure of government to employ before working on the details of how this organizational structure will carry out the basic functions of governing.





Charts by Deborah S. Hoag, Austin Community College.

3.2 Federalism: Structural Division of Power



Image 3.2 Exterior Nighttime Photo of Austin City Hall in Austin, Texas

Austin City Hall (Credit: Victor Ovalle; Feature-Banner-Austin-City-Hall at http://www.austintexas.gov/government)

Learning Objectives

- Identify some of the powers and responsibilities of federal, state, and local governments.
- Examine how responsibilities differ and powers overlap.
- Discover how federalism evolved in the US.

Chart 3.4 Learning Objectives on Powers and Responsibilities of Government

The US republic divides governmental power in two general ways–vertically and horizontally. Horizontally, we share power among three branches of government—the legislature, the executive, and the judiciary. Vertically, power is divided and shared between levels of government: national and sub-national (state, parish, county, local, special district). In the United States, the term **federal government** refers to government at the *national level*.

Federalism is an institutional arrangement creating a relatively autonomous division of governmental powers by level, each level of government able to act directly on behalf of the people, with the authority to act granted by the people.[1] What does this mean? According to William Riker, a federal system exists if two levels of government have authority over the same geographic area and people.[2] That is, in the U.S. federal system, residents of the state of Texas have both a state government that has authority to make laws and rules that impact citizens, and Texans are also impacted by a national government with authority to make laws and rules that directly impact the residents of Texas.

Although federal systems vary by design, some characteristics are common to the United States and other systems around the world including Germany and Mexico. First, one characteristic is that all federal systems establish two levels of government, with both levels being elected by the people and each level assigned somewhat different functions. By definition, a system like this requires that different levels of government cooperate, because the institutions at each level form an interacting network. In the U.S.

federal system, all national matters are handled by the federal government. All matters at the subnational level are the responsibility of the fifty states. Under a federal system, people agree (**consent**) to cooperate usually under terms of a written constitution that defines how they will work together and hold each other accountable; the intention being to keep people in control of the government by providing numerous points of access depending on the function or issue.

Federalism (a federal structure) increases access opportunities. The second characteristic common to all federal systems is a written contract/ constitution that cannot be changed without the substantial consent of sub-national governments. In the American federal system, the twenty-seven amendments added to the *Constitution* since its adoption resulted from an arduous process requiring approval by two-thirds of both houses of Congress and three-fourths of the states. This super-majority requirement ensures no changes to the *Constitution* may occur without broad support within Congress (the people's representatives) and among states. While each level of government is somewhat independent of the others, a great deal of interaction occurs. The ability of the federal and state governments to achieve their objectives often depends on cooperation. For example, law enforcement agents at the local and state levels work to bolster the national government's efforts to ensure homeland security. Third, the constitutions of federal systems formally allocate legislative, judicial, and executive authority to the various levels of government to ensure each has some degree of autonomy from the other. Under the U.S. *Constitution*, the president assumes executive power, Congress exercises legislative powers, and the federal courts (e.g., U.S. district courts, appellate courts, and the Supreme Court) assume judicial powers. In each of the fifty states, a governor assumes executive authority, a state legislature makes laws, and state-level courts (e.g., trial courts, intermediate appellate courts, and supreme courts) possess judicial authority.

The *Constitution* contains several provisions that direct the functioning of U.S. federalism. Some delineate the scope of national and state power, while others restrict it. The remaining provisions shape relationships among the states and between the states and the federal government. The enumerated powers of the national legislature are found in Article I, Section 8. These powers define the jurisdictional boundaries within which the federal government has authority. The last clause of Article I, Section 8, commonly referred to as the **elastic clause** or the **necessary and proper clause**, enables Congress "to make all Laws which shall be necessary and proper for carrying" out its constitutional responsibilities.

While the enumerated powers define the policy areas in which the national government has authority, the elastic clause allows it to create the legal means to fulfill those responsibilities. In fact, the open-ended interpretation of this clause has enabled the national government to expand its authority beyond what is specified in the *Constitution*, a development also motivated by the expansive interpretation of the **commerce clause**, which empowers the federal government to regulate interstate economic transactions. The powers of the state governments were never listed in the original *Constitution*.

The consensus among the framers was that states would retain any powers not prohibited by the *Constitution* or delegated to the national government.[3] However, when it came time to ratify the *Constitution*, several states requested that an amendment be added protecting, the reserved powers

of the states. What these Anti-Federalists sought was further assurance that the national government's capacity to act directly, or provide direct public goods and services for people would be restricted.

Those who place an emphasis on the Tenth Amendment have been called **dual federalists**, stressing the independence of each level of government and have a narrow interpretation of the necessary and proper clause. Those who stress the interaction between the levels or the flexibility in authority of each are called **cooperative federalists** and have a broad interpretation of the necessary and proper clause.[4]

The Tenth Amendment affirms the states' reserved powers: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Although states retain some sovereignty, the **supremacy clause** in Article VI proclaims the U.S. Constitution, national laws and treaties are "the supreme law of the land."[5]

The enduring political debate over federalism and the proper role and scope of the national government depends on whether you place an emphasis on the **elastic clause/necessary and proper clau**se of the Constitution or on the **Tenth Amendment** reserving powers to the states (not mentioned in the Constitution).

Historical Struggle for Power–Conflicts with a Federal Structure of Governing

As George Washington's secretary of the treasury from 1789 to 1795, Alexander Hamilton championed legislative efforts to create a publicly chartered bank. For Hamilton, the establishment of the Bank of the United States was fully within Congress's authority, and he hoped the bank would foster economic development, print and circulate paper money, and provide loans to the government. Although Thomas Jefferson, Washington's secretary of state, staunchly opposed Hamilton's plan on the constitutional grounds that the national government had no authority to create such an instrument, Hamilton managed to convince the reluctant president to sign the legislation.[6]

A political showdown between Maryland and the national government emerged when James McCulloch, an agent for the Baltimore branch of the Second Bank, refused to pay a tax that Maryland had imposed on all out-of-state chartered banks. The standoff raised two constitutional questions: Did Congress have the authority to charter a national bank? Were states allowed to tax federal property? In *McCulloch v. Maryland*, Chief Justice John Marshall argued that Congress could create a national bank even though the Constitution did not expressly authorize it.[7]

Under the necessary and proper clause of Article I, Section 8, the Supreme Court asserted that Congress could establish "all means which are appropriate" to fulfill "the legitimate ends" of the Constitution. In other words, the bank was an appropriate instrument that enabled the national government to carry out several of its enumerated powers, such as regulating interstate commerce, collecting taxes, and borrowing money.

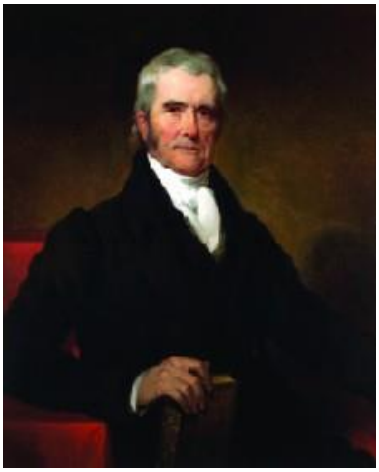


Image 3.3 Portrait of SCOTUS Chief Justice John Marshall

Chief Justice John Marshall, shown here in a portrait by Henry Inman, was responsible for establishing greater flexibilities in the exercise of national powers through the *McCulloch v. Maryland* (1819) decision. (Credit: National Archives)

This ruling established the doctrine of implied powers, granting Congress a vast source of discretionary power to achieve its constitutional responsibilities. The Supreme Court also sided with the federal government on the issue of state authority to tax federal property. Under the supremacy clause of Article VI, legitimate national laws trump conflicting state laws. As the court observed, "the government of the Union, though limited in its powers, is supreme within its sphere of action and its laws, when made in pursuance of the constitution, form the supreme law of the land." Maryland's action violated national supremacy because "the power to tax is the power to destroy." This second ruling established the principle of national supremacy, which prohibits states from meddling in the lawful activities of the national government.

In *Gibbons v. Ogden*, the scope of national power was subjected to court interpretation of the commerce clause of Article I, Section 8; specifically, it had to determine whether the federal government had the sole authority to regulate the licensing of steamboats operating between New York and New Jersey.[8]

Aaron Ogden, who had obtained an exclusive license from New York State to operate steamboat ferries between New York City and New Jersey, sued Thomas Gibbons, who was operating ferries along the same route under a coasting license issued by the federal government. Gibbons lost in New York state courts and appealed. Chief Justice Marshall delivered a two-part ruling in favor of Gibbons that strengthened the power of the national government. First, interstate commerce was interpreted broadly to mean "commercial intercourse" among states, thus allowing Congress to regulate navigation. Second, because the federal Licensing Act of 1793, regulating coastal commerce was a constitutional exercise of Congress's authority under the commerce clause, federal law trumped the New York State license-monopoly law granting Ogden an exclusive steamboat operating license. Marshall pointed out, "the acts of New York must yield to the law of Congress."[9]

Various states railed against the nationalization of power that had been going on since the late 1700s. When President John Adams signed the Sedition Act in 1798, which made it a crime to speak openly against the government, the Kentucky and Virginia legislatures passed resolutions declaring the act null on the grounds that they retained the discretion to follow national laws. In effect, these resolutions articulated the legal reasoning underpinning the doctrine of nullification—that states had the right to reject national laws they deemed unconstitutional.[10] A nullification crisis emerged over the tariff acts of 1828 and 1832. Nullifiers argued that high tariffs on imported goods benefited northern manufacturing interests while disadvantaging economies in the South. South Carolina passed an Ordinance of Nullification declaring both tariff acts null and void and threatened to leave the Union.

The federal government responded by enacting the Force Bill in 1833, authorizing the president's use of military force against states challenging federal tariff laws.

In the ultimate showdown between national and state authority, *Dred Scott v. Sandford*, the Supreme Court ruled the national government lacked the authority to ban slavery in the territories.[11] The election of President Abraham Lincoln in 1860 influenced eleven southern states to secede from the Union believing the new president would challenge the institution of slavery. What was initially a conflict to preserve the Union became a conflict to end slavery when Lincoln issued the Emancipation Proclamation in 1863, freeing all slaves in the rebellious states. The defeat of the South impacted the balance of power between the states and the national government. Congress imposed several conditions for readmitting former Confederate states into the Union; among them was ratification of the Fourteenth and Fifteenth Amendments. After the Civil War the power balance shifted toward the national government, a movement that had begun several decades before with *McCulloch v. Maryland* (1819) and *Gibbons v. Ogden* (1824).

Dual Federalism v. Cooperative Federalism: The Continuing Debate

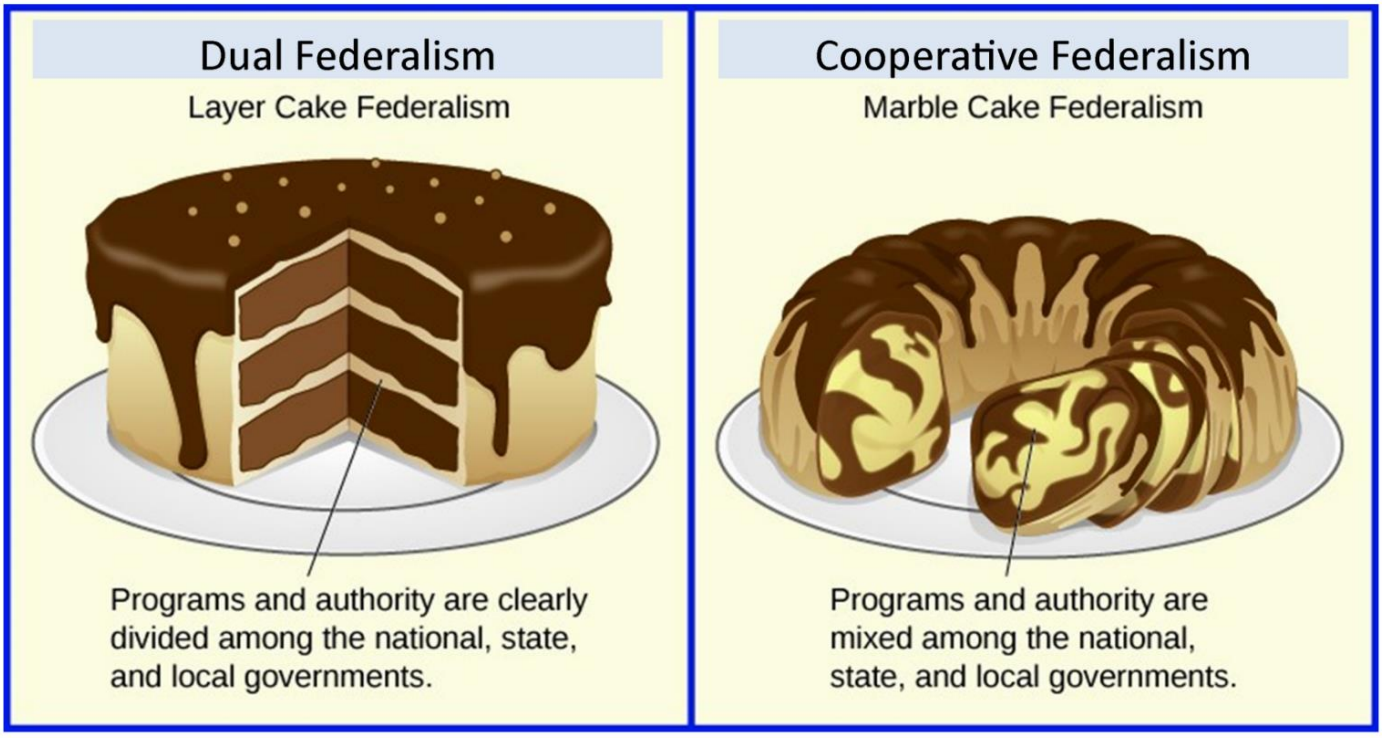


Chart 3.5 Diagram of Layer Cake and Marble Cake Federalism

Morton Grodzins, a professor of political science at the University of Chicago, coined the expression "marble-cake federalism" in the 1950s in order to explain the evolution of federalism in the U.S. (Credit: OpenStax; Morton Grodzins)

Despite some shift in power toward the national government following the conclusion of the Civil War and passage of the Fourteenth Amendment, the late 1870s ushered in a new phase in the evolution of the U.S. federal system with a renewed emphasis on stressing distinctions between the role of the national government and the state governments. Under **dual federalism**, the states and national government exercise exclusive authority in distinctly delineated spheres of jurisdiction. Like the layers of a cake, the levels of government do not blend with one another but rather are clearly defined.

Two factors contributed to this conception of federalism. Supreme Court rulings blocked attempts by state and federal governments to step outside their jurisdictional boundaries. Further, the prevailing economic philosophy at the time loathed government interference in the process of industrial development.

The Supreme Court rulings provided an interpretation of both the 14th Amendment that blocked state and federal action and narrowed the understanding of the Commerce Clause of the U.S. Constitution.[12]

In the late 1800s, some states attempted to regulate working conditions. For example, New York state passed the Bakeshop Act in 1897, which prohibited baker employees from working more than sixty hours in a week. In *Lochner v. New York*, the Supreme Court ruled this state regulation that capped work hours was unconstitutional on the grounds that it violated the due process clause of the 14th Amendment.[13] In other words, the right to sell and buy labor is a "liberty of the individual" safeguarded by the Constitution, the court asserted.

The federal government also took up the issue of working conditions, but that case, *Hammer v. Dagenhart*, resulted in the same outcome as in the Lochner case.[14]

Moreover, the Supreme Court ruled that the Commerce Clause could not be used to create national minimum standards for child labor working conditions. The Court stated that "The commerce clause was not intended to give to Congress a general authority to equalize such conditions."[15]

Morton Grodzins coined the cake analogy of federalism in the 1950s while conducting research on the evolution of American federalism. According to Grodzins the 1930s ushered in a new era of federalism he called "marble-cake federalism."[16] He identified that the national government, in addition to state governments, were all engaged in administering health, safety, income security, education, and welfare to state residents.

Moreover, the boundary had completely blurred between intra-state and interstate commerce as a result of broad interpretation of the commerce clause coupled with expanded use of the elastic/necessary and proper clause.

In *National Labor Relations Board (NLRB) v. Jones and Laughlin Steel*, the Supreme Court ruled the National Labor Relations Act of 1935 was constitutional, asserting that Congress can use its authority under the commerce clause to regulate both manufacturing activities and labor-management relations.[17]

The New Deal changed the relationship Americans had with the national government. Before the Great Depression, the government offered little in terms of financial aid, social benefits, and economic rights. After the New Deal, it provided old-age pensions (Social Security), unemployment insurance, agricultural subsidies, protections for organizing in the workplace, and a variety of other public services created during Roosevelt's administration. In the 1960s, President Lyndon Johnson's administration expanded the national government's role in society even more.

In fact, shared (overlapping or concurrent) powers had now become an integral part of contemporary U.S. federalism. These concurrent powers range from taxing, borrowing, making, and enforcing laws to establishing court systems.[18]

Grodzins found through his research that federalism has often but erroneously been symbolized by a layer cake, but a more accurate image was a marble cake characterized by inseparable mingling of different colored ingredients. As colors are mixed in the marble cake, so functions are mixed in the American system.[19] An example of cooperative federalism can be seen in the management of The Balcones Canyonlands Preserve Conservation Plan in Travis and Williamson counties in the state of Texas. The Preserve brings together national, state, county, and local governments as well as non-governmental organizations. All of these entities work together to achieve the goal of protecting endangered and threatened species, while also providing protection to habitat and green infrastructure. *See Appendix I for more interesting information, maps, and photos of this cooperative project.*

What are the various types of power in a federal structure?

The *Constitution* contains several provisions that direct the functioning of the U.S. federal structure. Some delineate the scope of national and state power while others expressly restrict it. Other provisions shape relationships among the states and between states and the national government.

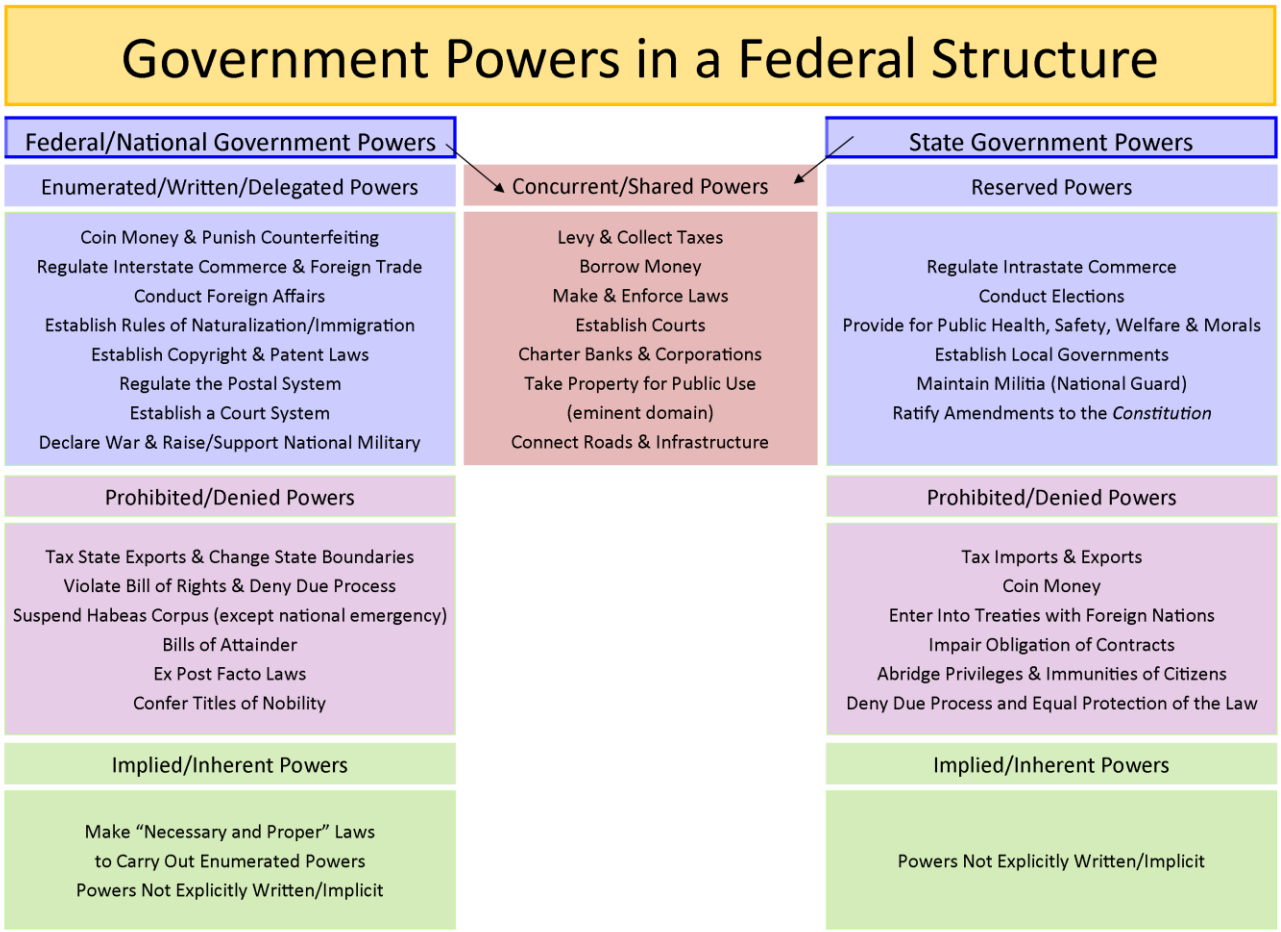


Chart 3.6 Diagram of Different Types of Power in a Federal Structure

Constitutional powers and responsibilities are divided between the U.S. federal and state governments. The two levels of government also share concurrent powers.

Chart 3.6 provides information on the enumerated power, implied or inherent power, and also prohibited power of the federal or national level of government. Chart 3.6 also provides information on the areas of reserved powers of the states along with areas prohibited, implied and inherent. In addition, it provides information on powers shared or known as concurrent powers.

Article I, Sections 9 and 10, along with several constitutional amendments, lay out the restrictions on federal and state authority. The most important restriction Section 9 places on the national government prevents measures that cause the deprivation of personal liberty. Specifically, the government cannot suspend the **writ of habeas corpus**, which enables someone in custody to petition a judge to determine whether that person's detention is legal; pass a **bill of attainder**, a legislative action declaring someone guilty without a trial; or enact an **ex post facto law**, which criminalizes an act retroactively. The Bill of Rights affirms and expands these constitutional restrictions, ensuring that the government cannot encroach on personal freedoms.

The states are also constrained by the Constitution. Article I, Section 10, prohibits the states from entering into treaties with other countries, coining money, and levying taxes on imports and exports. Like the federal government, the states cannot violate personal freedoms by suspending the writ of habeas corpus, passing bills of attainder, or enacting ex post facto laws. Furthermore, the Fourteenth Amendment, ratified in 1868, prohibits the states from denying citizens the rights to which they are entitled by the Constitution, due process of law, or the equal protection of the laws. Lastly, three civil rights amendments—the Fifteenth, Nineteenth, and Twenty-Sixth—prevent both the states and the federal government from abridging citizens' right to vote based on race, sex, and age. This topic remains controversial because states have not always ensured equal protection.

Various constitutional provisions also govern state-to-state relations. Article IV, Section 1, referred to as the **full faith and credit clause** or the Comity Clause (U.S. *Constitution*, Article IV, Section 2, Clause 1) requires the states to accept court decisions, public acts, and contracts of other states. Thus, an adoption certificate or driver's license issued in one state is valid in any other state.

The **privileges and immunities clause** of Article IV asserts that states are prohibited from discriminating against out-of-staters by denying them such guarantees as access to courts, legal protection, property rights, and travel rights. The clause has not been interpreted to mean there cannot be *any* difference in the way a state treats residents and non-residents. For example, individuals cannot vote in a state in which they do not reside, tuition at state universities is higher for out-of-state residents, and in some cases individuals who have recently become residents of a state must wait a certain amount of time to be eligible for social welfare benefits.

Another constitutional provision prohibits states from establishing trade restrictions on goods produced in other states. However, a state can tax out-of-state goods sold within its borders if state-made goods are taxed at the same level.

Again, if a state law clashes with a federal law found to be within the national government's constitutional authority, the federal law is supposed to prevail. The supremacy clause does not intend to subordinate the states to the federal government; rather, it affirms that one body of laws binds the

country. In fact, all national and state government officials are bound by oath to uphold the *Constitution* regardless of the offices they hold.



Image 3.4 Photo of Marijuana Plants

Colorado's marijuana laws do not match with federal standards. (Credit: National Institute on Drug Abuse at the National Institute of Health at https://www.drugabuse.gov/publications/drugfacts/marijuana-medicine

Yet enforcement is not always that simple. In the case of marijuana use, which the federal government defines to be illegal, twenty-three states and the District of Columbia have nevertheless established medical marijuana laws, others have decriminalized its recreational use, and four states have completely legalized it.

The federal government could act in this area if it wanted to. Recent and current administrations have actively chosen to ignore the supremacy clause–using prosecutorial discretion–not holding states or individuals accountable for violating federal/national laws. For example, in addition to the legalization issue, there is the question of how to treat the money from marijuana sales, which the national government designates as drug money and regulates under laws regarding its deposit in banks.

Interesting Information

Because the marijuana plant contains chemicals that may help treat a range of illnesses and symptoms, many people argue that it should be legal for medical purposes. In fact, a growing number of states have legalized marijuana for medical use.[1][3] The FDA requires carefully conducted studies (clinical trials) in hundreds to thousands of human subjects to determine the benefits and risks of a possible medication. So far, researchers have not conducted enough large-scale clinical trials that show that the benefits of the marijuana plant (as opposed to its cannabinoid ingredients) outweigh its risks in patients it is meant to treat.[1][4] Decriminalization of a controlled substance like marijuana highlights the conflict between states' rights and the supremacy of national laws.

(Credit: National Institute on Drug Abuse at the NIH; "Marijuana as Medicine" April 2017; "What Is medical marijuana?")



Image 3.5 Photo of Brain Scan from NIH (Credit: NIH)

Consider the Original: Tenth Amendment

The Tenth Amendment to the *United States Constitution* states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[17]

Chart 3.7 Text of the 10th Amendment to the U.S. Constitution

The Disputed Meaning of the 10th Amendment

Unlike other Bill of Rights provisions, the 10th Amendment focuses on *power* rather than rights. What exactly do these words mean and why has this amendment been debated since its adoption? To some, the amendment is intended to significantly restrict and limit the power of the federal or national government; while, to others, it is seen as having little real impact.[20]

Those who minimize the Tenth Amendment read it as merely stating what former Chief Justice Harlan Stone called a "truism that all is retained which has not been surrendered."[21] In other words, rather than limiting the power of the federal government in any meaningful way, it simply restates what is made obvious elsewhere in the *Constitution*: the federal government has both enumerated and implied powers. The emphasis is especially placed on a broad interpretation of "implied" powers from the "necessary and proper clause" or Article I, Section 8 of the *Constitution*.[22] The amendment is viewed as permissive of state exercise of power, rather than restrictive of federal power.

Those who argue against this perspective suggest that such an interpretation turns the entire philosophy of constitutionally limited government on its head. The 10th Amendment was added to reinforce the concept that the U.S. government had limited, not unlimited powers. From this point of view, a much narrower, restrictive interpretation of the implied powers of the "necessary and proper" clause is assumed.[23] Advocates for this view stress the position taken by James Madison in the Federalists Paper No. 45 that the "powers" granted by the Constitution to the "federal government are few and defined," while those granted to the states are "numerous and indefinite."[24] The courts have generally agreed with a broader interpretation of the necessary and proper clause, especially as it relates to the enumerated power of Congress to make laws relating to interstate commerce. In fact, use of the commerce clause of the U.S. *Constitution*, when coupled with the implied powers of the necessary and proper clause, has led to a major growth of federal power.[25]

However, several Supreme Court rulings have restricted the scope of the national government's power, especially under the commerce clause. For example, in United States v. Lopez, the court struck down the Gun-Free School Zones Act of 1990, which banned gun possession in school zones.[26] It argued that the regulation in question did not "substantively affect interstate commerce." The ruling ended a nearly

sixty-year period in which the court had used a broad interpretation of the commerce clause. The Lopez ruling supported a more narrow interpretation of the necessary and proper clause and quoted James Madison's restrictive language in Federalist 45.[27]

The courts have also agreed with restrictions to a broad interpretation of the commerce clause when the federal government appears to directly require state and local officials to do something. For example, in 1997 the Supreme Court struck down part of a federal law requiring state and local law enforcement to conduct background checks for prospective gun purchasers.[28] In 2012 the court ruled the government could not compel states to expand the joint state-federal Medicaid program by taking away all their existing Medicaid funding if they refused.[29]

The 10th Amendment also allows states to guarantee rights and liberties more fully or extensively than the federal government does, or to include additional rights. For example, many state constitutions guarantee the right to free public education. Several states give victims of crimes certain rights. Eighteen states include the right to hunt game and/or fish.[30]

Some state constitutions explicitly guarantee equal rights for men and women. Some states permitted women to vote before the Nineteenth Amendment of 1920, and people aged 18–20 could vote in a few states before the Twenty-Sixth Amendment of 1971. Several states also explicitly recognize a right to privacy. A decision by the Kansas Supreme Court in 2019 stated the state constitution protected a woman's access to abortion.[31]

These state protections and rights do not extend the other way, however. If a Supreme Court decision interprets the U.S. *Constitution* in a way that narrows these rights, the state's protection no longer applies. For example, if Congress decided to outlaw hunting and fishing and the Supreme Court decided this law was a valid exercise of federal power, the state constitutional provisions that protect the right to hunt and fish would effectively be meaningless.

Federalism: Questions to Consider

1. What key constitutional provisions define the scope of authority of the federal and state governments?
2. What is the main purpose of both national and state governments?
3. What are the main differences between cooperative and dual federalism?
4. What were the implications of *McCulloch v. Maryland?*

Terms to Remember

bill of attainder–a legislative action declaring someone guilty without a trial; prohibited under the Constitution
commerce clause–empowers the federal government to regulate interstate economic transactions
concurrent powers–shared state and federal powers that range from taxing, borrowing, and making and enforcing laws to establishing court systems
cooperative federalism–a style of federalism in which both levels of government coordinate their actions to solve national problems, lead to the blending of functions such as swirls in a marble cake
dual federalism–a style of federalism in which the states and national government exercise exclusive authority in distinctly delineated spheres of jurisdiction, creating a layer-cake view of federalism
elastic clause–the last clause of Article I, Section 8, which enables the national government "to make all Laws which shall be necessary and proper for carrying" out all its constitutional responsibilities
ex post facto law–a law that criminalizes an act retroactively; prohibited under the *Constitution*
federalism–an institutional arrangement that creates two relatively autonomous levels of government, each possessing the capacity to act directly on the people with authority granted by the national constitution
full faith and credit clause–found in Article IV, Section 1, of the *Constitution*, this clause requires states to accept court decisions, public acts, and contracts of other states; also referred to as the comity provision
privileges and immunities clause–found in Article IV, Section 2, of the *Constitution*, this clause prohibits states from discriminating against out-of-staters by denying such guarantees as access to courts, legal protection, and property and travel rights
reserved powers amendment–the 10th Amendment to the *Constitution* that reserves powers to the states not delegated by the Constitution to the national government
writ of habeas corpus–a petition that enables someone in custody to petition a judge to determine whether

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3.3 Federalism: How is revenue shared?



Image 3.6 Gold Liberty Coin from the U.S. Mint

Photo from the U.S. Mint of a gold liberty coin.
(Credit: U.S. Mint from https://www.usmint.gov/wordpress/wp-content/uploads/2017/03/2017-american-eagle-gold-tenth-ounce-proof-coin-obverse.jpg)

Learning Objectives

- Explain how federal intergovernmental grants have evolved over time.
- Identify the types of federal intergovernmental grants.
- Describe the characteristics of federal unfunded mandates.

Chart 3.8 Learning Objectives on Fiscal Federalism, Grants, and Mandates

Fiscal Federalism: How are the people's dollars distributed?

Federal, state, and local governments depend on different sources of revenue to finance their annual expenditures. Two important developments have fundamentally changed the allocation of revenue since the early 1900s. First, the ratification of the Sixteenth Amendment in 1913 authorized Congress to impose income taxes without apportioning it among the states on the basis of population, a burdensome provision that Article I, Section 9, had imposed on the national government.[11] This change significantly increased the federal government's ability to raise revenue and spend it.

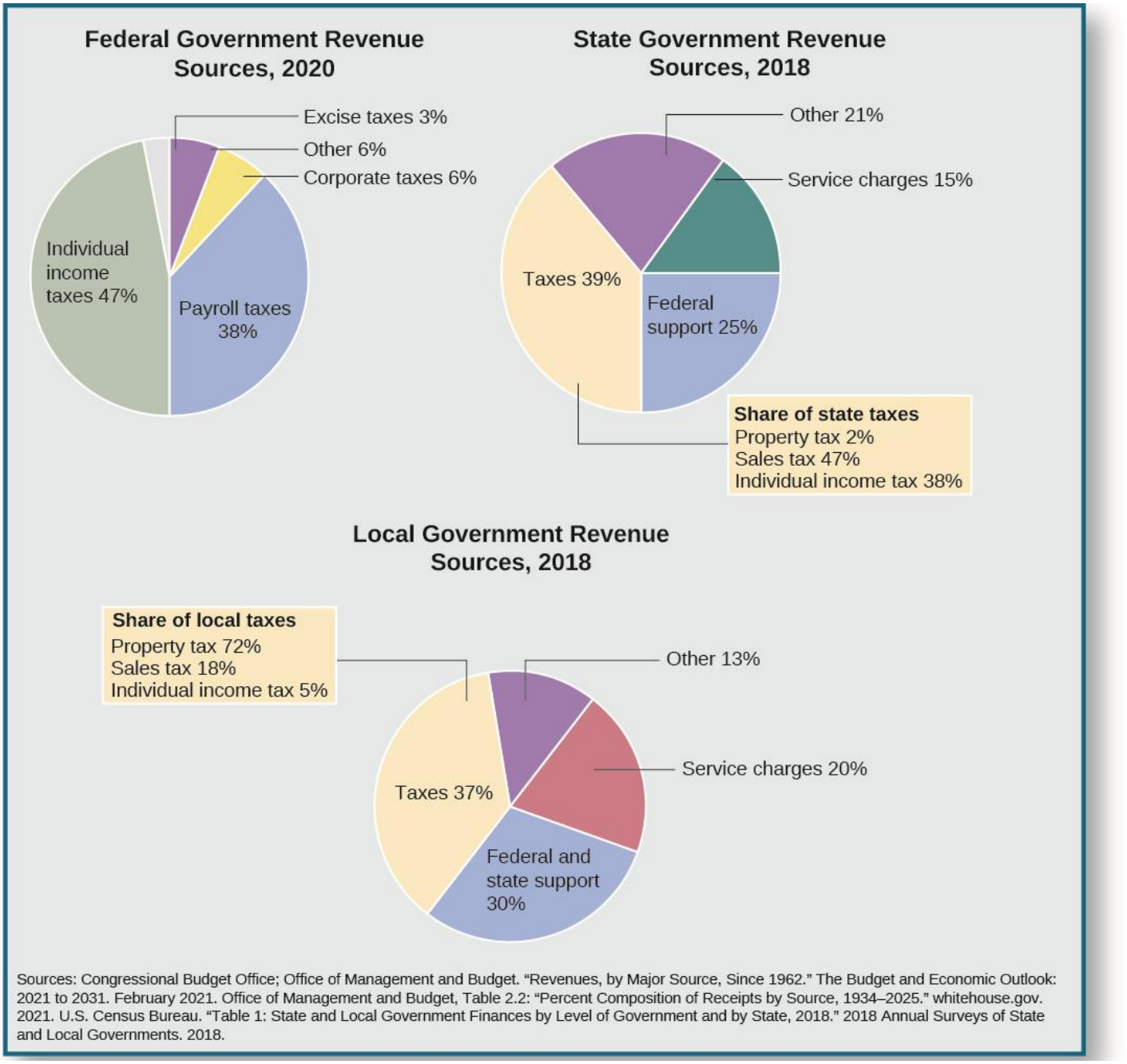


Chart 3.9 Pie Charts Comparing Federal, State and Local Spending

The second development regulates federal grants–transfers of federal money to state and local governments. These transfers, which do not have to be repaid, are designed to support the recipient governments, but also to encourage them to pursue federal policy objectives they might not otherwise adopt.

The expansion of the federal government's spending power has enabled it to transfer more grant money to lower government levels, which has accounted for an increasing share of their total revenue.[2]

The sources of revenue for federal, state, and local governments are detailed in figure 3.9. Although the data reflect 2020 results, patterns revealed in the figure give us an idea of how governments funded their

activities in recent years. For the federal government, 47 percent of 2020 revenue came from individual income taxes and 38 percent from payroll taxes, which combine Social Security tax and Medicare tax. For state governments, based on 2018 data, 39% comes from taxes, particularly sales tax on items such as purchased food, clothing, alcohol, tobacco products, and the motor fuel gasoline tax. Fuel tax revenue is typically used to finance state transportation projects. Some states have an individual income tax as a significant revenue source, others such as Texas and Florida do not have this tax. Federal grants account for about 25% of state government revenue.

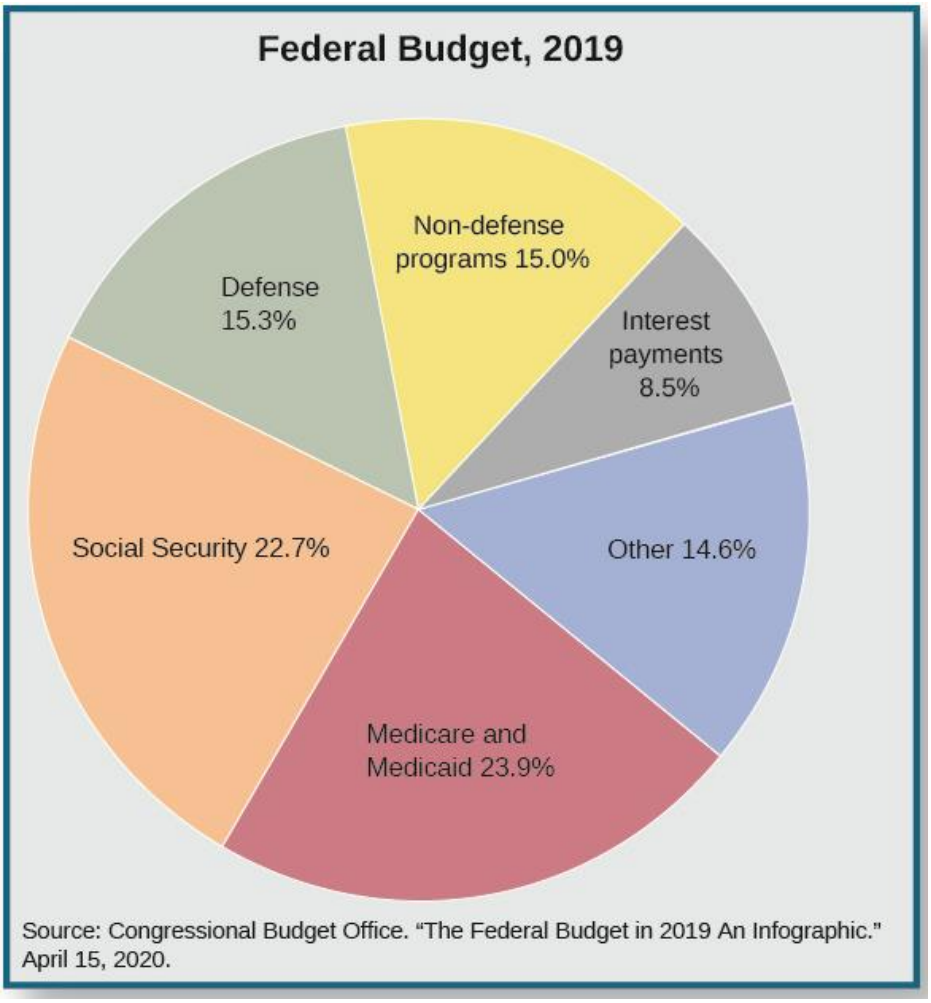


Chart 3.10 2019 Federal Spending Pie Chart; U.S. Treasury's Data Lab Analysis on Federal Spending to the Government's Main Function; DATALAB.usaspending.gov

For local governments, based on 2018 data, the property tax, a levy on residential and commercial real estate, was the most important source of tax revenue, accounting for about 72 percent of the total. Federal and state grants accounted for 30 percent of local government revenue. Charges for hospital-related services, sewage and solid waste management and airport services are important sources of general revenue for local governments.

Intergovernmental grants are important sources of revenue for both state and local governments. When economic times are good, such grants help states, cities, municipalities, and school districts carry out their regular functions. However, during hard economic times, such as the Great Recession of 2007-2009 or during the COVID-19 pandemic of 2020-2021, intergovernmental transfers provided much-needed fiscal relief as the revenue streams of state and local governments were adversely affected.

How are the revenues generated by people's tax dollars and people's fees paid for public services and licenses used by different levels of government? To gain insight on this question check Article I, Section 8, of the *Constitution,* assigning the federal government various powers allowing it to affect the nation as a whole.[3] The 2014 federal budget demonstrates that providing for the general welfare and national

defense consumes much of the government's resources—not just its revenue, but also its administrative capacity and labor power.

Educational expenditures constitute a major category for both state and local governments. However, whereas the states spend comparatively more than local governments on university education, local governments spend even more on elementary and secondary education. Local governments allocate more funds to police protection, fire protection, housing and community development, and public utilities such as water, sewage, and electricity. While state governments allocate comparatively more funds to public welfare programs, such as health care, income support, and highways, both local and state governments spend roughly similar amounts on judicial and legal services and correctional services. The national government's ability to achieve its objectives often requires the participation and cooperation of state and local governments. Intergovernmental grants offer positive financial inducements to get states to work toward selected national goals. A **grant** is commonly likened to a "carrot" to the extent that it is designed to entice the recipient toward a specific goal. On the other hand, **unfunded mandates** impose federal requirements on state and local authorities. **Mandates** are typically backed by the threat of penalties for non-compliance and provide little to no compensation to carry out the mandated action. Thus, given its coercive nature, a mandate is commonly likened to a "stick."

Grants

The national government has used grants to influence state actions as far back as the *Articles of Confederation* when it provided states with land grants. In the first half of the 1800s, land grants were the primary means by which the federal government supported the states.

Millions of acres of federal land were donated to support road, railroad, bridge, and canal construction projects, all of which were instrumental in piecing together a national transportation system to facilitate migration, interstate commerce, postal mail service, and movement of military people and equipment. Numerous universities and colleges across the country, such as Ohio State University and the University of Maine, are land-grant institutions because their campuses were built on land donated by the federal government. By 1900, cash grants replaced land grants as the main form of federal intergovernmental transfers and have become a central part of modern federalism.[4]

Federal cash grants have strings attached; the national government wants public monies used for policy activities that advance national objectives. **Categorical grants** are federal transfers formulated to limit recipients' discretion in the use of funds and subject them to strict administrative criteria that guide project selection, performance, and financial oversight, among other things. These grants also often require some commitment of matching funds. Examples are Medicaid and the food stamp program–categorical grants.

Block grants come with less stringent federal administrative conditions and provide recipients more flexibility over how to spend grant funds. Examples of block grants include the Workforce Investment Act program, which provides state and local agencies money to help youths and adults obtain skill sets that

will lead to better-paying jobs, and the Surface Transportation Program, which helps state and local governments maintain and improve highways, bridges, tunnels, sidewalks, and bicycle paths.

Finally, recipients of general revenue sharing faced the least restrictions on the use of federal grants. From 1972 to 1986, when revenue sharing was abolished, upwards of $85 billion of federal money was distributed to states, cities, counties, towns, and villages.[5]

During the 1960s and 1970s, funding for federal grants grew significantly. Growth picked up again in the 1990s and 2000s primarily due to the increase in federal grant money going to Medicaid.

Federally funded health-care programs jumped from $43.8 billion in 1990 to an estimated $625 billion in 2023.[6] Health-related grant programs such as Medicaid and the Children's Health Insurance Program (CHIP) represented more than half of total federal grant expenses.

The federal government uses grants and other tools to achieve its national policy priorities. Take a look at the **National Priorities Project** to find out more.

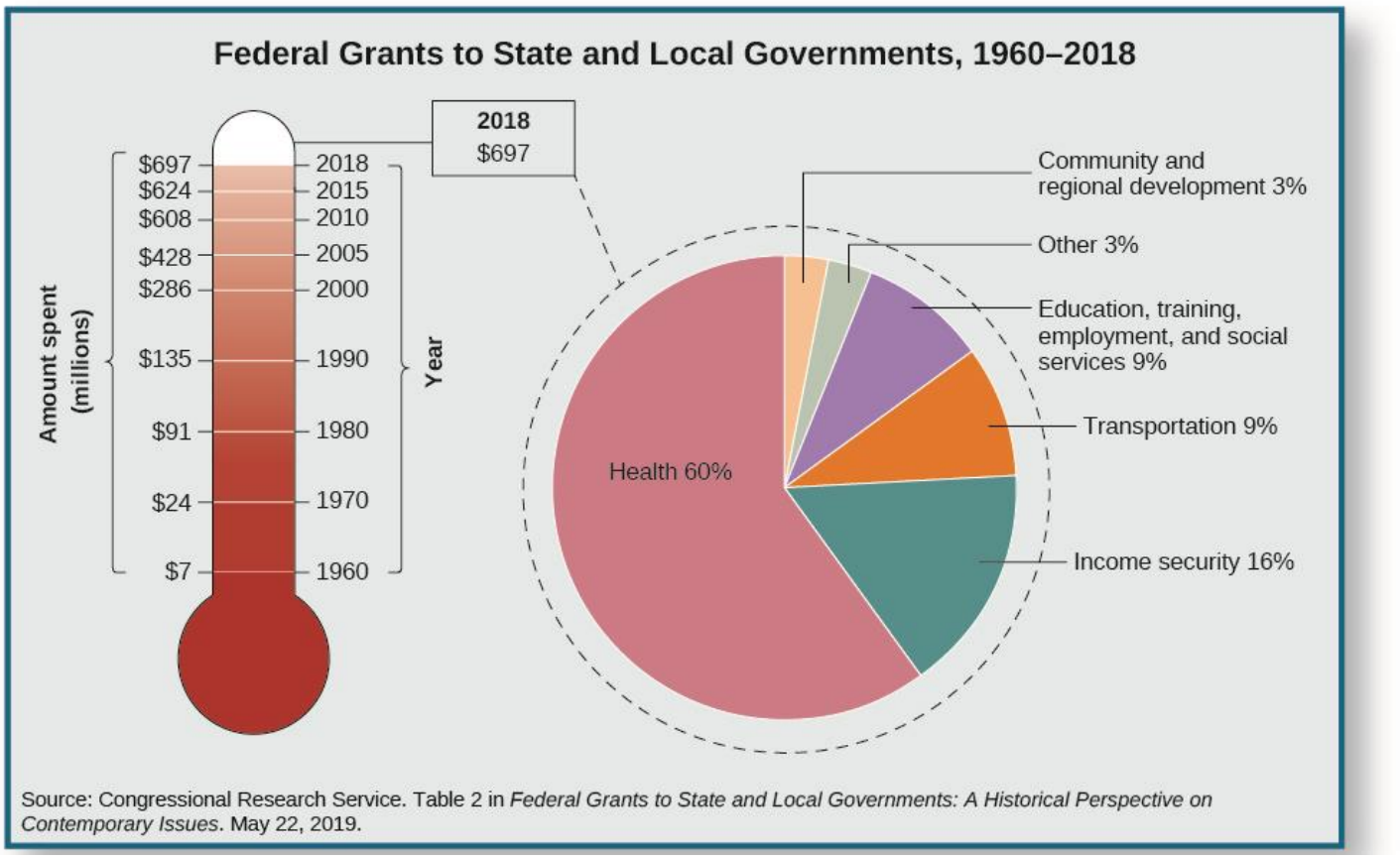


Chart 3.11 Chart Examines Federal Grant Spending with State and Local Governments

As the thermometer in Chart 3.13 shows, federal grants to state and local governments have steadily increased since the 1960s. The pie chart shows how federal grants are allocated among different

functional categories today. The national government favors using categorical grants to transfer funds to state and local authorities because this gives them more control and discretion in how the money is spent.

In 2019, the federal government distributed 1,274 grants, 1,253 of which were categorical, while only 21 were block grants.[7]

In response to the terrorist attack on the United States on September 11, 2001, more than a dozen new federal grant programs relating to homeland security were created, but as of 2011, only three were block grants.

There are a couple of reasons that categorical grants are more popular than block grants despite calls to decentralize public policy.

One reason is that elected officials who sponsor these grants can take credit for their positive outcomes (e.g., clean rivers, better-performing schools, healthier children, a secure homeland) since elected officials, not state officials, formulate the administrative standards that lead to the results. Another reason is that categorical grants afford federal officials greater command over grant program performance.



Image 3.7 Photo of Poetry Award Winner Funded by Taxpayers

Henry Bienen and National Endowment for the Arts Chair Jan Chu. (Credit: https://www.arts.gov/photos-pol)

Block grants continue to be championed for their cost-cutting effects. The transformation of the entitle welfare program known as Aid to Families with Dependent Children (AFDC) to a block grant, capping federal spending and providing state flexibility in managing the programs has been viewed as a model applicable to the very costly federal health Medicaid program.

Proposals of block-granting Medicaid go back to the 1990s and a 2014 plan advocated by then Speaker of the House Paul Ryan (R-WI). Ryan estimated that such a reform could save the federal government upwards of $732 billion over ten years.[8]

The political debate between the uses of block grants versus categorical grants is an ongoing dispute between those who wish to decentralize the administration of federal grant dollars and provide states administrative flexibility and those who wish to further centralize and strengthen nation-wide uniformity of programs.

Frequently, this debate finds those on the conservative side of the ideological spectrum advocating for block grants, decentralization and cost-cutting, while liberals prefer categorical grants, national uniformity and greater federal controls.

Historically, block grant flexibility has been undermined as a result of **creeping categorization**, a process in which the national government places new administrative requirements on state and local governments or supplants block grants with new categorical grants.[9]

Among the more common measures used to restrict block grants' programmatic flexibility are set-asides (i.e. requiring a certain share of block grant funds to be designated for a specific purpose) and cost-ceilings (i.e. placing a cap on funding for other purposes).

In other words, Washington, D. C. has been as likely to use the stick of mandates as the carrot of grants to accomplish its national agenda. As a result, there have been more instances of confrontational interactions between the states and the federal government.

Unfunded mandates are federal laws and regulations that impose obligations on state and local governments without fully compensating them for the administrative costs they incur. The federal government has used mandates increasingly since the 1960s to promote national objectives in policy areas such as the environment, civil rights, education, and homeland security. One type of mandate threatens civil and criminal penalties for state and local authorities that fail to comply with them across the board in all programs, while another provides for the suspension of federal grant money. These are commonly referred to as *crosscutting* mandates/requirements.

Failure to fully comply with crosscutting mandates can result in punishments that normally include reduction of or suspension of federal grants, prosecution of officials, fines, or some combination of these penalties. If only one requirement is not met, state or local governments may not get any money at all.

Some mandates include partial preemption regulations, whereby the federal government sets national regulatory standards but delegates the enforcement to state and local governments. For example, the Clean Air Act sets national air quality regulations but instructs states to design implementation plans to achieve such standards.[10] The widespread use of federal mandates in the 1970s and 1980s provoked a backlash among state and local authorities, which culminated in the Unfunded Mandates Reform Act (UMRA) in 1995. The UMRA's main objective has been to restrain the national government's use of mandates by subjecting rules that impose unfunded requirements on state and local governments to greater procedural scrutiny. However, since the act's implementation, states and local authorities have obtained limited relief. A new piece of legislation aims to take this approach further. The 2015 Unfunded

Mandates and Information Transparency Act, HR 50, passed the House early in 2015 before being referred to the Senate, where it waits committee consideration.[11]

Some leading federalism scholars have used the term **coercive federalism** to describe or label this aspect of contemporary U.S. federalism.[12]

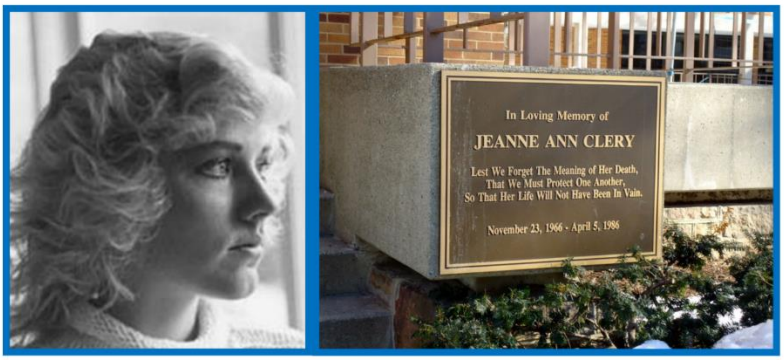


Image 3.8 Photo of Jeanne Clery and Photo of Memorial Plaque

The federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) requires colleges and universities, both public and private, participating in federal student aid programs to disclose campus safety information, and imposes certain basic requirements for handling incidents of sexual violence and emergency situations. (Credit: modification of work (a) Brenda and Pete Kohr and (b) Code Carvings.com.)

Consider the Original

The U.S. Department of Education's Clery Act Compliance Division is responsible for enforcing the 1990 Act. Specifically, to remain eligible for federal financial aid funds and avoid penalties, colleges and universities must comply with the following provisions:

- Publish an annual security report and make it available to current and prospective students and employees;
- Keep a public crime log that documents each crime on campus and is accessible to the public;
- Disclose information about incidents of criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, and hate crimes that occurred on or near campus;
- Issue warnings about Clery Act crimes that pose a threat to students and employees; Develop a campus community emergency response and notification strategy that is subject to annual testing;
- Gather and report fire data to the federal government and publish an annual fire safety report;
- Devise procedures to address reports of missing students living in on-campus housing.

Chart 3.12 List of Clery Act Provisions

THE CLERY ACT

The Clery Act of 1990, formally the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, requires public and private colleges and universities that participate in federal student aid programs to disclose information about campus crime. The Act is named after Jeanne Clery, who in 1986 was raped and murdered by a fellow student in her Lehigh University dorm room.

An Opinion on the Issue

Sofia Orozco, Austin Community College…

The Clery Act isn't sufficient in reminding students how to keep themselves safe or to prevent crimes. No matter how many resources are used to "disclose campus crime statistics and security information," if students aren't well informed in how to protect themselves, simply disclosing the information does nothing ("Clery Act Reports" at studentaid.ed.gov). I would ask universities to convert statistical findings into actionable tips posted around campus to constantly remind students how to ensure their own safety. Jeanne Clery was raped and murdered in her own dorm room; but, maybe if she walked by a poster on her way to class everyday that highlighted sensitive spots to strike an attacker, she might have been better prepared to defend herself ("The Handbook for Campus Safety and Security Reporting" at ifap.ed.gov). The University of Chicago's annual security and fire report contains safety tips like—if a student feels they're being followed, they should "cross the street, change direction, or go to a well-lit public place where others are present" ("Annual Security and Fire Safety Report" at safety-security.uchicago.edu). The university is right to include actionable tips. All universities under the Clery Act should be required to do the same. Though tips may seem obvious, if they help one student escape a dangerous situation, the revised Clery Act would be successful.

[Used with permission 06/12/2019 from Sofia Orozco]

Chart 3.13 Student Opinion on The Clery Act



For more about the Clery Act, see **http://clerycenter.org**.

Federalism: Questions to Consider

1. What does it mean to refer to the carrot of grants and the stick of mandates?
2. Were you made aware of your campus's annual security report before you enrolled?
3. Do you think reporting about campus security is appropriately regulated at the federal level under the Clery Act? Why or why not?

1. grant money may be offered to state governments for much needed services to entice the states to comply with national mandates
2. personal answer
3. personal opinion

Terms to Remember

block grant—a type of grant that comes with less stringent federal administrative conditions and provides recipients more latitude over how to spend grant funds

categorical grant—a federal transfer formulated to limit recipients' discretion in the use of funds and subject them to strict administrative criteria

fiscal federalism–sharing of tax dollars, fees, etc. between levels of government; usually in the form of grants to state governments

grant—commonly likened to a "carrot" to the extent that it is designed to entice the recipient toward a specific goal

mandates—typically backed by the threat of penalties for non-compliance and offer little to no compensation to carry out mandated action

unfunded mandate—federal laws and regulations that impose obligations on state and local government without fully compensating them for the costs of implementation

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4.1 Public Opinion & Political Socialization



Image 4.1 Civic Participation Photos of Opposing Protesting Groups

On April 15 (or "tax day"), 2010, members of the Tea Party movement rallied at the Minnesota State Capitol in St. Paul in favor of smaller government and against the Affordable Care Act (left). Two years later, supporters of the law (right) demonstrated in front of the U.S. Supreme Court during oral arguments in National Federation of Independent Business v. Sebelius.
(Credit: OpenStax; credit left--modification of work by "Fibonacci Blue"/Flickr; credit right--modification of work by LaDawna Howard)

Learning Objectives

- Define public opinion and political socialization.
- Explain the process and role of political socialization in the U.S. political system.
- Compare the ways in which citizens learn political information.
- Understand the role of social groups in the political socialization process and public opinion formation.

Chart 4.1 Learning Objectives on Public Opinion and Political Socialization

What Is Public Opinion?

Public opinion is a collection of attitudes and beliefs of an individual or a group of individuals about political issues and topics. For example, each day, a number of polling organizations call Americans at random to ask whether they approve or disapprove of the way the president is guiding the country.[1] These individual opinions are collected for analysis and interpretation by public policy makers. The collection of public opinion through polling and interviews is a part of the American political system. Politicians want to know what the public thinks. Campaign managers want to know how citizens will vote. Media members seek to write stories about what Americans want and about critical issues facing the nation. Every day, polls take the pulse of the people and report the results. Why do we care what people think?

Public opinion analysis examines how the public feels or thinks, so policy makers can use the information to make decisions that are responsive to public concerns.

With a system of elected representation, the connection between majority public opinion and governmental action by those elected is a guiding assumption of democratic theory. While many will dispute how exact the linkage is or should be, few will deny that "**consent** of the governed" implies a responsive relationship to public opinion.[2] But where do people's opinions come from?

Most citizens base their political opinions on their beliefs[3] and their attitudes, both of which begin to form in childhood. Beliefs are closely held ideas that support our values and expectations about life and politics. For example, the idea that we are all entitled to equality, liberty, freedom, and privacy is a belief most people in the United States agree upon; and, it can be said to be part of the shared political culture of the United States. We may acquire this belief by growing up in the United States or by having come from a country that did not afford these valued principles to its citizens. Our attitudes are also affected by our personal beliefs and represent the preferences we form based on our life experiences and values. A person who has suffered racism or bigotry may have a skeptical attitude toward the actions of authority figures. Over time, our beliefs and our attitudes about people, events, and ideas will become a set of norms, or accepted ideas, about what we may feel should happen in our society or what is right for the government to do in a situation. In this way, attitudes and beliefs form the foundation for opinions.

Political Socialization

While our political beliefs and attitudes are forming during childhood, we are also being socialized; that is, we are learning from many information sources about the society and community in which we live and about its political system. **Political socialization** is the entire complex process by which we are trained to understand our country's political system and form our political views about how it should operate; and, like most forms of socialization, it starts when we are very young. We may first become aware of politics by watching a parent or guardian vote, for instance, or by hearing presidents and candidates speak on television or the Internet, or seeing adults honor the American flag at an event. As socialization continues, we are introduced to basic political information in school. We recite the Pledge of Allegiance and learn about the Founding Fathers, the *Constitution*, the two major political parties, the three branches of government, and the economic system. In the United States, one benefit of socialization is that our political system enjoys diffuse support, which is support characterized by a high level of stability in politics, acceptance of the government as legitimate, and a common goal of preserving the system.[4]

Consider the Original: Pledge of Allegiance

The Pledge of Allegiance…

"I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

(Credit: USCode.House.gov)

Chart 4.2 The Pledge of Allegiance

By the time we complete formal schooling, we have usually acquired the political knowledge necessary to form political views and be contributing members of the political system.[5] However, political socialization does not end with formal schooling and is really a life-long process. Our own personal political ideology, made up of the attitudes and beliefs that help shape our opinions on political theory and policy, is rooted in who we are as individuals. Our political beliefs may change as we grow older and are introduced to new circumstances or new information. While some changes in political beliefs may be subtle and gradual, sometimes we experience events that profoundly affect us and our political beliefs.[6] For example, family members of 9/11 victims became more Republican and more political following the terrorist attacks.[7]





Image 4.2 Photos of Children Involved in Civic Participation

Political socialization begins early. (a) Hans Enoksen, former prime minister of Greenland, receives a helping hand at the polls from five-year-old Pipaluk Petersen. (b) Intelligence Specialist Second Class Tashawbaba McHerrin hands a U.S. flag to a child visiting the USS *Enterprise* during Fleet Week in Port Everglades, Florida. (OpenStax; Credit a: modification of work by Leiff Josefsen; Credit b: modification of work by Matthew Keane, U.S. Navy)

Socialization Agents

An **agent of political socialization** is a source of political information which influences citizen understanding of how to act in their political system or make decisions on political matters. These agents' information may influence their political actions. For example, the information may help a citizen decide how to vote, where to donate money, or how to protest decisions made by the government. The most prominent early agents of socialization are family, friends, and formal schooling.

Other life-long influential agents of socialization include social groups, such as religious institutions, interest groups of which

Agents of Socialization
parents, family
friends, peers
Interest groups
education, teachers
books, movies, media
experiences
circumstances
religious practice/leaders
social group membership

Chart 4.3 Agents of Socialization

individuals are members, unions, popular culture such as movies and television along with the news mass media. Both interest groups and the mass media, major agents of political socialization for adults, will be covered in a separate chapters.[8] We are also socialized outside our homes and schools. When citizens attend religious services or ceremonies, as 70 percent of Americans in a recent survey claimed, they are socialized to adopt beliefs that affect their politics.[9] Religious leaders often teach on matters of life, death, punishment, and obligation, which translate into views on political issues such as abortion, euthanasia, the death penalty, and peace and military involvement. Political socialization is not a new concept. It was acknowledged even in the days of ancient Greece that democracy could not flourish without capable people acting and the cultivation and spread of knowledge.

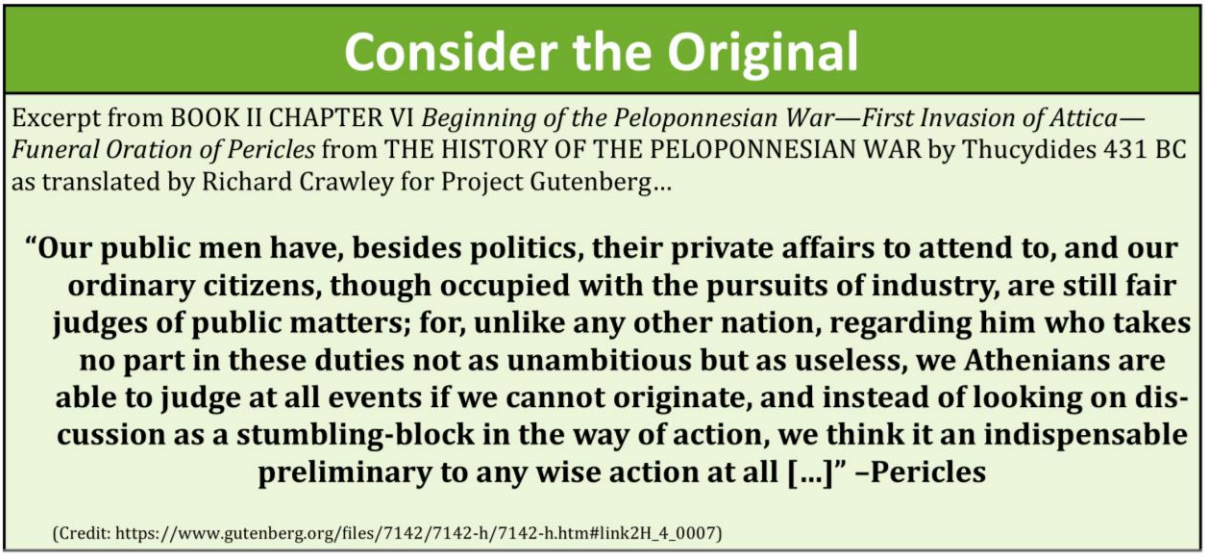


Chart 4.4 Excerpt from Pericles

Friends and peers too have a socializing effect on citizens. Communication networks are based on trust and common interests, so when we receive information from friends and neighbors, we often readily accept it because we trust them.[10] Information transmitted through social media is also likely to have a socializing effect. Friends "like" articles and information, sharing their political beliefs and information with one another. Media—newspapers, television, radio, and the Internet—also socialize citizens through the information they provide. For a long time, the media served as gatekeepers of our information, creating reality by choosing what to present. If the media did not cover an issue or event, it was as if it did not exist. With the rise of the Internet and social media, however, traditional media have become less powerful agents of this kind of socialization.

Social Groups and Public Opinion

Race, ethnicity, gender, age, religion, and socio-economic status also shape opinion. They are part of the everyday reality of personal experiences and circumstances, and they become part of how we evaluate leadership and governing processes. Opinions of various demographic groups varied widely during the 2016 presidential election season.[11] Public opinion analysts frequently find differences on issues divided by demographic groups. These differences occur because of the shared experiences of those in the social

group. That is, individuals in these social groups are comfortable with one another and will talk more and share opinions, leading to more opportunities to influence or reinforce one another's opinions.

Social groups may be viewed as both voluntary and involuntary. Some examples of social groups include age cohort, gender, race, social economic class, ethnicity, education level, geographic region, etc. It is possible for a social group to be both voluntary and involuntary. For example, someone might be born within a particular social class; but, through their own actions, they may move up or down the socio-economic ladder. Research shows opinions often develop through the filter of group affiliation. For example, issues surrounding social security elicit different responses from senior citizens versus younger adults. Race and ethnicity are often factors in facilitating the development of distinctive political viewpoints.

Race and Ethnicity

About three-quarters of blacks and Asians and about half of Hispanics say they experience discrimination or unfair treatment because of race or ethnicity.[12] In the same survey, about two-thirds whites claimed to have never experienced unfair treatment; however, this may be changing among some whites. For example, an increasing percentage of young white males in the science and technology fields now claim they are being discriminated against based on both race and gender in the workplace—with "diversity" in the workforce being the chief reason for discrimination in hiring and career advancement.[12] These white male workers consider themselves victims of "reverse discrimination."[13] Blacks and Hispanics are more likely than whites to say they have been unfairly stopped by law enforcement. Blacks, far more than Whites (79% to 44%), suggest that government should increase help for the needy "even if it means" increased government debt.[14]

Gender

Pew Research Center surveys acknowledge approximately four in ten women claim discrimination based upon gender, and about half say the government has not done enough to provide equal rights to women.[16] More women (58%) appear to prefer bigger government providing more services rather than smaller government with fewer services (36%)—with men the statistics are reversed.[17] Significant gender gaps also exist on several political and social issues, including party identification and views of the death penalty. However, while abortion is favored by women with less men identifying as pro-choice, perhaps somewhat surprisingly, these differences are quite small and generally such results have been the case for decades.[18]

Geography

Daniel Elazar's 1966 book, *Federalism: A View from the States*, discussed three distinct geographic regions and political cultures in the US attributed to immigrant migratory patterns, with distinct political and religious values influencing beliefs about the proper role of government. Advances in technology and transportation make it easier to travel and relocate; however, analysts still acknowledge political opinion

differences among regions and states. Gallup polling found a concentration of conservative voters in the South and Mountain states, while the Northeast and West Coast areas promote liberal perspectives on the role of government.[19] Pew Research Center found significant differences in public opinion between rural, suburban and urban areas.[20]

Religious Affiliation

Religious affiliation or lack of any affiliation impacts individual opinion. On the issue of abortion over sixty percent of evangelical protestants oppose abortion, while over eighty percent of American Jews support legal abortion as did those with no religious affiliation.[21] More than seventy percent of individuals who say religion is "very important and an integral part of a person's life," oppose abortion.[22]

Political Assumptions and Social Group Membership

Political parties and candidates consider social group affiliation when designing campaigns, with campaign strategies considering the generally perceived opinions of groups on sets of issues. While social group loyalties impact public opinion formation, group influence is reduced when affiliation with a group is offset by simultaneous linkage with another group—**cross-cutting cleavages** limit the degree to which political alignments intensify and establish a singular political orientation.[23]

A person identifying as "working class" does not necessarily define their entire political perspective exclusively by this characteristic. They may also focus on race, ethnicity, gender, or even the industry in which they work. Some or all these social groups may determine their total political orientation or perspective on issues. Seymour Martin Lipset's *Social Requisites of Democracy* notes "the available evidence suggests that the chances for stable democracy are enhanced to the extent that groups and individuals have a number of cross-cutting, politically relevant affiliations."[24] Recent trends show a growth of **reinforcing** rather than **cross-cutting cleavages** has led to polarization and conflict within the U.S. political system. In *Uncivil Agreement*, Lilliana Mason analyses a decades-long process of "social sorting" among social groups and found that cross-cutting differences "are increasingly disappearing from the American electorate," noting Republican and Democratic parties attract supporters with different racial, religious, ideological and regional differences; but, gradually Republicans and Democrats are more internally homogeneous with greater overlap and reinforcing consistency among respective social groups—increasing alignment between partisan, ideological and social identities.[25] The term, **identity politics**, denotes when people's political beliefs and interests are assumed to be determined by group membership—particularly gender, race, sexual orientation or religion.[26] In this era of increasing social group reinforcement in the two major political parties, each party accuses the other of paying inappropriate attention to identity politics. Republicans criticize Democrats for "playing identity politics" with a focus on racial, ethnic or gender-related social identities. Democrats charge Republicans are controlled by one social group—Christian evangelicals playing "identity politics" among working class whites.[27]

Public Opinion: Questions to Consider

1. Where do your beliefs originate?
2. What do we mean by political socialization and what two things do we learn through this process of socialization?
3. What is an agent of political socialization?
4. Which early agents of socialization will have the strongest impact on an individual?

1. *beliefs originate from our life experiences which begin to form in childhood with family or early childhood experiences including formal schooling but continue throughout our lives and include the influence of others and of groups formal and informal of which we are a party*
2. *political socialization is the way we acquire political values and opinions; through this continuous process we learn about the political system and form political opinion*
3. *it is a source of political information which influences citizen understanding an dopinion of how to act in their political system or make decisions on political matters*
4. *family is typically the strongest influence because it is the first*

Terms to Remember

agent of political socialization–a person or entity that teaches and influences others about politics through use of information

cross-cutting cleavages—social group divisions within society that cut across demographic categories to produce groups that are more heterogeneous or different; concept recognizes most people have multiple interests and identities affecting political views

identity politics—term used when people's political beliefs and interests are assumed to be determined by their membership in groups, particularly their gender, race, sexual orientation or religion

political socialization–the process of learning the norms and practices of a political system through others and societal institutions

public opinion—collection of attitudes and beliefs of an individual or group of individuals on a topic, person, or event

reinforcing cleavages—social group divisions within society that reinforce one another, making groups more homogeneous or similar in their political beliefs

socio-economic status—position in society based upon social class, education, and income

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4.2 Political Culture and Political Ideology



Image 4.3 Photos of Women Factory Workers During WWII

Our shared values in the US was first expressed in the Declaration of Independence, including a person's inherent right to "life liberty and the pursuit of happiness." This American political creed involves a belief in hard work and personal achievement, with the expectation of equal treatment by employers. (Credit: "Operating a hand drill at Vultee-Nashville, a woman is shown working on a 'Vengeance'dive bomber, Tennessee;" Library of Congress, Alfred T. Palmer, photographer, 1943; www.loc.gov/resource/fasc.1a35371 and National Archives athttps://www.archives.gov/founding-doc/declaration; a group of women are shown working on machinery, Department of the Interior photo)

Learning Objectives
• Discuss shared beliefs, values, and political culture. • Explain how beliefs and ideology affect the formation of public opinion about governmental actions. • Explain the standard interpretation of political ideology in the United States and its limitations. • Explain an alternative interpretation of U.S. political ideology. • Understand political ideology in a worldwide context.

Chart 4.5 Learning Objectives on Shared Political Culture and Ideology

SHARED POLITICAL CULTURE: VALUES AND BELIEFS

The first, and perhaps most crucial, elements of a **shared political culture** are values and beliefs. **Values** are a culture's standard for discerning what is good and just in society. Values are deeply embedded and critical for transmitting and teaching a culture's beliefs. **Beliefs** are the tenets or convictions that people hold to be true. Individuals in a society have specific beliefs, but they also share collective values. Collective values are not static. They vary across time and between groups as people evaluate, debate, and change societal beliefs. Values also vary from political culture to political culture, that is, nation to nation.

To illustrate the difference, Americans commonly believe in and value the "American Dream"—that everyone should have an opportunity to seek a happy, successful life with material comfort and prosperity. Underlying this belief are the American values of egalitarianism, individualism, populism, freedom, and confidence in a private-sector free-market capitalist economic system.

Collective values help shape a **shared political culture** by suggesting what is good and bad and what is to be sought or avoided in public policy and governmental actions. Consider the value that the United States places upon **egalitarianism** or the belief that everyone should be treated equally by the government regardless of other factors such as age, ethnicity, socioeconomic status, gender, etc. The United States also has an individualistic culture, meaning people place a high value on **individualism** and independence. In contrast, many other cultures are collectivist, meaning the welfare of the group and group relationships are a primary value. Americans tend to value **democratic principles** or the belief that the people, themselves, through their civic participation ought to be in control of the government and the government should protect our **liberty/freedoms** whether political, social or economic. Additionally, most Americans think **capitalism,** or a private sector dominate market-based economy, is the best economic system.

Element	Description of Element of Shared Political Culture
liberty/freedom	political, social and economic liberty of each individual
democratic principles	belief that the people should be in control of the government
egalitarianism	belief that everyone should be treated equally by the government
individualism	independence; self-determination
capitalism	market-based economy with minimal controls to protect the people

Chart 4.6 Elements of Shared Political Culture

Living up to a political culture's values can be difficult. On a personal level, it is easy to value good health, but it is hard to quit smoking. Equal opportunities for all people are valued in the United States, yet the country's highest political offices have been dominated by white men and not all have been able to achieve the "American Dream."

Societies strive to put values into action through rewards, sanctions, and punishments. Rewards may involve informal social interaction while sanctions and punishments require governmental action. For example, when people observe the norms of society and uphold its values, they are often rewarded. A boy who helps an elderly woman board a bus may receive a smile and a "thank you."

People sanction certain behaviors by giving their support, approval, or permission informally, or by enacting formal governmental sanctions of disapproval and nonsupport.

Sanctions are a form of social control, a way to encourage conformity to cultural norms. Sometimes people conform to norms in anticipation or expectation of positive sanctions: good grades, for instance, may mean praise from parents and teachers.

From a criminal justice perspective, properly used social control is also inexpensive crime control. Utilizing social control pushes most people to conform to societal rules, regardless of whether authority figures (such as law enforcement) are present. When people go against a society's values, they are punished either informally or through formal governmental enforced action. A boy who shoves an elderly woman aside to board the bus first may receive frowns or even a scolding from other passengers. Breaking norms and rejecting values can lead to cultural sanctions such as earning a negative label—lazy, no-good bum—or to legal sanctions, such as traffic tickets, fines, or imprisonment.[1]

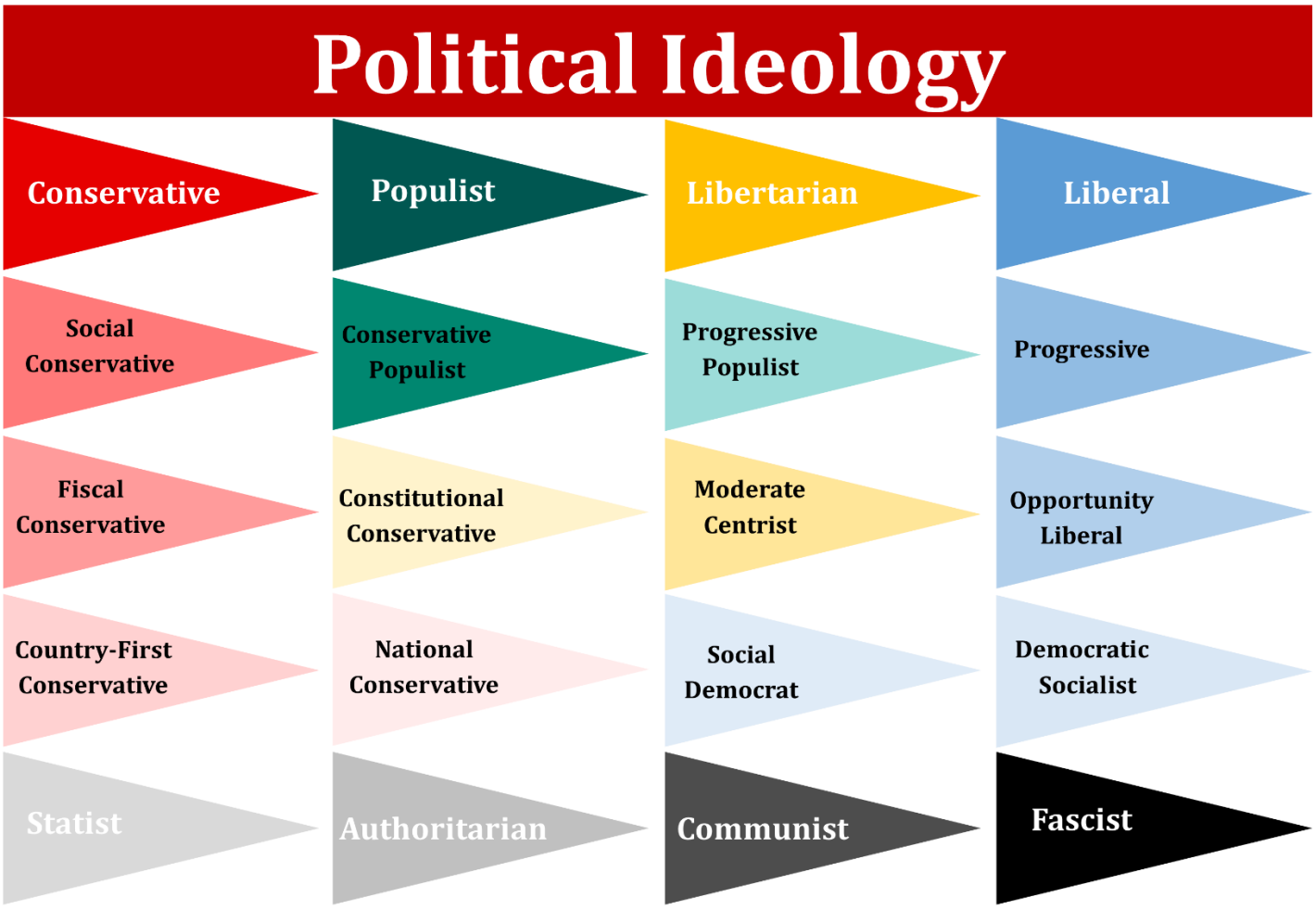


Chart 4.7 Illustration of Various Degrees of Political Ideology

Original Chart by Richard Fonte and Deborah Hoag of Austin Community College, 18 July 2019.

Political ideologies can come in many varieties and combinations beyond the simple division between conservative and liberal. The chart reflects the complex division of ideologies within the United States. The bottom four ideologies are not significant within the U.S. but reflect ideological thought among some individuals and in other countries.

Socialization and Political Ideology

A **political ideology** is a consistent set of political beliefs, values, and attitudes shared by a group about what government should do: its purposes and scope. The individual political socialization process leaves citizens with attitudes and beliefs that create a personal **political ideology**. In the United States, both the predominate political ideologies and a personal political ideology are shaped within a shared political culture. Political ideologies depend on attitudes and beliefs and on how we prioritize each belief or attitude.

Even in the context of a shared political culture, however, there can be significant differences over the prioritization and interpretation of the shared values. For example, egalitarianism can be interpreted solely as a commitment to the **equality of opportunity** or fair competition based upon legal and social equality; or, it can be broadened to suggest that government should take action to provide for a specific equalized result—**equality of outcome**.[2]

Citizens hold a great number of beliefs and attitudes about government action. Most think government should provide for the common defense, in the form of a national military. They also argue that government should provide social programs and services to citizens in the form of public education, temporary income payments for the unemployed and assistance for the poor and senior citizens. When asked how to divide the national budget, Americans reveal priorities that divide public opinion. Should we have smaller military and larger social welfare programs or a larger military budget for national defense and limited social benefits?

This is the *guns versus butter* debate, which assumes that governments have a finite amount of money and must choose whether to spend a larger part on the national defense or on social programs. The choice forces citizens into opposing ideological groups regarding government priorities.



Image 4.4 Photo of Important Women Social Reformers

Suffrage and labor activist Flora Dodge "Fola" La Follette (1882-1970) and social reformer and missionary Rose Livingston with a young stiker during a garment strike in New York City in 1913 illustrate how personal beliefs and values can lead to civic engagement based upon ideological preferences. (Credit: Library of Congress, Bain Collection, Bain News Service, 12397)

Ideologies and the Ideological Spectrum

An extremely common way to look at political ideologies is to place them on a left to right spectrum or axis that visually compares them based on what they prioritize. This left to right placement dates from the time of the French Revolution, where those seeking the most change in the nation's political and societal arrangements sat on the left side of the

legislative assembly. Those seeking to preserve or conserve the existing political and social system sat on the right side.

Today, many political analysts and the popular mass media frequently characterize the two most predominant U.S. political ideological groups, liberal and conservative, using this left to right continuum. This left to right spectrum does have some limitations in differentiating between governmental roles in regulating social behavior and economic intervention, but it can be generally useful in dividing those who both seek change in the existing economic and social systems and those who both seek to preserve and maintain the existing economic and social systems.

It is important to recognize the two political ideologies of liberalism and conservatism do not represent the entire spectrum of U.S. political ideologies. They are, however, predominant enough that conservatives find their major home in the Republican Party while liberals primarily associate with the Democrat Party.

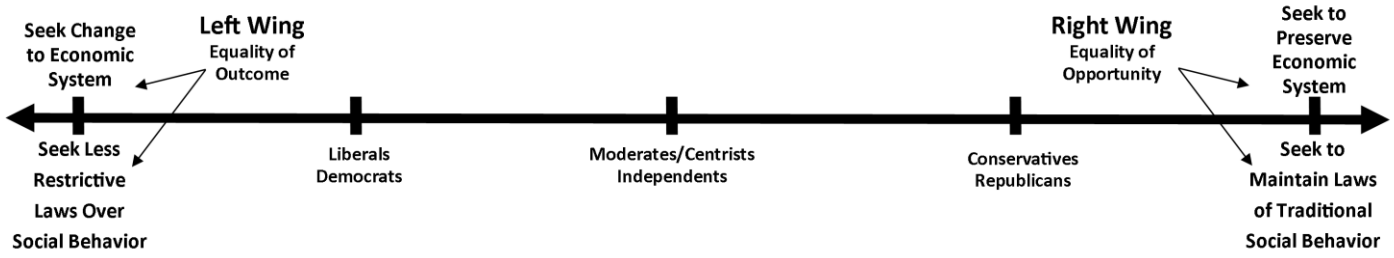


Chart 4.8 Illustration of Political Leanings Left to Right

Predominant U.S. Ideologies: Liberal and Conservative

Liberalism

Modern **Liberals** generally support a more interventionist and active role for the federal/national government in regulating and stimulating the nation's economy. They support government spending on social welfare programs aimed at providing a strong social safety net for the economically disadvantaged with the goal of achieving the outcome of greater income and economic equality. That is, they see a significant role for the national government in providing public goods and services. Liberals often express concerns over fairness of the criminal justice and law enforcement systems and the potential adverse impact on some ethnic and racial groups.

Liberalism supports an individual's right to make decisions without what are traditional constraints on social behavior, including constraints on marriage (same-sex marriage) and abortion. To Liberals, these are personal liberty choices or lifestyle freedoms with which government should not interfere.

The research of the moral psychologist, Jonathan Haidt, found Liberals committed to the value of caring/compassion leading to concern over rights of "vulnerable groups" and to social welfare programs to help these groups as a matter of "social justice."[3]

Frequently, the media uses the term **Progressives** to describe Liberals, and the two terms are often considered interchangeable.[4] However, the progressive term is differentiated from liberal in that progressives favor higher levels of national government intervention on economic matters and to remove traditional constraints on social behavior. Some Progressives seek to go even further than other Liberals on the role of government, preferring to be called **Social Democrats** or **Democratic Socialists**. The candidate debates for the 2020 Democratic Party nomination during 2019 debate season demonstrated that many of the candidates preferred to classify themselves as Progressives rather than Liberals. Bernie Sanders, running for the 2020 nomination, calls himself a Democratic Socialist.

The 2017 Pew Research Center survey on ideology found differences among liberal oriented groups, reflecting the interpretation of a split between a progressive wing and a more moderate "opportunity" liberalism, which had greater confidence in the current U.S. economic system to provide for economic advancement without government intervention. The research found two groups differing on government's role on health care with the more moderate "opportunity" oriented liberals in favor of some form of private-public mix for health insurance rather than a fully public sector insurance plan. [5]

Conservatism

Modern **Conservatives** support a more limited role for the national government supporting less government spending and more fiscal restraint. Conservatives advocate a smaller commitment to social welfare programs by the national government or for what are known as public sector goods and services. Conservatives perceive the role of government is to facilitate individualized equality of opportunity with minimal responsibility of guaranteeing equality of outcome. Thus, they support only a basic social safety net for truly needy individuals.

Jonathan Haidt, the moral psychologist found Conservatives viewing equality as a matter of fair treatment for individuals in achieving what they deserve based on their abilities with "liberty" from government interference. Conservatives view "justice as fairness" and use the term "justice" with no modifier, where Liberals often seek "social justice," which is seeking to equalize someone's or some social group's social or economic standing in society through governmental programs and policies—implying the need to seek a high social safety net.[6]

For Conservatives, a critical idea is that individuals are to be judged on their individual actions and needs rather than a judgment of need for government assistance based on social group identifiers—that is, regardless of individual action or effort. Conservatives support a government of equal rules for all individuals rather than favoritism for certain groups—opposing what might be considered group-oriented equality of outcome programs.

In addition, Conservatives have a strong commitment and loyalty to maintaining order through a safe and organized society based upon the rule of law and the established practices and national traditions of society.[7] Conservative governmental policy generally supports upholding traditional moral or social constraints (the social order) on individual behavior including marriage and abortion.[8][9] Conservatives,

especially **Social Conservatives**, see abortion as disrespecting the unalienable right to life regardless of age, the human fetus is acknowledged as a separate individual with separate liberties and rights.

There are significant differences in emphasis among those who consider themselves Conservatives. **Fiscal Conservatives** emphasize policies focused on economic issues, while **Social Conservatives** focus on upholding traditional social behavior.

Fiscal Conservatives prefer limited government intervention in the economy, allowing the free market to determine prices, wages, and supply of goods. They are also very concerned about the overall level of government spending and an increasingly large national debt.

Constitutional Conservatives or Limited Government Conservatives believe the *U.S. Constitution* carefully delineates and restricts the powers of the national government. As a matter of constitutional principle, they favor state government flexibility in determining the scope of the safety net. They believe in monitoring government overreach into individual lives along with maintaining the rule of law and support of constitutional structures of government meant to balance power and limit the possibility of tyrannical government. Even the courts should be bound by the *Constitution*, and no branch of government should exceed the enumerated authority granted in the *U.S. Constitution*.

The 2017 Pew Research Center survey on Ideology found differences among Conservatives between those they labeled as **"country-first" conservatives**, favoring restrictions on legal and illegal immigration and international trade with less optimism of the U.S. military role abroad, in contrast with other conservatives favoring more legal immigration and a greater international economic role and more optimism over the ability of the U.S to effectively use military power.[10] Recently, these more nationalistic, country-first conservatives have self-described as **National Conservatives**.[11]

Moderates, Centrists or Ambivalent?

Many political analysts recognize that these two political ideologies do not fully represent the range of political beliefs of the American public. Frequently, an in-between category known as **Moderates**, has been used to describe those who do not fall into the major categories. Moderates are assumed to share some beliefs from Liberalism and Conservatism. Sometimes they are called **Centrists**. Many people, in response to political polling, describe themselves as moderates, but the category lacks a consistency of content.[12] Sometimes, the polling would seem to place such people in an "ambivalent" category toward ideology.[13]

Libertarianism and Populism: Other U.S. Ideologies (Social Issue Variation)

There is a growing recognition that many American differentiate between social and economic based issues when evolving a personal political ideology.[14]

While some seek change on both economic and social behavior issues, some may seek change only on economic issues.[15] Thus, a simple left to right focus on change as indicated by the chart above, may fail to capture the range of current U.S. political ideologies.[16]

Therefore, a fuller understanding of the U.S. ideological spectrum is helped by two additional ideologies, Libertarianism and Populism. The diagram below adds these two additional ideologies recognizing that individuals can have views on the desirability of governmental laws in either or both arenas–social and economic.[17]

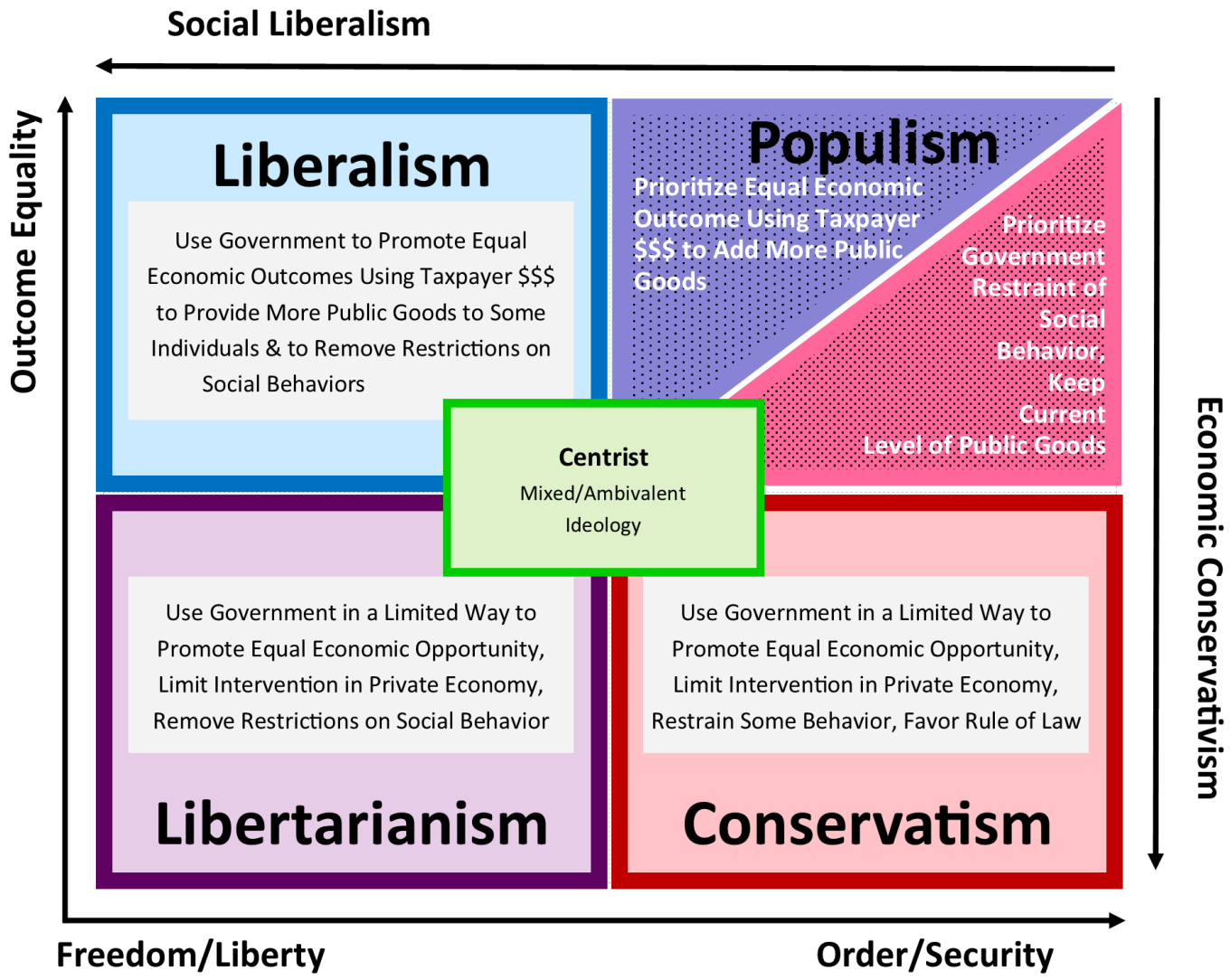


Chart 4.9 Illustration of Various Ideologies

Libertarianism

Libertarians support limited government intervention in private life and the economy. Government exists to maintain and maximize individual freedom for both personal life behavior choices and individual economic decision-making. For Libertarians, government's main functions are very limited with an emphasis on ensuring domestic peace and national defense with few public goods. For

Libertarians, government should not engage in major social welfare programs or programs aimed at promoting economic equality. Their view of the social safety net may be stricter than Conservatives in terms of government responsibility.

Libertarians may have considerable compatibility with Conservatives on fiscal issues and frequently find themselves at home in the Republican Party. They may be constitutional conservatives or limited government conservatives, generally believing the U.S. *Constitution* significantly restricts the powers of the national government.

Libertarians are frequently less inclined to favor an interventionist foreign policy than many conservatives; and, they often share similar views with Liberals opposing governmental restraint on social behavior, including marriage, abortion, or marijuana use.[18]

Populism

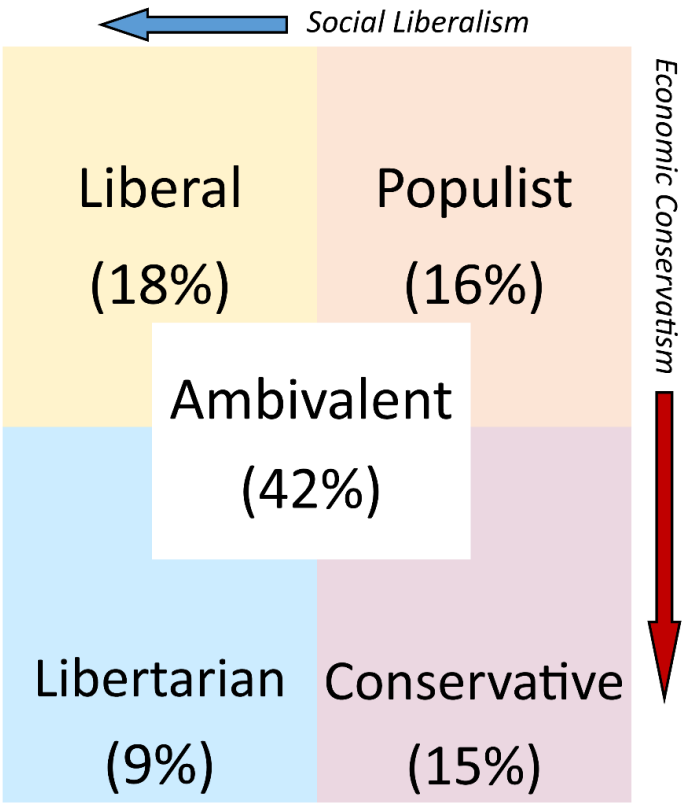
Populism has both an attitudinal and ideological aspect to its perspective on the role and scope of government. Populism places emphasis on control of government by the people, meaning ordinary people rather than a powerful elite.

In fact, a distrust of elites is usually an essential part of a populist viewpoint, especially business or economic elites as well as political, cultural, or establishment elites. The ideological definition of Populism varies widely with analysts seeing both the existence of left-wing or **progressive populism** and right-wing or **conservative-leaning populism**. [19]

One view of a **Populist** typically aligns them ideologically with Liberals on economic equality issues such as the value of the social safety net and with Conservatives on social issues.[20] This explanation may be too simple since it fails to differentiate among Populists of the priority or emphasis they may place on economic versus social issues. Populists generally support a significant governmental role in providing greater economic equality through social welfare programs, often favoring economic regulation of business.

Some Populists are sometimes called social conservatives or conservative populists because they have similar views with Conservatives by also placing a priority on issues such as abortion, marriage, law-enforcement, and immigration policy.

The Pew Research Center found that a group labeled the "devout and diverse" approached such views.[21] Other Populists, known as Progressive Populists, emphasize economic issues almost exclusively and have views similar to Liberals or self-styled Progressives.[22][23]



Based on responses to 6 questions: 3 dealing with role of government in the economy and social welfare issues, and 3 dealing with social issues. (Credit: Pew Research Center, "In Search of Ideologues in America," 10 April, 2006)

Chart 4.10 Ideologies by Percent of Population

The U.S. Profile of Ideology

The Pew Research study of ideologies found that the majority of Americans could be classified into one of four basic ideological categories—liberal, conservative, libertarian or populist. However, a significant portion of the American public (42%) defied easy classification into these groups. This large non-ideological group was labeled as "ambivalent" about ideology. The largest ideological group were classified as liberals (18%), followed by populist (16%), conservatives (15%) and libertarians (9%).[24]

The survey of 2000 people classified ideology on the basis of responses to six questions covering economic and social issues. While liberals and conservatives gave consistently contrasting responses on both economic and social issues, populists were similar to conservatives on social questions and more similar to liberals on economic issues. Libertarians were liberal-like on social questions and similar to conservatives on economic issues.[25]

The ideological groups also differed from each other on certain demographic characteristics. Libertarians were more likely to be under 30 and contain more males. Males and females were evenly divided as conservatives, with females more likely to be populist and liberal than males. Those with only a high school degree were more likely in the populist or ambivalent category, with only 16% of populists having a college degree. Populists also were less well-off financially than other groups. Liberals were more likely to have a college degree.[26]

The populist ideological category also had some other significant differences from other ideological groups. Unlike liberals, populists are far more likely to be evangelical protestants and attend church weekly than are liberals. In addition, they are far more likely to reside in the South, with liberals far more likely to li the Northeast.[27]

World-Wide Ideologies (Economic Issue Variation): Socialism and Communism

Socialism

Socialism (Democratic) supports strong governmental policy to promote both social and economic equality within a country. Socialists believe government should provide public goods and publicly financed services, often to the exclusion of private goods and services. Socialist countries frequently have basic industries run directly by the government, but they differ on the degree of reliance on the public sector and public goods–seeing governmental programs as a way to ensure all citizens obtain equal economic outcomes. Compared to the American version of Liberalism, the level of governmental intervention in society and the economy is a higher priority for modern Socialists. At least one recent U.S. politician, Senator Bernie Sanders, is a self-proclaimed Democratic Socialist. European social Democracies like Sweden or Denmark are characterized by significant adoption of socialist political ideology, while preserving most civil liberties and civil rights.[28]

Communism

Communism promotes common ownership of all property, means of production, and materials. This means that the government, or states, should own the property, farms, manufacturing, and businesses. Essentially, there would be no private goods–only public goods. Communism presents a problem, however, because the practice differs from the theory. The presumption of communist theory, as espoused by Karl Marx and Frederick Engels, includes advocacy for common ownership of property, society based solely on public goods, and government supported and led by workers of the country.[29] Human rights violations by actual communist countries, such as Cuba and the former Soviet Union, demonstrate that such governments are not formed with the consent of the people but are imposed upon the citizens of the country. That is, communist governments are generally totalitarian and non-democratic with limited civil liberties and civil rights. They differ, therefore, very little from other authoritarian regimes with governmental control over virtually all aspects of society.

World-Wide Ideologies (Authoritarian Based): Fascism and Statism

Fascism

Fascism promotes total control of the country by the ruling party or political leader. This form of government will run the economy, the military, society, and culture, and often tries to control the private lives of its citizens. Authoritarian leaders control the politics, military, and government of a country, and often the economy as well, either through direct ownership or state planning and regulation. Such governments are non-democratic and citizens have neither rights nor civil liberties.[30]

Statism

Statism promotes extensive intervention by the government in both economic and social spheres. Individuals supporting the state as the ultimate arbiter of what is correct, what (or who) is valuable, and what level of government control is acceptable are Statists. For Statists, nothing exists outside the state.

Political Ideologies: United States and World-Wide

The U.S. versions of Liberalism and Conservatism, even with the addition of Libertarianism and Populism, do not represent the totality of worldwide political ideologies commonly adopted or represent how such ideological terms are used in other countries. In fact, people may sometimes be a mix of ideological positions depending on the exact issues under discussion. The chart below provides a short summary of some of the major ideologies operating both in the United States and in other countries.

Ideological Label	Generalized Description of Ideological Viewpoint
Major U.S. Political Ideologies	
Liberalism	remove constraints on social behavior; increase govt. role in $$ issues
Conservatism	traditions of social behavior; limited government control of $$ issues; rule of law
Other Ideologies (Social Issue Variation)	
Populism	traditional on social behavior; expanded public services and govt. $$ spending
Libertarianism	very little constraint on social behavior; limited govt. intervention; limited $$ spending
Other Ideologies (Economic Issue Variation)	
Socialism	govt. enforces social and economic equality; govt. provides goods and services
Communism	common ownership/full government ownership of all property, production, etc.
Other Ideologies (Authoritarian Variation)	
Fascism	total control by ruling elite or dictator of both private and public lives of citizens
Statism	individuals support extensive intervention by the state; economic and social control

Chart 4.11 Descriptions of Ideological Labels

Chart created by Deborah Hoag and Richard Fonte, Austin Community College.

Where do your beliefs come from?

The Pew Research Center offers a **typology quiz** to help you find out.

- Ask a friend or family member to answer a few questions with you and compare the results of your quiz answers.
- What do you think about government regulation?
- What are your opinions on the military?
- What do you think about the economy?
- Are you both liberal, conservative, or moderate?

Public Opinion: Questions to Consider

1. What would be the difference between Liberals and Conservatives on the issue of the appropriate level of public goods and services?
2. On what category of issues would Conservatives and Libertarians find frequent agreement and on what category of issues would they disagree?
3. How do ideological differences develop in the U.S. with its system of shared political culture?

1. *Liberals favor a higher level of public goods and services than Conservatives who are typically more reluctant to put the burden of paying for all these services upon the taxpayers*
2. *They would agree on fiscal or economic issues and likely disagree on personal lifestyle or traditional social behavior issues?*
3. *There can be significant difference over the prioritization and interpretation of the shared values.*

Terms to Remember

beliefs–the tenets or convictions that people hold to be true

capitalism–an economic system, characterized by a predominate, private sector providing goods and services through a private market based economy and free markets based upon private ownership of means of production and services

communism/communist–a political and economic system ideology where government promotes common or government ownership of all property and the means of production, a removal of private property protections; placing the economic system in the hands of a limited number of governmental elites; in practice, most communist governments use force to maintain political, social, and economic control, essentially statist or authoritarian

conservatism/conservative–a political ideology that prioritizes individual liberties, preferring a smaller government that stays out of the economy

democratic principles–belief that people should be in control of government with political equality, the right to political participation and consent of the governed" in determining public policy

democratic socialism—belief in predominately socialist economic system, frequently used term connected to social democracy in Denmark and Sweden

egalitarianism— the belief that everyone should be treated equally by the government

equality of opportunity—egalitarianism with an emphasis on equality before the law, non-discrimination based on individual action

equality of outcome—broaden view of egalitarianism beyond social and legal equality suggesting government should take action to guarantee some level of economic equality as the result of policy; equality of outcome policies may be focused upon individuals or groups; group equality of outcome favors some groups based on group identity rather than individual situation and action

fascism/fascist–a political system of total control by the ruling party or political leader over the economy, the military, society, and culture and often the private lives of citizens

ideology–beliefs and values shared by members of a group

individualism–independence of the individual, everyone has value regardless of any factor of birth or circumstance

liberalism/liberal– a political ideology based on belief in government intervention to support increased economic equality and less control of personal social behavior or personal lifestyle

libertarianism/libertarian–a political ideology which supports individual rights and limited government intervention in private life and personal economic decisions

liberties–freedoms possessed because an individual is a human being with reasoning capabilities; life, liberty and property; basic freedoms

moderate/centrist–assumed to share some beliefs from Liberalism and Conservatism

political ideology–a consistent set of political beliefs, values, and attitudes shared by a group about what government should do: its purposes and scope

political socialization–the process of learning the norms and practices of a political system and of forming our political views about how it should operate

populism/populist–a political ideology which places an emphasis on control of government by the common people rather than a powerful elite; generally supports a significant program of public goods and services by government, divided among themselves on the degree that government should or should not intervene in traditional social behavior issues

progressive—term sometimes used interchangeably with liberal; but is sometimes differentiated form liberal with progressives said to favor higher levels of national government intervention on economic matters an higher levels of action to remove traditional constraints on social behavior

public opinion--a collection of attitudes and beliefs of an individual or a group of individuals on a topic, person, or event

shared political culture—collectively held and deeply embedded values and beliefs which shape a particular society's perspectives on what is good and bad and what is to be sought or avoided in public policy or governmental actions; this shared political culture may vary from nation to natio

socialism/socialist--a political and economic system in which government uses its authority to promote social and economic equality

statism/statist–the state is the highest arbiter of the scope of government intervention and law

values–a culture's standard for discerning or determining what is good and just in society

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4.3 Public Opinion: How is it measured?



Image 4.5 Photo of Child Waiting to Watch Voting

Photo of child at the polling place.
(Credit: Catherine Donaldson-Evans, November 5, 2012, 7:23 pm,
"Voting with Kids: The 411 on Taking Your Children to the Polls" from CafeMom.com)

Learning Objectives

- Explain how information about public opinion is gathered.
- Identify common ways to measure and quantify public opinion.
- Analyze polls to determine whether they accurately measure a population's opinions.

Chart 4.12 Learning Objectives on Public Opinion

Polling has changed over the years. The first opinion poll was taken in 1824; it asked voters how they voted as they left their polling places. Informal polls are called **straw polls**, and they informally collect opinions of a non-random population or group. Newspapers and social media continue the tradition of unofficial polls, mainly because interested readers want to know how elections will end.

Facebook and online newspapers often offer informal, pop-up quizzes that ask a single question about politics or an event. The poll is not meant to be formal, but it provides a general idea of what the readership thinks.

Tracking polls are typically conducted repeatedly over a period and by going back to the same group of respondents. These polls often follow an incumbent office holder (like the president) or a policy issue, making trends observable

Modern public opinion polling is relatively new, only eighty years old. These polls are far more sophisticated than straw polls and are carefully designed to probe what we think, want, and value. The information they gather may be relayed to politicians or newspapers and is analyzed by statisticians and social scientists. As the media and politicians pay more attention to the polls, an increasing number are put in the field every week.

Taking a Poll

Most public opinion polls aim to be accurate, but this is not an easy task. From design to implementation, polls are complex and require careful planning and care. Our history is littered with examples of polling companies producing results that incorrectly predicted public opinion due to poor survey design or bad polling methods.

In 1936, *Literary Digest* continued its tradition of polling citizens to determine who would win the presidential election. The magazine sent opinion cards to people who had a subscription, a phone, or a car registration. Only some of the recipients sent back their cards. As a result, Alf Landon was predicted to win 55.4 percent of the popular vote; in the end, he received only 38 percent.[1]

A few years later, Thomas Dewey lost the 1948 presidential election to Harry Truman, despite polls showing Dewey far ahead and Truman destined to lose. In 1948, pollsters did not poll up to the day of the election, relying on old numbers that did not include a late shift in voter opinion. Zogby's polls did not represent likely voters and incorrectly predicted who would vote and for whom. These examples reinforce the need to use scientific methods when conducting polls, and to be cautious when reporting the results.

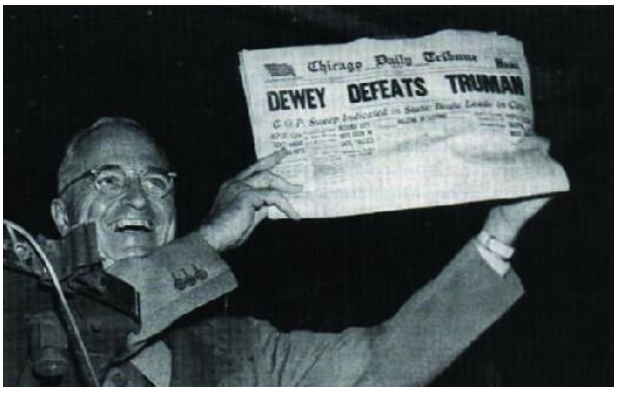


Image 4.6 President Truman Wins Election

Polling process errors can lead to incorrect predictions. On November 3, the day after the 1948 presidential election, a jubilant Harry S. Truman triumphantly displays the inaccurate headline of the *Chicago Daily Tribune* announcing Thomas Dewey's supposed victory (Credit: OpenStax; David Erickson/Flickr).

Most polling companies employ statisticians and methodologists trained in conducting polls and analyzing data. Several criteria must be met if a poll is to be completed scientifically.

First, the methodologists identify the desired population, or group, of respondents they want to interview. For example, if the goal is to project who will win the presidency, citizens from across the United States should be interviewed. If we wish to understand how voters in Colorado will vote on a proposition, the population of respondents should only be Colorado residents. When surveying on elections or policy matters, many polling houses will interview only respondents who have a history of voting in previous elections, because these voters are more likely to go to the polls on Election Day.

Politicians are more likely to be influenced by the opinions of proven voters than of everyday citizens. Once the desired population has been identified, the researchers will begin to build a sample that is both random and representative.

Type of Poll	Description of Poll
straw	informal collection of opinion; non-random; not representative; pop-up question
tracking	repeated over time with same group of respondents; following policy or person
exit	taken as voters leave/exit the polling locations after an election
push	poll uses leading questions in an attempt to get a predetermined answer; may be used to influence a targeted audience with the skewed polling data
Type of Sample	**Description of Sample**
random	limited number of people from overall population selected; each person in overall population examined has equal chance of being chosen to participate in the poll
representative	group whose demographic distribution is similar to the overall population sought for the poll

Chart 4.13 Types of Polls, Descriptions and Samples

A **random sample** consists of a limited number of people from the overall population, selected in such a way that each has an equal chance of being chosen. In the early years of polling, telephone numbers of potential respondents were arbitrarily selected from various areas to avoid regional bias. While landline phones allow polls to try to ensure randomness, the increasing use of cell phones makes this process difficult. Cell phones, and their numbers, are portable and move with the owner. To prevent errors, polls that include known cellular numbers may screen for zip codes and other geographic indicators to prevent regional bias. A **representative sample** consists of a group whose demographic distribution is similar to that of the overall population. For example, nearly 51 percent of the U.S. population is female.[2] To match this demographic distribution of women, any poll intended to measure what most Americans think about an issue should survey a sample containing slightly more women than men.

Pollsters try to interview a set number of citizens to create a reasonable sample of the population. This sample size will vary based on the size of the population being interviewed and the level of accuracy the pollster wishes to reach. If the poll is trying to reveal the opinion of a state or group, such as the opinion

of Wisconsin voters about changes to the education system, the sample size may vary from five hundred to one thousand respondents and produce results with relatively low error. For a poll to predict what Americans think nationally, such as about the White House's policy on greenhouse gases, the sample size should be larger.

A larger sample makes a poll more accurate, because it will have relatively fewer unusual responses and be more representative of the actual population. Pollsters do not interview more respondents than necessary, however. Increasing the number of respondents will increase the accuracy of the poll, but once the poll has enough respondents to be representative, increases in accuracy become minor and are not cost-effective.[3]

When the sample represents the actual population, the poll's accuracy will be reflected in a lower margin of error. The **margin of error** is a number that states how far the poll results may be from the actual opinion of the total population of citizens. The lower the margin of error, the more predictive the poll is likely to be. Large margins of error are problematic. For example, if a poll that claims Hillary Clinton is likely to win 30 percent of the vote in the 2016 New York Democratic primary has a margin of error of +/-6, it tells us that Clinton may receive as little as 24 percent of the vote (30 – 6) or as much as 36 percent (30 + 6). A lower of margin of error is clearly desirable because it gives us the most precise picture of what people think or will do.

With many polls out there, how do you know whether a poll is a good poll and accurately predicts what a group believes? First, look for the numbers. Polling companies include the margin of error, polling dates, number of respondents, and population sampled to show their scientific reliability. Was the poll recently taken? Is the question clear and unbiased?

Was the number of respondents high enough to predict the population? Is the margin of error small? It is worth looking for this valuable information when you interpret poll results.

While most polling agencies strive to create quality polls, other organizations want fast results and may prioritize immediate numbers over random and representative samples. For example, instant polling is often used by news networks to quickly assess how well candidates are performing in a debate.

Technology and Polling

The days of randomly walking neighborhoods and phone book cold-calling to interview random citizens are gone. Scientific polling has made interviewing more deliberate. Historically, many polls were conducted in person, yet this was expensive and yielded problematic results.

In some situations, face-to-face interviewing still exists. Exit polls, focus groups, and some public opinion polls occur in which the interviewer and respondents communicate in person.

Exit polls are conducted in person, with an interviewer standing near a polling location and requesting information as voters leave the polls. Focus groups often select random respondents from local shopping

places or pre-select respondents from Internet or phone surveys. The respondents show up to observe or discuss topics and are then surveyed.



Image 4.7 Young People Conducting Exit Polling

On November 6, 2012, the Connect2Mason.com team conducts exit surveys at the polls on the George Mason University campus. (Credit: OpenStax; Mason Votes/Flickr).

When organizations like Gallup or Roper decide to conduct face-to-face public opinion polls, however, it is a time-consuming and expensive process. The organization must randomly select households or polling locations within neighborhoods, making sure there is a representative household or location in each neighborhood.[4]

Then it must survey a representative number of neighborhoods from within a city. At a polling location, interviewers may have directions on how to randomly select voters of varied demographics. If the interviewer is looking to interview a person in a home, multiple attempts are made to reach a respondent if he or she does not answer.

Gallup conducts face-to-face interviews in areas where less than 80 percent of the households in an area have phones, because it gives a more representative sample.[5]

News networks use face-to-face techniques to conduct exit polls on Election Day.

Most polling now occurs over the phone or through the Internet. Some companies, like Harris Interactive, maintain directories that include registered voters, consumers, or previously interviewed respondents. If pollsters need to interview a population, such as political party members or retirees of a specific pension fund, the company may purchase or access a list of phone numbers for that group. Other organizations, like Gallup, use random-digit-dialing (RDD), in which a computer randomly generates phone numbers with desired area codes. Using RDD allows the pollsters to include respondents who may have unlisted and cellular numbers.[6]

Questions about ZIP code or demographics may be asked early in the poll to allow the pollsters to determine which interviews to continue and which to end early.

The interviewing process is also partly computerized. Many polls are now administered through computer-assisted telephone interviewing (CATI) or through robo-polls. A CATI system calls random telephone numbers until it reaches a live person and then connects the potential respondent with a trained interviewer. As the respondent provides answers, the interviewer enters them directly into the computer program. These polls may have some errors if the interviewer enters an incorrect answer. The

polls may also have reliability issues if the interviewer goes off the script or answers respondents' questions.

Robo-polls are entirely computerized. A computer dials random or pre-programmed numbers and a prerecorded electronic voice administers the survey. The respondent listens to the question and possible answers and then presses numbers on the phone to enter responses. Proponents argue that respondents are more honest without an interviewer. However, these polls can suffer from error if the respondent does not use the correct keypad number to answer a question or misunderstands the question. Robo-polls may also have lower response rates, because there is no live person to persuade the respondent to answer. There is also no way to prevent children from answering the survey. Lastly, the Telephone Consumer Protection Act (1991) made automated calls to cell phones illegal, which leaves a large population of potential respondents inaccessible to robo-polls.[7]

The latest challenges in telephone polling come from the shift in phone usage. A growing number of citizens, especially younger citizens, use only cell phones, and their phone numbers are no longer based on geographic areas. The millennial generation (currently aged 18–33) is also more likely to text than to answer an unknown call, so it is harder to interview this demographic group. Polling companies now must reach out to potential respondents using email and social media to ensure they have a representative group of respondents.

Yet, the technology required to move to the Internet and handheld devices presents further problems. Web surveys must be designed to run on a varied number of browsers and handheld devices. Online polls cannot detect whether a person with multiple email accounts or social media profiles answers the same poll multiple times, nor can they tell when a respondent misrepresents demographics in the poll or on a social media profile used in a poll.

These factors also make it more difficult to calculate response rates or achieve a representative sample. Yet, many companies are working with these difficulties, because it is necessary to reach younger demographics in order to provide accurate data.[8]

Problems in Polling

For several reasons, polls may not produce accurate results. Two important factors a polling company faces are timing and human nature. Unless you conduct an **exit poll** during an election and interviewers stand at the polling places on Election Day to ask voters how they voted, there is always the possibility the poll results will be wrong. The simplest reason is that if there is time between the poll and Election Day, a citizen might change his or her mind, lie, or choose not to vote at all. Timing is very important during elections, because surprise events can shift enough opinions to change an election result. Of course, there are many other reasons why polls, even those not time-bound by elections or events, may be inaccurate.



Created in 2003 to survey the American public on all topics, Rasmussen Reports is a **new entry** in the polling business. Rasmussen also conducts exit polls for each national election.

Polls begin with a list of carefully written questions. The questions need to be free of framing, meaning they should not be worded to lead respondents to an answer. For example, take two questions about presidential approval. Question 1 might ask, "Given the high unemployment rate, do you approve of the job President Obama is doing?" Question 2 might ask, "Do you approve of the job President Obama is doing?" Both questions want to know how respondents perceive the president's success, but the first question sets up a frame for the respondent to believe the economy is doing poorly before answering. This is likely to make the respondent's answer more negative. Similarly, the way we refer to an issue or concept can affect the way listeners perceive it. The phrase "estate tax" did not rally voters to protest the inheritance tax, but the phrase "death tax" sparked debate about whether taxing estates imposed a double tax on income.[9]

Many polling companies try to avoid leading questions, which lead respondents to select a predetermined answer, because they want to know what people really think. Some polls, however, have a different goal. Their questions are written to guarantee a specific outcome, perhaps to help a candidate get press coverage or gain momentum. These are called **push polls**. In the 2016 presidential primary race, MoveOn tried to encourage Senator Elizabeth Warren (D-MA) to enter the race for the Democratic nomination. Its poll used leading questions for what it termed an "informed ballot," and, to show that Warren would do better than Hillary Clinton, it included ten positive statements about Warren before asking whether the respondent would vote for Clinton or Warren.[10]

The poll results were blasted by some in the media for being fake. Sometimes lack of knowledge affects the results of a poll. Respondents may not know that much about the polling topic but are unwilling to say, "I don't know." For this reason, surveys may contain a quiz with questions that determine whether the respondent knows enough about the situation to answer survey questions accurately.

A poll to discover whether citizens support changes to the Affordable Care Act or Medicaid might first ask who these programs serve and how they are funded. Polls about territory seizure by the Islamic State (or ISIS) or Russia's aid to rebels in Ukraine may include a set of questions to determine whether the respondent reads or hears any international news. Respondents who cannot answer correctly may be excluded from the poll, or their answers may be separated from the others. People may also feel social pressure to answer questions in accordance with the norms of their area or peers.[11] If they are embarrassed to admit how they would vote, they may lie to the interviewer.

In the 1982 governor's race in California, Tom Bradley was far ahead in the polls, yet on Election Day he lost. This result was nicknamed the **Bradley effect**, on the theory that voters who answered the poll were afraid to admit they would not vote for a black man because it would appear politically incorrect and racist. In the 2016 presidential election, the level of support for Republican nominee Donald Trump may

have been artificially low in the polls due to the fact that some respondents did not want to admit they were voting for Trump.

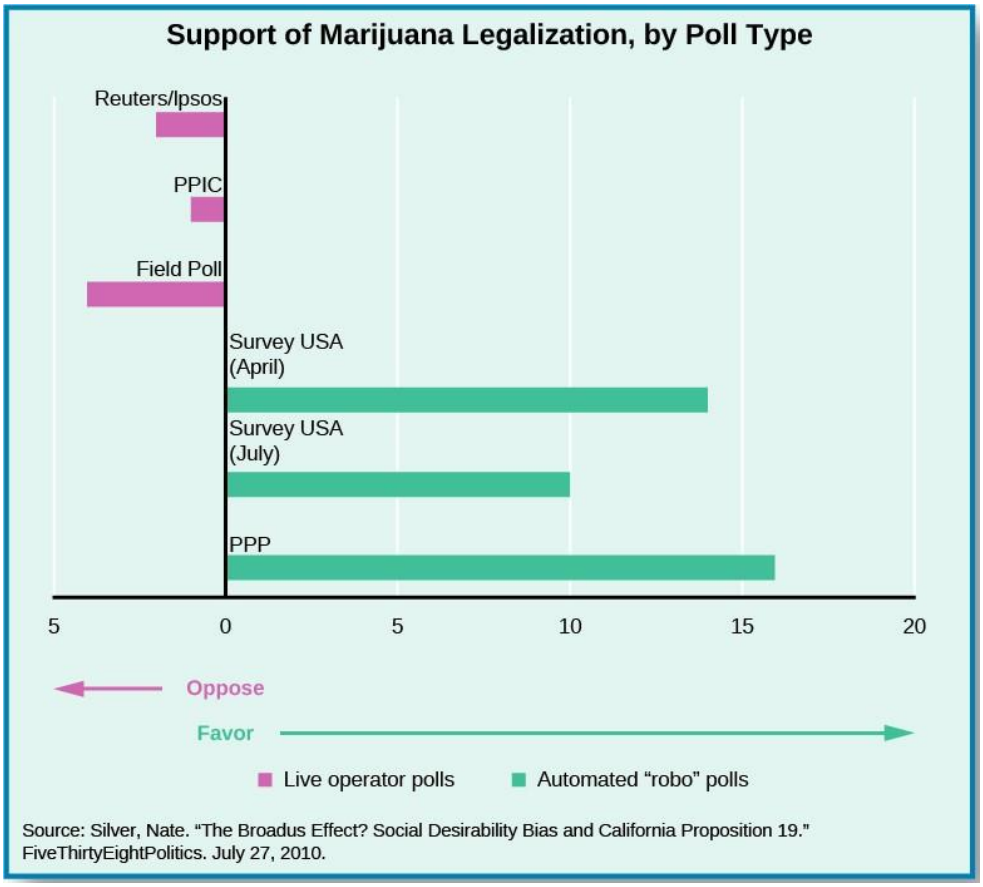


Chart 4.15 Bar Graph on Polling on Issue of Marijuana Legalization

In 2010, polls about California's Proposition 19 were inconsistent, depending on how they were administered, with voters who spoke with a live interviewer declaring they would vote against Proposition 19 and voters who were interviewed via a computer declaring support for the legislation. The measure was defeated on Election Day.

In 2010, Proposition 19, which would have legalized and taxed marijuana in California, met with a new version of the Bradley effect. Nate Silver, a political blogger, noticed that polls on the marijuana proposition were inconsistent, sometimes showing the proposition would pass and other times showing it would fail. Silver compared the polls and the way they were administered, because some polling companies used an interviewer and some used robo-calling. He then proposed that voters speaking with a live interviewer gave the socially acceptable answer that they would vote against Proposition 19, while voters interviewed by a computer felt free to be honest.[12] While this theory has not been proven, it is consistent with other findings that interviewer demographics can affect respondents' answers. African Americans, for example, may give different responses to interviewers who are white than to interviewers who are black.[13]

Public Opinion: Questions to Consider

1. Why do pollsters interview random people throughout the country when trying to project which candidate will win a presidential election?
2. How have changes in technology made polling more difficult?

1. *because if they were to confine their sample to one area of the country, it would not be representative of the total population and would have a significant margin of error*
2. *many citizens use only cell phones, whose area codes do not indicate their actual geographic location since cell phones are their numbers are portable and move with the owner; random and representative samples are also impacted by Caller ID on phones allows individuals to avoid calls they do not recognize; new technology requires companies to make online polls accessible on different platforms; the millennial generation (currently aged 18–33) is also more likely to text than to answer an unknown call, so it is harder to interview this demographic group*

Terms to Remember

exit poll–an election poll taken by interviewing voters as they leave a polling place

leading question–a question worded to lead a respondent to give a desired answer

margin of error–a number that states how far the poll results may be from the actual preferences of the total population of citizens

push poll--politically biased campaign information presented as a poll in order to change minds

random sample–a limited number of people from the overall population selected in such a way that each has an equal chance of being chosen

representative sample–a group of respondents demographically like the population of interest

straw poll–an informal and unofficial election poll conducted with a non-random population

tracking poll–poll conducted repeatedly over a period of time; usually following an incumbent office holder (like the president) or a policy issue; making trends observable

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4.4 Public Opinion: What is the connection to political institutions?

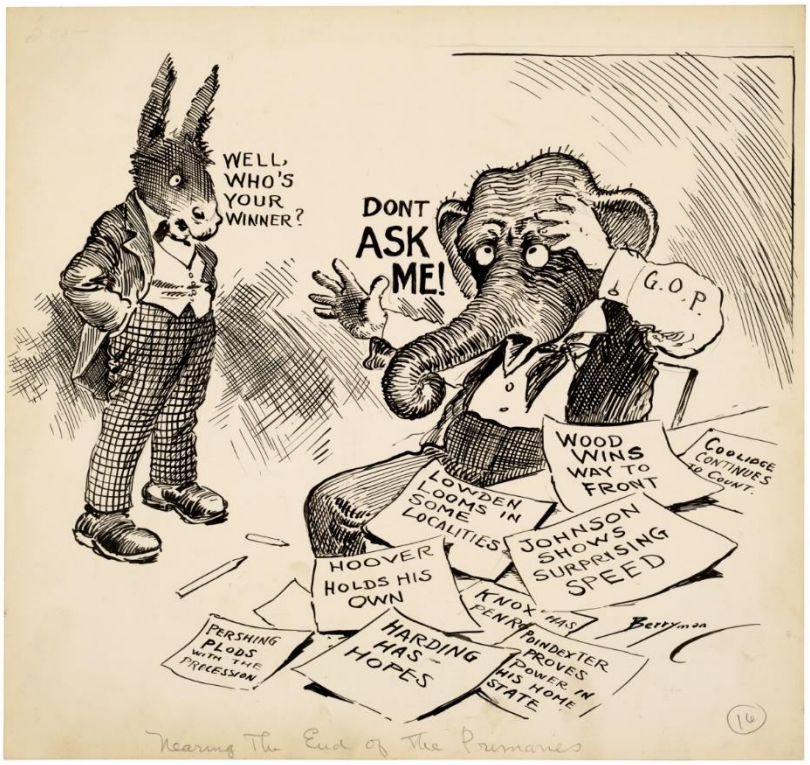


Image 4.8 Political Cartoon from 1920

May 3, 1920 This cartoon illustrates the effect of the primary process and the uncertainty of public opinion on choosing nominees for political office. This cartoon shows the frazzled Republican elephant surrounded by conflicting newspaper headlines while the Democratic donkey makes pressing inquiries "Who's your winner?" (Credit: U.S. Senate Collection Center for Legislative Archives at http://www.archives.gov/exhibits/running-for-office/)

Learning Objectives

- Explain why Americans hold a variety of views about politics, policy issues, and political institutions.
- Identify factors that change public opinion.
- Compare levels of public support for the branches of government.

Chart 4.16 Learning Objectives on Opinion of Government

Public Opinion and Political Institutions

Public opinion about American institutions is measured in public approval ratings rather than in questions of choice between positions or candidates. The congressional and executive branches of government are the subject of much scrutiny and discussed daily in the media. Polling companies take daily approval polls of these two branches.

The Supreme Court makes the news less frequently, and approval polls are more likely after the court has released major opinions. All three branches, however, are susceptible to swings in public approval in response to their actions and to national events. Approval ratings are generally not stable for any of the three. We next look at each in turn.

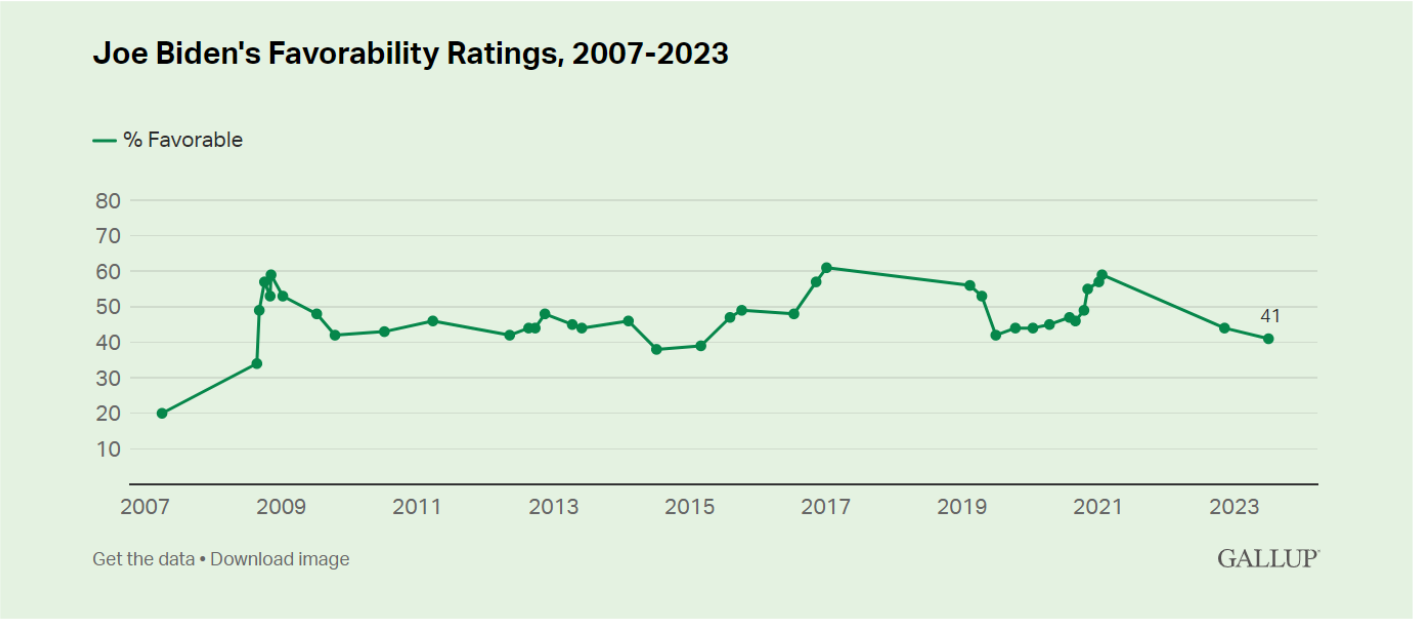


Chart 4.17 Line Graph on Joe Biden Tracking Poll

Presidential approval ratings illustrated by a **tracking poll** on President Joe Biden by Gallup, Inc. (Credit: Gallup at new.gallup.com/poll/509186/biden-averages-job-approval-tenth-quarter.aspx)

The president is the most visible member of the U.S. government and a lightning rod for disagreement. Presidents are often blamed for the decisions of their administrations and political parties and are held accountable for economic and foreign policy downturns. For these reasons, they can expect their approval ratings to slowly decline over time, increasing or decreasing slightly with specific events. On average, presidents enjoy a 66 percent approval rating when starting office, but it drops to 53 percent by the end of the first term. Presidents serving a second term average a beginning approval rating of 55.5 percent, which falls to 47 percent by the end of office. President Obama's presidency followed the same trend closely. He entered office with a public approval rating of 67 percent, which fell to 53 percent by the end of the first term; and, it then dropped to 52 percent after his reelection. In November 2016, his rating was 46 percent. The Trump presidency, however, did not follow the normal trend. President Trump received a 45 percent approval rating when he began his term; and, the rating remained in the 40 percent range. President Biden's approval rating dropped from 57% in January 2021 to 43% by September according to Gallup polling.[1] Events during a president's term may spike his or her public approval ratings. George W. Bush's public approval rating jumped from 51 percent on September 10, 2001, to 86 percent by September 15 following the 9/11 attacks. His father, George H. W. Bush, had received a similar spike in approval ratings (from 58 to 89 percent) following the end of the first Persian Gulf War in 1991.[2]

These spikes rarely last more than a few weeks, so presidents try to quickly use the political capital they bring. For example, the 9/11 rally effect helped speed a congressional joint resolution authorizing the president to use troops, and the "global war on terror" became a reality.[3]

Consider the Original: Federalist 71

|| Excerpts from *Federalist No. 71* ||

The Duration in Office of the Executive
From the New York Packet; Tuesday, March 18, 1788; Author: **Alexander Hamilton**

To the People of the State of New York:
...There are some who would be inclined to regard the servile pliancy of the Executive to a prevailing current, either in the community or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. **The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests.**[3] It is a just observation, that the people commonly INTEND the PUBLIC GOOD. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always REASON RIGHT about the MEANS of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset, as they continually are, by the wiles of parasites and sycophants, by the snares of the ambitious, the avaricious, the desperate, by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than to deserve it. When occasions present themselves, in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests, to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure [...].[4]

PUBLIUS.

Chart 4.18 Excerpt from Federalist Paper No. 71

President Kennedy's approval average was unusually high because his time in office was short; he was assassinated before he could run for reelection, leaving less time for his ratings to decline. Nixon's unusually low approval ratings reflect several months of media and congressional investigations into his involvement in the Watergate affair, as well as his resignation in the face of likely impeachment.

Gallup polling has tracked approval ratings for all presidents since Harry Truman. The **Presidential Job Approval Center** allows you to compare weekly approval ratings for all tracked presidents, as well as their average approval ratings.

Congress as an institution has historically received lower approval ratings than presidents, a striking result because individual senators and representatives are generally viewed favorably by their constituents. While congressional representatives almost always win reelection and are liked by their constituents back home, the institution itself is often vilified as representing everything that is wrong with politics and partisanship. As of March 2021, public approval of Congress sat at around 34 percent higher than most recent ratings as can be seen on the chart below.[5]

For most of the last forty years, congressional approval levels have bounced between 20 percent and 60 percent, but in the last fifteen years they have regularly fallen below 40 percent. Like President George W. Bush, Congress experienced a short-term jump in approval ratings immediately following 9/11, likely because of the rallying effect of the terrorist attacks. Congressional approval had dropped back below 50 percent by early 2003.



Chart 4.19 Line Chart on Congressional Approval Ratings Via Tracking Poll

Congressional approval ratings over the past forty-four years have generally fallen between 20 and 50 percent; however, these ratings spiked to over 80 percent in the wake of the terrorist attacks on September 11, 2001.
(Credit: Gallup, "Congress and the Public," at news.gallup.com/poll/1600/congress-public.aspx, 2019)

While presidents are affected by foreign and domestic events, congressional approval is mainly affected by domestic events. When the economy rebounds or gas prices drop, public approval of Congress tends to go up. But when party politics within Congress becomes a domestic event, public approval falls. The passage of revenue bills has become an example of such an event, because deficits require Congress to make policy decisions before changing the budget. Deficit and debt are not new to the United States.

Congress and presidents have attempted various methods of controlling debt, sometimes successfully and sometimes not.

In the past three decades alone, however, several prominent examples have shown how party politics make it difficult for Congress to agree on a budget without a fight, and how these fights affect public approval.

Most of the time, the people believe political parties need to work together to solve problems rather than play political games. During the 2011 ceiling debate, congressional approval fell from 18 to 13 percent, while in 2013; congressional approval fell to a new low of 9 percent in November.[6]

The Supreme Court generally enjoys less visibility than the other two branches of government, which leads to more stable but also less frequent polling results. Indeed, 22 percent of citizens surveyed in 2014 had never heard of Chief Justice John Roberts, the head of the Supreme Court.[7] The court is protected by the justices' non-elected, non-political positions, which gives them the appearance of integrity and helps the Supreme Court earn higher public approval ratings than presidents and Congress. To compare, between 2000 and 2010, the court's approval rating bounced between 50 and 60 percent. During this same period, Congress had a 20 to 40 percent approval rating. The Supreme Court's approval rating is also less susceptible to the influence of events. Support of and opinions about the court are affected when the justices rule on highly visible cases that are of public interest or other events occur that cause citizens to become aware of the court.[8]

PUBLIC OPINION AND GOVERNMENT

The relationship between public opinion polls and government action is murkier than that between polls and elections. Like the news media and campaign staffers, members of the three branches of government are aware of public opinion. But do politicians use public opinion polls to guide their decisions and actions?

The short answer is "sometimes." The public is not perfectly informed about politics, so politicians realize public opinion may not always be the correct guide in making decisions. Yet many political studies, from the *American Voter* in the 1920s to the *American Voter Revisited* in the 2000s, have found that voters behave rationally despite having limited information. They appear to be informed just enough, using preferences like their political ideology and party membership, to make decisions and hold politicians accountable during an election year for the positions they have taken on the issues.

Overall, the collective public opinion of a country changes over time, even if party membership or ideology does not change dramatically. As James Stimson's prominent study found, the public's mood, or collective opinion, can become more or less liberal from decade to decade. Studies have gone beyond to determine collective public opinion, and its relative liberalness, and how they in turn affect politicians and institutions and the politician's decisions on policy.[9]

PUBLIC OPINION AND THE PRESIDENT

Public opinion of the president is different from public opinion of Congress. Congress is an institution of 535 members, and opinion polls look at both the institution and its individual members. The president is both a person and the head of an institution. The media pays close attention to any president's actions, and the public is generally well informed and aware of the office and its current occupant. Perhaps this is why public opinion has an inconsistent effect on presidents' decisions.

Overall, it appears that presidents try to move public opinion towards personal positions rather than moving themselves towards the public's opinion.[10]

If presidents have enough public support, they use their level of public approval indirectly to get their agenda passed. Immediately following Inauguration Day, for example, the president enjoys the highest level of public support for implementing campaign promises.

When presidents have high levels of public approval, they are likely to act quickly and try to accomplish personal policy goals. They can use their position and power to focus media attention on an issue. This is sometimes referred to as the bully pulpit approach. The term "bully pulpit" was coined by President Theodore Roosevelt, who believed the presidency commanded the attention of the media and could be used to appeal directly to the people. Roosevelt used his position to convince voters to pressure Congress to pass laws.

Increasing partisanship has made it more difficult for presidents to use their "power to persuade" to get their own preferred issues through Congress, however, especially when the president's party is in the minority in Congress.[11] For this reason, modern presidents may find more success in using their popularity to increase media and social media attention on an issue. Even if the president is not the reason for congressional action, he or she can cause the attention that leads to change.[12]

CONGRESSIONAL POLICY-MAKING AND PUBLIC OPINION

While presidents have at most only two terms to serve and work, members of Congress can serve if the public returns them to office. We might think that for this reason public opinion is important to representatives and senators, and that their behavior, such as their votes on domestic programs or funding, will change to match the expectation of the public. In a more liberal time, the public may expect to see more social programs. In a non-liberal time, the public mood may favor austerity, or decreased government spending on programs. Failure to recognize shifts in public opinion may lead to a politician's losing the next election.[13]

The savvier politicians look carefully to recognize when shifts occur. When the public is more or less liberal, the politicians may make slight adjustments to their behavior to match. Politicians who frequently seek to win office, like House members, will pay attention to the long- and short-term changes in opinion. By doing this, they will be less likely to lose on Election Day.[14] Thus, failure to recognize shifts in public opinion may lead to a politician's losing the next election.

House of Representatives members, with a two-year term, have a more difficult time recovering from decisions that anger local voters. And because most representatives continually fundraise, unpopular decisions can hurt their campaign donations. For these reasons, it seems representatives should be susceptible to polling pressure. Yet one study, by James Stimson, found that the public mood does not directly affect elections, and shifts in public opinion do not predict whether a House member will win or lose. Despite this, we still see policy shifts in Congress, often matching the policy preferences of the

public. When the shifts happen within the House, they are measured by the way members vote. The study's authors hypothesize that House members alter their votes to match the public mood, perhaps to strengthen their electoral chances.[15] The Senate is quite different from the House. Senators do not enjoy the same benefits of incumbency, and they win reelection at lower rates than House members. Yet, they do have one advantage over their colleagues in the House: Senators hold a six-year term, which gives them time to engage in fence-mending to repair the damage from unpopular decisions. In the Senate, Stimson's study confirmed that opinion affects a senator's chances at reelection, even though it did not affect House members. Specifically, the study shows that when public opinion shifts, fewer senators win reelection.

Thus, when the public becomes more or less liberal, new senators are elected. Rather than the senators shifting their policy preferences and voting differently, it is the new senators who change the policy direction of the Senate.[16]

Another major study by Benjamin Page and Robert Shapiro *found change in public policy more likely to occur in Congress when there is a significant change in public opinion from past opinion.* They found that when opinion moved up or down at least 6 percentage points between two surveys of public opinion, government policy changed in keeping with the changed opinion direction. Of the over 300 instances of opinion change they studied; policy changes were consistent with opinion changes in 66% of the cases. Moreover, Page and Shapiro found that very large change in public opinion (20 points or more) produced consistent policy changes more than 90% of the time. The evidence suggests that the government does responds to major shifts of public opinion.[17]

THE SUPREME COURT AND PUBLIC OPINION

There is some disagreement about whether the Supreme Court follows public opinion or shapes it. The lifetime tenure the justices enjoy was designed to remove everyday politics from their decisions, protect them from swings in political partisanship, and allow them to choose whether and when to listen to public opinion. Often, the public is unaware of the Supreme Court's decisions and opinions. When the justices accept controversial cases, the media tune in and ask questions, raising public awareness and affecting opinion. But do the justices pay attention to the polls when they make decisions? Studies that look at the connection between the Supreme Court and public opinion are contradictory. Early on, it was believed that justices were like other citizens: individuals with attitudes and beliefs who would be affected by political shifts.[18] Later studies argued that Supreme Court justices rule in ways that maintain support for the institution. Instead of looking at the short term and making decisions day to day, justices are strategic in their planning and make decisions for the long term.[19]

Overall, however, it is clear that public opinion has a less powerful effect on the courts than on the other branches and on politicians.[20] Perhaps this is due to the lack of elections or justices' lifetime tenure, or perhaps we have not determined the best way to measure the effects of public opinion on the Court.

Public Opinion: Questions to Consider

1. Why might one branch's approval ratings be higher than another's?
2. When are social and economic issues more likely to cause polarization in public opinion?

1. *opinion question; based upon whether individuals perceive one branch has been an advocate for their position or ideological beliefs*
2. *open for debate; consider the level of divisiveness between economic or social issues*

Term to Remember

tracking poll–conducting a public opinion poll that is repetitious; example–following the approval ratings of an office holder like the president over an extended period of time

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5.1 Interest Groups: Who or what are they?



Image 5.1 Supporters For and Against Building a Wall on the Border

A Trump supporter with a sign reading "Pres. Trump Build That Wall." (Credit: modification of work–Robyn Beck / AFP/Getty Images and Paul Waldman, Special to the *Washington Post* Commentary: "Sorry, Trump voters, you got scammed. You're never getting your wall." at http://www.chicagotribune.com/news/opinion/commentary/ct-trump-mexico-border-wall-scam-20170425-story.html) and Members of the League of United Latin American Citizens, respected Hispanic civil rights interest group protesting the border wall. (Credit: modification of work–LULAC at http://lulac.org/)

Learning Objectives

- Explain how interest groups differ from political parties.
- Evaluate the different types of interests and what they do.
- Compare economic issue and citizen-public issue interest groups.

Chart 5.1 Learning Objectives on Interest Groups

An **interest group** is a group of people working together through an organization and advocating on behalf of shared interests. Interest groups abound in the United States. In recent years, many groups spoke out on behalf of both sides of the argument over government healthcare. The 2010 Patient Protection and Affordable Care Act (PPACA), also known as Obamacare, represented a substantial overhaul of the U.S. healthcare system.[1]

Given its potential impact, interest group representatives (**lobbyists**) from the insurance industry, hospitals, medical device manufacturers, and organizations representing doctors, patients, and employers all tried to influence what the law would look like and the way it would operate. Moreover, besides paid representatives of many interest groups, many ordinary citizens got involved in "grassroots" lobbying efforts to attempt to influence lawmakers to support or oppose the legislation. Even after the legislation became law, interest groups remained involved, some seeking to influence the rules and regulations issued to implement the law, while others sought to challenge the law in court.

In fact, throughout its entire existence, the controversial law continued to engage interest groups seeking to both protect and expand the law or to repeal and replace it. In 2017, the Republican dominated Congress and the Trump administration initiated an effort to substantially change U.S. healthcare law and many interest groups were once again working on behalf of their members.

Interest groups like those for and against the PPACA play a fundamental role in representing individuals, corporate interests, and the public before the government. They help inform the public and lawmakers about issues, monitor government actions, and promote policies that benefit their interests, using all three branches of government at the federal, state, and local levels. The multi-layered federal structure in the US allows for more points of access or linkages to the government.

While the term **interest group** is not mentioned in the U.S. *Constitution*, the framers were aware that individuals would band together to use government in their favor. In *Federalist* No. 10, James Madison warned of the dangers of "factions," minorities who would organize around issues they felt strongly about, possibly to the detriment of the majority. But Madison believed limiting these factions was worse than facing the evils they might produce, because such limitations would violate individual freedoms. Instead, the natural way to control factions was to let them flourish and compete against each other. The sheer number of interests in the United States suggests that many have, indeed, flourished. They compete with similar groups for membership, and with opponents for access to decision-makers. Some people suggest there may be too many interests in the United States. Others argue that some have gained a disproportionate amount of influence over public policy, whereas many others are underrepresented.

Madison's definition of "factions" can apply to both interest groups and political parties. But unlike political parties, interest groups do not necessarily function primarily to elect candidates under a certain party label or to directly control the operation of the government. That is, interest groups do not officially nominate or sponsor candidates for public office, although they may very well support or oppose candidates. Political parties in the United States are generally much broader coalitions that represent a significant proportion of citizens. In the American two-party system, the Democratic and Republican Parties spread relatively wide nets to try to encompass large segments of the population. Interest groups may support or oppose political candidates; however, their goals are usually more issue-specific and narrowly focused on areas like taxes, the environment, and gun rights or gun control, or their membership is limited to specific professions. They may represent interests ranging from well-known organizations, such as the Sierra Club, IBM, or the American Lung Association, to obscure ones, such as the North Carolina Game fowl Breeders Association. Political parties and interest groups both work together and compete for influence.

While interest group activity often transcends party lines, many interest groups are perceived as being more supportive of one party over another. The National Rifle Association, the National Right to Life organization and conservative organizations such as the Heritage Foundation are more likely to have relationships with the Republican Party. The National Organization for Women (NOW), teachers' unions, and organizations such as Americans for Democratic Action all have strong relationships with the Democratic Party. Within each party, there is a competition for influence among the groups generally

aligned with a party. Moreover, activists from many of these interest groups become activists with the political parties.

Consider the Original

Excerpts from || Federalist No. 10 ||

The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection
From the New York Packet.
Friday, November 23, 1787.

Author: **James Madison**

To the People of the State of New York:

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. [...] Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. [...]

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. [...]

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

[...] From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions. A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

[...] Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,–is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.
In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.[2]

Chart 5.2 Excerpts from Federalist Paper No. 10



Image 5.2 Boy Scout Speaks on Environmental Cause

William T. Hornaday Conservation Award Winner and Eagle Scout delivering informative speech about the importance of nest-boxes and promoting the interests of the Texas Bluebird Society at their 10th Annual Meeting and Convention in Glen Rose, Texas on August 20, 2011. TBS is an active interest group advocating on behalf of the protection of Eastern Bluebirds and their habitat. (Credit: 290 Photo)

What Are Interest Groups and What Do They Want?

Definitions abound when it comes to interest groups, which are sometimes referred to as special interests, interest organizations, pressure groups, or just interests. Most definitions specify that **interest group** indicates any formal association of individuals or organizations that attempt to influence government decision-making and/or the making of public policy. This influence is **advocacy**. People translate opinion into advocacy. They may speak to a friend or co-worker and eventually form a group with this shared interest in influencing others. If advocacy attempts are successful, other individuals, groups, legislators, etc. may be **co-opted** into the same opinion, shared interest, or common policy agenda. Often, this influence is exercised by a lobbyist or a lobbying firm.

Formally, a **lobbyist** is someone who represents the interest organization before government, is usually compensated for doing so, and is required to register with the government in which he or she lobbies, whether state or federal. The lobbyist's primary goal is usually to influence policy. Most interest organizations engage in lobbying activity to achieve their objectives. As you might expect, the interest hires a lobbyist, employs one internally, or has a member volunteer to lobby on its behalf. For present purposes, we might restrict our definition to the relatively broad one in the **Lobbying Disclosure Act**.[3] This act requires the registration of lobbyists representing any interest group and devoting more than 20 percent of their time to it.[4] Clients and lobbying firms must also register with the federal government based on similar requirements. Moreover, campaign finance laws require disclosure of campaign contributions given to political candidates by organizations.

Visit this **site** to research donations and campaign contributions given to political candidates by organizations.

Lobbying is not limited to Washington, DC, however, and many interests lobby there as well as in one or more states. Each state has its own laws describing which individuals and entities must register, so the definitions of lobbyists and interests, and of what lobbying is and who must register to do it, also vary from state to state. Therefore, while a citizen contacting a lawmaker to discuss an issue is generally not viewed as lobbying, an organization that devotes a certain amount of time and resources to contacting lawmakers may be classified as lobbying, depending on local, state, or federal law.

Largely for this reason, there is no comprehensive list of all interest groups to tell us how many there are in the United States. Estimates of the number vary widely, suggesting that if we use a broad definition and include all interests at all levels of government, there may be more than 200,000.[5] Following the passage of the Lobbying Disclosure Act in 1995, we had a much better understanding of the number of interests registered in Washington, DC; however, it was not until several years later that we had a complete count and categorization of the interests registered in each of the fifty states.[6]

Political scientists have categorized interest groups in a number of ways.[7] First, interest groups may take the form of membership organizations, which individuals join voluntarily and to which they usually pay dues. Membership groups often consist of people who have common issues or concerns, or who want to be with others who share their views. The National Rifle Association (NRA) is a membership group consisting of members who promote gun rights. For those who advocate greater regulation of access to firearms, such as background checks prior to gun purchases, the Brady Campaign to Prevent Gun Violence is a membership organization that weighs in on the other side of the issue.[8]

In addition to membership organizations, companies and corporate entities and governments may themselves have a compelling interest to be represented in front of one or more branches of government. For example, Verizon and Coca-Cola will register to lobby in order to influence policy in a way that benefits them. These corporations will either have one or more **in-house lobbyists**, who work for one interest group or firm and represent their organization in a lobbying capacity, and/or will hire a **contract lobbyist**, individuals who work for firms that represent a multitude of clients and are often hired because of their resources and their ability to contact and lobby lawmakers, to represent them before the legislature. A governmental institution, such as a state government, a county, or a municipality may also be represented by a **legislative liaison**, whose job it is to present issues to other governmental decision makers.

Interest groups also include association**s**, which are typically groups of institutions that join with others, often within the same trade or industry (trade associations) and have similar concerns.

The American Beverage Association includes Coca-Cola, Red Bull North America, ROCKSTAR, and Kraft Foods.[9] Despite the fact that these companies are competitors, they have common interests related to the manufacturing, bottling, and distribution of beverages, as well as the regulation of their business activities. The logic is that there is strength in numbers, and if members can lobby for tax breaks or eased regulations for an entire industry, they may all benefit.

These common goals do not, however, prevent individual association members from employing in-house lobbyists or contract lobbying firms to represent their own business or organization as well. Indeed, many members of associations are competitors who also seek representation individually before the legislature.

Visit the website of an association like the **American Beverage Association** or the **American Bankers Association** and look over the key issues it addresses. Do any of the issues it cares about surprise you? What areas do you think members can agree about? Are there issues on which the membership might disagree? Why would competitors join when they normally compete for business?

Finally, sometimes individuals volunteer to represent an organization. They are called amateur or volunteer lobbyists and are typically not compensated for their lobbying efforts. In some cases, citizens may lobby for pet projects because they care about some issue or cause. They may or may not be members of an interest group, but if they register to lobby, they are sometimes nicknamed "hobbyists."



Image 5.3 Photos For and Against Gun Rights

A Florida member of the NRA proudly displays his support of gun rights (a). In December 2012, CREDO, a San Francisco telecommunications company that supports progressive causes, called on the NRA to stop blocking Congress from passing gun control legislation (b).
(Credit OpenStax a: modification of work by Daniel Oines; Credit b: modification of work by Josh Lopez)

Interest groups serve as a means of political participation for their members. The primary goal of interest groups is to influence decision-makers and public policy through advocacy on behalf of members.

According to political scientists Jeffrey Berry and Clyde Wilcox, interest groups provide a means of representing people and serve as a link between them and government.[10]

Interest groups also allow people to actively work on an issue to influence public policy.

Another interest group function is to help educate the public. Someone concerned about the environment may not need to know what an acceptable level of sulfur dioxide is in the air, but by joining an environmental interest group, he or she can remain informed when air quality is poor or threatened by legislative action.

Interest groups also try to get issues on the government agenda and to monitor a variety of government programs. Following the passage of the PPACA, numerous interest groups have been monitoring the implementation of the law, hoping to use successes and failures to justify their positions for and against the legislation. Those opposed have utilized the court system to try to alter or eliminate the law or have lobbied executive agencies or departments that have a role in the law's implementation. Similarly, teachers' unions, parent-teacher organizations, and other education-related interests have monitored implementation of the *No Child Left Behind Act* promoted and signed into law by President George W. Bush.

Interest groups also help frame issues, usually in a way that best benefits their cause. Abortion rights advocates often use the term "pro-choice" to frame abortion as an individual's private choice to be made free of government interference, while an anti-abortion group might use the term "pro-life" to frame its position as protecting the life of the unborn. "Pro-life" groups often label their opponents as "pro-abortion," rather than "pro-choice," a distinction that can affect the way the public perceives the issue.

Lobbyists representing a variety of organizations employ different techniques to achieve their objectives. One method is inside lobbying or direct lobbying, which takes the interest group's message directly to a government official such as a lawmaker.[11] Inside lobbying tactics include testifying in legislative hearings and helping to draft legislation. Numerous surveys of lobbyists have confirmed that the vast majority rely on these inside strategies. For example, nearly all report that they contact lawmakers, testify before the legislature, help draft legislation, and contact executive agencies. Trying to influence government appointments or providing favors to members of government are somewhat less common insider tactics.

Many lobbyists also use outside lobbying or indirect lobbying tactics, whereby the interest attempts to get its message out to the public.[12] These tactics include issuing press releases, placing stories and articles in the media, entering coalitions with other groups, and contacting interest group members, hoping that they will individually pressure lawmakers to support or oppose legislation. An environmental interest group like the Sierra Club, for example, might issue a press release or encourage its members to contact their representatives in Congress about legislation of concern to the group. It might also use outside tactics if there is a potential threat to the environment and the group wants to raise awareness among its members and the public. Members of Congress are likely to pay attention when many constituents contact them about an issue or proposed bill. Many interest groups, including the Sierra Club, will use a combination of inside and outside tactics in their lobbying efforts, choosing whatever strategy is most likely to help them achieve their goals.



Image 5.4 Photo of Sierra Club Protesters

In February 2013, members of the Sierra Club joined a march on Los Angeles City Hall to demand action on climate change and protest the development of the Keystone pipeline. (Credit: OpenStax; Charlie Kaijo)

While influencing policy is the primary goal, interest groups also monitor government programs and activity and provide information to the public and to lawmakers about effectiveness or ineffectiveness of governmental programs from their point of view.

Thus, a member of an interest group or a citizen concerned about the issues or the governmental activities that the interest group monitors, need not be an expert on the legislative process or the technical or legal details of a proposed bill to be kept informed and to know when to politically participate on issues of interest. Interest groups regularly inform members, the general public, and governmental decision-makers of their evaluations of issues and governmental activities of concern, and they suggest changes to programs and services.

Interest groups facilitate political participation in several ways. Some members become active within a group, working on behalf of the organization to promote its agenda. Some interests work to increase membership, inform the public about issues the group deems important, or organize rallies and promote get-out-the-vote efforts. Sometimes groups will utilize events to mobilize existing members or encourage new members to join.

Functions of Interest Groups	Description of Functions
inside lobbying direct contact with policy makers	⇒ legislative testimony ⇒ assistance in bill writing ⇒ direct contact of executive agencies
outside lobbying indirect methods to influence decisions	⇒ educate members on key issues ⇒ increase general public awareness on key issues through media efforts ⇒ organize and coordinate 'grassroots lobbying" efforts to contact policy makers to influence decision making ⇒ engage in political process to elect supportive candidates; donate
monitor government programs	⇒ evaluate effectiveness ⇒ suggest changes

Chart 5.3 Functions of Interest Groups

Interest Group Types: Economic Issue Groups v. Citizen-Public Issue Interest Groups

Interest groups and organizations represent both economic and non-economic issues in the United States. **Economic interest groups** usually seek particularized benefits from government that favor a work-related single interest or a narrow set of economically related interests focused on some industry sector, occupational group, or employee union.[13] For example, The American Dairy Association may lobby government for tax exemptions, fewer regulations, or favorable laws that benefit individual companies or an industry more generally.

On the other hand, **citizen-public issue interest groups** represent individuals who have organized to advocate on behalf of a cause or purpose they consider important that is not directly related to their

employment or work situation.[14] These groups may focus on single issues, such as the environment, gun rights, gun control, abortion, or a broader set of ideologically consistent issues.

For example, citizen groups such as the Sierra Club and the National Resources Defense Council have primarily focused on environmental issues. These citizen public issue groups often call themselves public interest groups.[15]

They argue that what they do is in the public interest. They would argue that if the Sierra Club encourages Congress to pass legislation that improves national air quality, citizens receive the benefit regardless of whether they are members of the organization or even support the legislation. Many environmental groups lobby for and raise awareness of issues that affect large segments of the population.[16]Of course, many citizen-public issue groups claim to work in the public interest.[17] Some liberal ideological groups such as MoveOn.org or the Americans for Democratic Action or conservative ideological groups such as the Heritage Foundation or Christian Coalition have much broader range of issues they address. Of course, all claim to be working in the public interest. However, some citizens-public issue groups seek to advance the economic and political interest of a demographic such as the NAACP or La Raza. While it is true that some citizen-public issue groups are seeking some economic benefits or at least a change in economic conditions in society, they differ from economic interest groups in that any citizen is open to join the group. In contrast, economic interest groups have closed membership based upon an individual's employment, work situation, or professional status.[18]

Interest Groups: Questions to Consider

1. What are interest groups and what do they want?
2. How do they provide avenues for political participation?
3. How do interest groups try to achieve their objectives?
4. What benefits do interest groups bring to society?
5. What are some of the disadvantages of interest groups?

1. *An interest group is a group of people working together through an organization and advocating on behalf of shared interests that attempt to influence government decision-making and/or the making of public policy. A broader definition of an interest group might include any group with a common interest, but such groups are less effective in influencing public policy than those that have a formal organization.*
2. *easier to assemble and speak out with a group; more recognition of a cause/policy position if the numbers are higher; etc.*
3. *Interest Groups employ different techniques to achieve their objectives, some "inside" or direct and some indirect. One method is inside lobbying or direct lobbying, which takes the interest group's message directly to a government official such as a lawmaker. Inside lobbying tactics include testifying in legislative hearings and helping to draft legislation.. Interest groups also use outside lobbying or indirect lobbying tactics, whereby the interest attempts to get its message out to the public.*
4. *The benefits they bring are they represent the needs and concerns of diverse groups and can work on their behalf to influence public policy. It is easier for an individual to have their voice heard and "speak out" on an issue with an organized group.*
5. *open to debate; but, not all interest groups are politically equal in their ability to influence government outcomes; for example, if one interest has more money or connections than another they may achieve more policy goals, leaving groups with less money or connections without the possibility to effect policy change, notwithstanding the merits of the case of actual majority opinion*

Terms to Remember

advocacy–influence; individuals or interest groups speak out to influence others

association–groups of companies or institutions that organize around a common set of concerns, often within a given industry or trade

citizen (public issue) interest groups–representing individuals who have organized to advocate on behalf of a cause or purpose they consider important that is not directly related to their employment or work situation; membership is open to all who support and wish to advocate for the cause or some public issue

contract lobbyist–lobbyist who works for a contract lobbying firm that represents clients before government

cooptation/co-opt–successful influence/advocacy for a policy position, agenda, opinion

economic (private issue) interest groups–representing individuals who seek particularized benefits from government that favor a work-related interest or narrow set of economically related interests focus on some industry sector, occupational group, or employee union; membership is based upon an individual's employment, work situation, or professional status

in-house lobbyist–an employee or executive within an organization who works as a lobbyist on behalf of the organization

interest group–people working through an organization with a common interest often work together advocating on behalf of this shared interest

legislative liaison–a person employed by a governmental entity such as a local government, executive department, or university to represent the organization before the legislature

lobbyist–a person who represents an organization before government to influence policy

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5.2 Interest Groups: Pathways to Participation and Influence



Image 5.5 Photo of Protesters inside Texas Capitol Building

Photo of protesters in the Texas Capitol, interest groups were protesting the signing of the sanctuary cities bill. (Credit: Raven Ambers @ravenambers; her "bird's eye view" of the happenings)

Learning Objectives

- Explain theories of interest group formation.
- Describe free riding and the reasons it occurs.
- Analyze how interest groups provide a means for political participation.
- Discuss recent changes to interest groups and the way they operate in the United States.
- Explain why lower socioeconomic status citizens are not well represented by interest groups.
- Identify the barriers to interest group participation in the United States.
- Describe how interest groups influence the government through elections.
- Explain how interest groups influence the government through the governance processes.

Chart 5.4 Learning Objectives on Theories of Interest Groups

Interest Group Formation: Two Conflicting Theories

Over the past several decades, the United States witnessed a tremendous growth in the number of interest groups.[1] Why did these particular groups arise? Some scholars argue that groups form due to an

event in the political, economic, or social environment.[2] This theory, Known as the disturbance theory, describes the origins of interest groups as a natural reaction to a "disturbance in society."[3]That is, when the social, economic, or political environment is disturbed, a group or groups emerge in response to the disturbed conditions to press for policy change. David Truman stated that interest groups form primarily when there are changes in a social environment that upsets the well-being of some groups of people. The Theory states that interest groups form and grow in response to perceived threats, which has a direct cause and effect outcome on interest group formation.[4]

For example, in 1962, Rachel Carson published *Silent Spring*, a book exposing the dangers posed by pesticides such as DDT.[5] The book served as a catalyst for individuals worried about the environment and the potential dangers of pesticides. The result was an increase in both the number of environmental interest groups, such as Greenpeace and American Rivers, and the number of members within them.

However, sometimes adverse situations impacting individuals have been on-going or even worsened without any interest group being formed. This suggests that the disturbance theory has some serious limits and is overly optimistic.[6] That is, those with resources–either financial or organizational leadership skills–can more quickly respond to adverse events. For example, during most of the 20th century, California migrant farm workers were not well treated by farmers. Bad working conditions, poor wages, and discriminatory practices were not enough to encourage these workers to organize into a union despite repeated efforts by the AFL-CIO. Then, in the late 1960s, a charismatic farm worker named Cesar Chavez succeeded in unionizing the California grape pickers. The difference in the formation of the United Farm Workers was clearly not a single event, but resulted from the leadership of Chavez.[7]



Image 5.6 President Obama Signs Proclamation Recognizing Cesar Chavez

President Obama signs presidential proclamation designating March 3, 2010 as Cesar Chavez Day, honoring the leaders of the United Farm Workers which was co-founded by Chavez. Chavez's family looks on. Credit: White House Photo by Pete Souza.

The leadership factor suggests that the origins of interest groups can very frequently be traced to the efforts of **interest policy entrepreneurs**. That is, energetic individuals who identify a problem and are

convinced of a solution or approach to the problem who rallies supporters to the cause by forming a group to pursue the goals. In fact, political scientist Robert Salisbury states that leadership is the key reason why any group succeeds or dies.[8]

Collective Action and Free Riding

In any group project in which you have participated, you may have noticed that a small number of students did the bulk of the work while others did very little. Yet everyone received the same grade. Why do some do all the work, while others do little or none? How is it possible to get people to work when there is a disincentive to do so? This situation is an example of a collective action problem, and it exists in government as well as in public and private organizations. Whether it is Congress trying to pass a budget or an interest group trying to motivate members to contact lawmakers, organizations must overcome collective action problems to be productive. This is especially true of interest groups; whose formation and survival depend on members doing the necessary work to keep the group funded and operating.

Collective action problems exist when people have a disincentive to take action.[9] People tend not to act when the perceived benefit is insufficient to justify the costs associated with engaging in the action. Many citizens may have concerns about the appropriate level of taxation, gun control, or environmental protection, but these concerns are not necessarily strong enough for them to become politically active. In fact, most people take no action on most issues, either because they do not feel strongly enough or because their action will likely have little bearing on whether a given policy is adopted. Thus, there is a disincentive to call your member of Congress, because rarely will a single phone call sway a politician on an issue.

Why do some students elect to do little on a group project? The answer is that they likely prefer to do something else and realize they can receive the same grade as the rest of the group without contributing to the effort. This result is often termed the **free rider problem**, because some individuals can receive benefits (get a free ride) without helping to bear the cost. When National Public Radio (NPR) engages in a fund-raising effort to help maintain the station, many listeners will not contribute. Since it is unlikely that any one listener's donation will be decisive in whether NPR has adequate funding to continue to operate, most listeners will not contribute to the costs but instead will free ride and continue to receive the benefits of listening.

If free riding is so prevalent, why are there so many interest groups and why is interest group membership so high in the United States? One reason is that free riding can be overcome in a variety of ways. Olson argued, for instance, that some groups are better able than others to surmount collective action problems.[10] They can sometimes maintain themselves by obtaining financial support from patrons outside the group.[11]

Group leaders also play an important role in overcoming collective action problems. For instance, political scientist Robert Salisbury suggests that group leaders will offer incentives to induce activity among individuals.[12] Some offer material incentives, which are tangible benefits of joining a group.

AARP (American Association for Retired Persons), for example, offers discounts on hotel accommodations and insurance rates for its members, while dues are very low, so they can save money by joining. Group leaders may also offer solidarity incentives, which provide the benefit of joining with others who have the same concerns or are similar in other ways. Some scholars suggest that people are naturally drawn to others with similar concerns.



Image 5.7 Poster for Tea Party

Photo of poll taken by the Tea Party Patriots regarding the controversial issue of sanctuary cities. Interest groups often arise from what is known as the "grassroots" level with individual citizens banding together for a common cause. (Credit: OpenStax; Tea Party Patriots at https://www.facebook.com /teapartypatriots/)

Groups with financial resources have an advantage in mobilizing in that they can offer incentives or hire a lobbyist. Smaller, well-organized groups also have an advantage. For one thing, opinions within smaller groups may be more similar, making it easier to reach consensus. It is also more difficult for members to free ride in a smaller group. In comparison, larger groups have a greater number of individuals and therefore more viewpoints to consider, making consensus more difficult. It may also be easier to free ride because it is less obvious in a large group when any single person does not contribute. However, if people do not lobby for their own interests, they may find that they are ignored, especially if smaller but more active groups with interests opposed to theirs lobby on behalf of themselves.

Sometimes collective action problems are overcome because there is little choice about whether to join an organization. For example, some organizations may require membership in order to participate in a profession. To practice law, individuals may be required to join the American Bar Association or a state bar association. In the past, union membership could be required of workers, particularly in urban areas controlled by political machines consisting of a combination of parties, elected representatives, and interest groups.

Interest Groups as Political Participation

Interest groups offer individuals an important avenue for political participation. Tea Party protests, for instance, gave individuals all over the country the opportunity to voice their opposition to government actions and control. Likewise, the Occupy Wall Street movement also gave a voice to those individuals frustrated with economic inequality and the influence of large corporations on the public sector. Individually, the protesters would likely have received little notice, but by joining with others, they drew substantial attention in the media and from lawmakers. While the Tea Party movement might not meet the definition of organized interest groups presented earlier, its aims have been promoted by established

interest groups. Other opportunities for participation that interest groups offer or encourage include voting, campaigning, contacting lawmakers, and informing the public about causes.

Group Participation as Civic Engagement

In 2011, an Occupy Wall Street protestor highlights that the concerns of individual citizens are not always heard by those in the seats of power. (Credit: OpenStax; Timothy Krause)



Image 5.8 Photo of Occupy Wall Street Protester

Joining interest groups can help facilitate civic engagement, which allows people to feel more connected to the political and social community. Some interest groups develop as **grassroots movements**, which often begin from the bottom up among a small number of people at the local level. Interest groups can amplify the voices of such individuals through proper organization and allow them to participate in ways that would be less effective or even impossible alone or in small numbers. The Tea Party is also a grassroots movement. Many ordinary citizens support the Tea Party because of its opposition to tax increases, it attracts a great deal of support from elite and wealthy sponsors, some of whom are active in lobbying. The FreedomWorks political action committee (PAC), for example, is a conservative advocacy group that has supported the Tea Party movement. FreedomWorks is an offshoot of the interest group Citizens for a Sound Economy, which was founded by billionaire industrialists David H. and Charles G. Koch in 1984.

Trends in Interest Group Formation and Activity

Several changes in interest groups have taken place over the last three or four decades in the United States. The most significant change is the tremendous increase in both the number and type of groups.[14] Political scientists often examine the diversity of registered groups, in part to determine how well they reflect the variety of interests in society. Some areas may be dominated by certain industries, while others may reflect a multitude of interests. Some interests appear to have increased at greater rates than others. For example, the number of institutions and corporate interests has increased both in Washington and in the states. Telecommunication companies like Verizon and AT&T will lobby Congress for laws beneficial to their businesses, but they also target the states because state legislatures make laws that can benefit or harm their activities. There has also been an increase in the number of interest groups that represent citizen-public issue organizations as opposed to economic interests. U.S. PIRG is a public interest group that represents the public on issues including public health, the environment, and consumer protection.[15]

What are the reasons for the increase in the number of interest groups? In some cases, it simply reflects new interests in society. Forty years ago, stem cell research was not an issue on the government agenda, but as science and technology advanced, its techniques and possibilities became known to the media and the public, and several interests began lobbying for and against this type of research.

Medical research firms and medical associations will lobby in favor of greater spending and increased research on stem cell research, while some religious organizations and anti-abortion groups will oppose it.

As societal attitudes change and new issues develop, and as the public becomes aware of them, we can expect to see the rise of interests addressing them.

We have also seen increased specialization by some interests and even fragmentation of existing interests. While the American Medical Association may take a stand on stem cell research, the issue is not critical to the everyday activities of many of its members. On the other hand, stem cell research is highly salient to members of the American Neurological Association, an interest organization that represents academic neurologists and neuroscientists.

Accordingly, different interests represent the more specialized needs of different specialties within the medical community, but **fragmentation** can occur when a large interest like this has diverging needs. Such was also the case when several unions split from the AFL-CIO (American Federation of Labor-Congress of Industrial Organizations), the nation's largest federation of unions, in 2005.[16] Improved technology and the development of social media have made it easier for smaller groups to form and to attract and communicate with members. The use of the Internet to raise money has also made it possible for even small groups to receive funding.

Over the last few decades, we have also witnessed an increase in professionalization in lobbying and in the sophistication of lobbying techniques. This was not always the case, because lobbying was not considered a serious profession in the mid-twentieth century. Over the past three decades, there has been an increase in the number of contract lobbying firms.

These firms are often effective because they bring significant resources to the table, their lobbyists are knowledgeable about the issues on which they lobby, and they may have existing relationships with lawmakers. In fact, relationships between lobbyists and legislators are often ongoing, and these are critical if lobbyists want access to lawmakers. However, not every interest can afford to hire high-priced contract lobbyists to represent it. A great deal of money is spent on lobbying activities.

We have also seen greater limits on inside lobbying activities. In the past, many lobbyists were described as "good ol' boys" that provided gifts or other favors in exchange for political access or other considerations. Today, restrictions limit the types of gifts and benefits lobbyists can bestow on lawmakers. There are certainly fewer "good ol' boy" lobbyists, and many lobbyists are now full-time professionals. The regulation of lobbying is addressed in greater detail below.

How Representative Is the Interest Group System?

Participation in the United States has never been equal; wealth and education, components of socioeconomic status, are strong predictors of political engagement.[17] We already discussed how wealth can help overcome collective action problems, but lack of wealth also serves as a barrier to participation more generally. These types of barriers pose challenges, making it less likely for some groups than others to participate.[18] Some institutions, including large corporations, are more likely to participate in the political process than others, simply because they have tremendous resources. And with these resources, they can write a check to a political campaign or hire a lobbyist to represent their organization. Writing a check and hiring a lobbyist are unlikely options for a disadvantaged group.

Individually, the poor may not have the same opportunities to join groups.[19] They may work two jobs to make ends meet and lack the free time necessary to participate in politics. Further, there are often financial barriers to participation. For someone who punches a timeclock, spending time with political groups may be costly and paying dues may be a hardship. Certainly, the poor are unable to hire expensive lobbying firms to represent them. Minorities may also participate less often than the majority population, although when we control for wealth and education levels, we see fewer differences in participation rates. Still, there is a bias in participation and representation, and this bias extends to interest groups as well. Yet, there are interest groups successfully organized to represent poor citizens who can receive little or no support from the clients they serve.

For example, the National Welfare Rights Organization represents poor citizens who receive welfare benefits. The leader of this organization successfully raised large sums of money from wealthy liberals to sustain and nurture the organization, according to Jeffrey Berry and Clyde Wilcox (2009) from The Interest Group Society, 5th Edition. Likewise, Black Lives Matter (BLM) is a group that focused attention on poor, African American communities on issues of racial profiling, police brutality, and racial inequality in the U.S. criminal justice system. This movement and its affiliated national network receive limited funds from the citizens it seeks to represent, but it is sustained by wealthy donors according to Valarie Richardson of the *Washington Times* in her article "Black Lives Matter Cashes in with $100 Million from Liberal Foundations," August 16, 2016. Finally, people do not often participate because they lack the political skill to do so or believe that it is impossible to influence government actions.[20] They might also lack interest or could be apathetic.

Participation usually requires some knowledge of the political system, the candidates, or the issues. Younger people are often cynical about government's response to the needs of non-elites. How do these observations translate into the way different interests are represented in the political system?
Some pluralist scholars like David Truman suggest that people naturally join groups and that there will be a great deal of competition for access to decision-makers.[21] Scholars who subscribe to this **pluralist view** assume this competition among diverse interests is good for democracy.

Political theorist Robert Dahl argued that "all active and legitimate groups had the potential to make themselves heard."[22] Not all scholars accept the premise that all groups have the potential for access to decision-makers. The **elite critique** suggests that certain interests, typically businesses and the wealthy

are advantaged and that policies more often reflect their wishes than anyone else's. While most scholars agree that some interests do have advantages, others have questioned the overwhelming dominance of certain interests. Additionally, neo-pluralist scholars argue that certainly some interests are in a privileged position, but these interests do not always get what they want.[23] Instead, their influence depends on a number of factors in the political environment such as public opinion, political culture, competition for access, and the relevance of the issue.

Even wealthy interests do not always win if their position is at odds with the wish of an attentive public. And if the public cares about the issue, politicians may be reluctant to defy their constituents. If a prominent manufacturing firm wants fewer regulations on environmental pollutants, and environmental protection is a salient issue to the public, the manufacturing firm may not win in every exchange, despite its resource advantage. We also know that when interests mobilize, opposing interests often counter-mobilize, which can reduce advantages of some interests. Thus, the conclusion that businesses, the wealthy, and elites win in every situation is overstated.[24]

The graph below shows lobbying expenditures by interests from a variety of sectors during 2016. A few notable observations may be drawn from the chart. First, large sums of money are spent in lobbying by different interests. Second, many of these are business sectors including the real estate sector, the insurance sector, and the health care industry.

Considering the changing environment concerning federal policy in health care and insurance, it should probably not be that surprising those high lobbying expenditures occurred in those sectors.

Lobbying Expenditures Ranked by Sector: 2016 Expenditures	
Sector	**Total**
Health	$515,412,528
Miscellaneous Business	$496,774,545
Finance/Insurance/Real Estate	$493,065,576
Communications/Electronics	$370,177,686
Energy/Natural Resources	$301,437,899
Transportation	$227,159,245
Other	$197,767,762
Ideology/Single-Issue	$129,576,658
Agribusiness	$127,262,998
Construction	$53,332,072
Labor	$47,126,000

Chart 5.5 Lobbying Expenditures

The chart above shows the dollar amounts contributed from lobbying expenditures ranked by sector during the 2016 election cycle, as reported to the Federal Election Commission. (Credit: Center for Responsible Politics, Sector Totals, May 3, 2017)

Influence in Elections

Many people criticize the huge amounts of money spent in politics. Some argue that interest groups have too much influence on who wins elections, while others suggest influence is also problematic when interests try to sway politicians in office. There is little doubt that interest groups often try to achieve their objectives by influencing elections and politicians but discovering whether they have succeeded in changing minds is challenging because they tend to support those who already agree with them.

Interest groups support candidates who are sympathetic to their views in hopes of gaining access to them once they are in office.[28] For example, an organization like the NRA will back candidates who support Second Amendment rights. Both the NRA and the Brady Campaign to Prevent Gun Violence (an interest group that favors background checks for firearm purchases) have grading systems that evaluate candidates and states based on their records of supporting these organizations.[29]

To garner the support of the NRA, candidates must receive an A+ rating for the group. In much the same way, Americans for Democratic Action, a liberal interest group, and the American Conservative Union, a conservative interest group, both rate politicians based on their voting records on issues these organizations view as important.[30]

These ratings, and those of many other groups, are useful for interests and the public in deciding which candidates to support and which to oppose. Incumbents have electoral advantages in terms of name recognition, experience, and fundraising abilities, and they often receive support because interest groups want access to the candidate who is likely to win.

Some interest groups will offer support to the challenger, particularly if the challenger better aligns with the interest's views or the incumbent is vulnerable. Sometimes, interest groups even hedge their bets and give to both major party candidates for office in the hopes of having access regardless of who wins.

Some interest groups work to form **political action committees** (PACs), groups that collect funds from donors and distribute them to candidates who support their issues. As the chart below makes apparent, many large corporations like Honeywell International, AT&T, and Lockheed Martin form PACs to distribute money to candidates.[31] Other PACs are either politically or ideologically oriented.

For example, the MoveOn.org PAC is a progressive group that formed following the impeachment trial of President Bill Clinton, whereas GOPAC is a Republican PAC that promotes state and local candidates of that party.

PACs are limited in the amount of money that they can contribute to individual candidates or to national party organizations; they can contribute no more than $5,000 per candidate per election and no more than $15,000 a year to a national political party. Individual contributions to PACs are also limited to $5,000 a year.

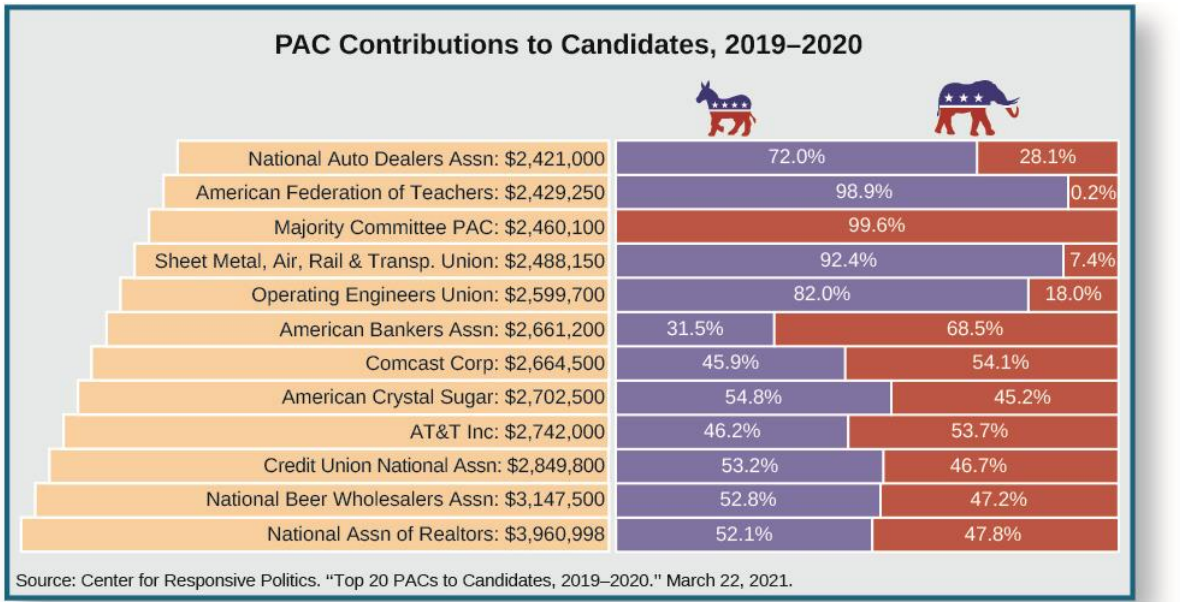


Chart 5.6 Bar Graph Illustrating Political Action Committee Contributions to Candidates

Corporations and associations spend large amounts of money on elections via affiliated PACs. This chart reveals the amount donated to Democratic (blue) and Republican (red) candidates by the top ten PACs during the most recent election cycle.

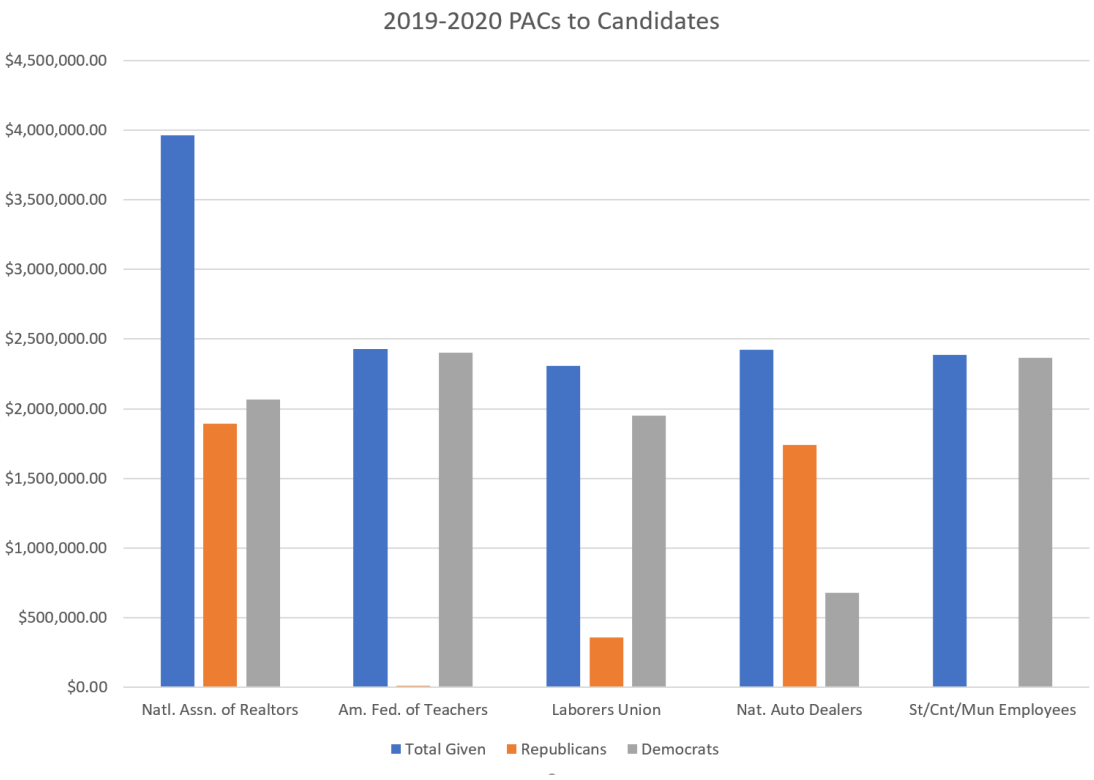


Figure 1 Chart 5.7 Bar Graph on Contributions to Candidates from Political Action Committees (Credit: OpenSecrets.org; "Top 20 PACs to Candidates, 2019-2020")

PACs through which corporations and unions can spend virtually unlimited amounts of money on behalf of political candidates are called super PACs.[32] As a result of a 2010 Supreme Court decision, *Citizens United v. Federal Election Commission*, there is no limit to how much money unions or corporations can donate to super PACs. Unlike PACs, however, super PACs cannot contribute money directly to individual candidates. If the 2022 elections were any indication, super PACs will continue to spend large sums of money to influence future election results.

Influencing Governmental Policy

Interest groups support candidates to have access to lawmakers once they are in office. Lawmakers, for their part, lack the time and resources to pursue every issue; they are policy generalists. Therefore, they (and their staff members) rely on interest groups and lobbyists to provide them with information about the technical details of policy proposals, as well as about fellow lawmakers' stands and constituents' perceptions. These **voting cues** give lawmakers an indication of how to vote on issues, particularly those with which they are unfamiliar. But lawmakers also rely on lobbyists for information about ideas they can champion and that will benefit them when they run for reelection.[33]

Interest groups likely cannot target all 535 lawmakers in both the House and the Senate, nor would they wish to do so. There is little reason for the Brady Campaign to Prevent Gun Violence to lobby members of Congress who vehemently oppose any restrictions on gun access. Instead, the organization will often contact lawmakers who are amenable to some restrictions on access to firearms. Thus, interest groups first target lawmakers they think will consider introducing or sponsoring legislation.

Second, they target members of relevant committees.[34] If a company that makes weapons systems wants to influence a defense bill, it will lobby members of the Armed Services Committees in the House and the Senate or the House and Senate appropriations committees if the bill requires new funding. Many members of these committees represent congressional districts with military bases, so they often sponsor or champion bills that allow them to promote policies popular with their districts or state. Interest groups attempt to use this to their advantage.

They also conduct strategic targeting because legislatures function by respectfully considering fellow lawmakers' positions. Since lawmakers cannot possess expertise on every issue, they defer to their trusted colleagues on issues with which they are unfamiliar. Targeting committee members also allows the lobbyist to inform other lawmakers indirectly.

In the highly decentralized decision-making environment of the U.S. Congress, it is understandable that interest groups will focus considerable attention on standing committees, which are set up or designated by subject areas. Since interest group politics are often characterized by whether groups have access to decision-makers and how effectively these groups may participate in the policy-making process, congressional committee-- related to the subject area of importance to an interest group--becomes a priority of lobbying efforts.

Scholars have suggested that two distinct patterns may exist in the relationships between interest groups, standing congressional committees, and the related executive department. The relationship can be characterized as either an **iron triangle** or as an **issue network**.

The **iron triangle** relationship is a hypothetical arrangement among three elements (the corners of the triangle) an interest group, a congressional committee member or chair, and an agency within the bureaucracy, as noted by Frank R. Baumgartner and Beth L. Leech (1998) in *Basic Interests: The Importance of Groups in Political Science*.

Each element has a symbiotic relationship with the other two, and it is difficult for those outside the small, tightly knit triangular system to gain access. The congressional committee members, including the chair rely upon the interest group for policy information and political contributions, while the interest group needs both the committee members and staff and agency bureaucrats to work closely with them to advance some policy objectives. The agency needs the interest group for information, and they are dependent on the standing committee to provide appropriation to fund the agency's jobs and programs.

That is, this relationship is so strong that even the president may have less influence on the development of policy than those inside the triangle relationship. For example, if the agricultural standing committee and staff of the Department of Agriculture work closely with rice producers to advance mutual objectives, they are working in a closed environment limiting access for other groups and individuals who may have a stake in affected policy areas.

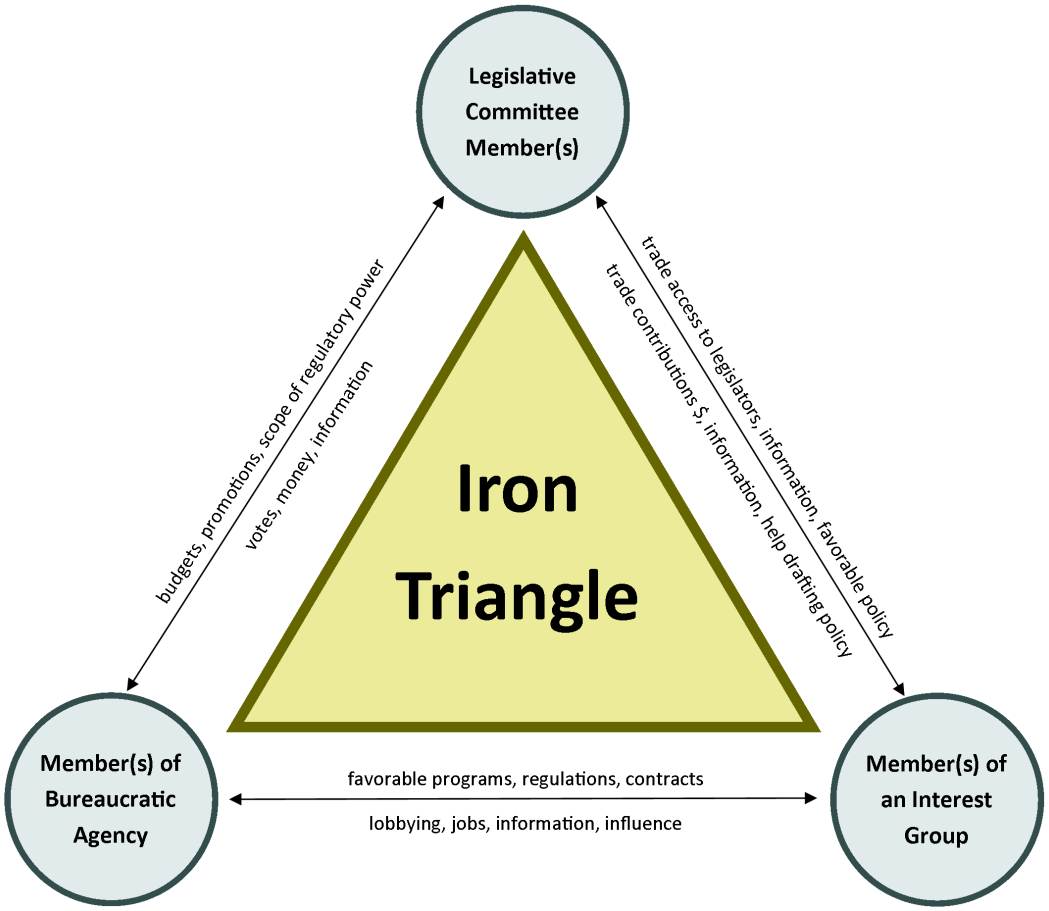


Chart 5.8 Illustration of Iron Triangle

An alternate explanation of the arrangement of duties carried out in each policy area by interest groups, legislators, and agency bureaucrats may be known as an **issue network**. Such an arrangement includes many different interests and political actors that work together to address an issue of policy as noted by Hugh Heclo in his article titled "Issue Networks and the Executive Establishment" from *The New American Political System* (1984) edited by Anthony King.

For example, lobbyists of various associations representing parts of higher education might all have a strong interest in federal student aid policy; but they might have differences of opinion on how this policy should be implemented. In additions, others such as the president or university research scholars, those outside very narrow and tight interested policy communities, often seek to influence federal financial aid policy.

In fact, issue networks can be quite large in the number of actors and many studies have demonstrated that the issue network model is a more accurate description of interest group relationships with Congress and the executive branch, as noted by Jeffrey Berry and Clyde Wilcox in their work *The Interest Group Society.*

Third, interest groups target lawmakers when legislation is on the floor of the House and/or Senate, but again, they rely on the fact that many members will defer to their colleagues who are more familiar with a given issue.

Finally, since legislation must past both chambers in identical form, interest groups may target members of the conference committees whose job it is to iron out differences across the chambers. At this negotiation stage, a 1 percent difference in, say, the corporate income tax rate could mean millions of dollars in increased or decreased revenue or taxation for various interests.

WASHINGTON, DC – JANUARY 25: Anti-abortion protesters attend the March for Life on January 25, 2013 in Washington, DC. The pro-life gathering is held each year around the anniversary of the Roe v. Wade Supreme Court decision. (Credit: OpenStax; Brendan Hoffman/Getty Images).



Image 5.9 Photo of Pro-Life Protesters

Interest groups also target the budgetary process in order to maximize benefits to their group. In some cases, their aim is to influence the portion of the budget allocated to a given policy, program, or policy area. For example, interests for groups that represent the poor may lobby for additional appropriations for various welfare programs; those interests opposed to government assistance to the poor may lobby for reduced funding to certain programs. It is likely that the legislative liaison for your university or college spends time trying to advocate for budgetary allocations in your state.

Once legislation has been passed, interest groups may target the executive branch of government, whose job is to implement the law. Interest groups are extremely interested and actively involved in the rule making process and directly lobby executive agencies seeking rules that are favorable to their group's interests. The U.S. Department of Veterans Affairs has some leeway in providing care for military veterans, and interests representing veterans' needs may pressure this department to address their concerns or issues. Other entities within the executive branch, like the Securities and Exchange Commission, which maintains and regulates financial markets, are not designed to be responsive to the interests they regulate, because to make such a response would be a conflict of interest. Interest groups may lobby the executive branch on executive, judicial, and other appointments that require Senate confirmation. As a result, interest group members may be appointed to positions in which they can influence proposed regulation of the industry of which they are a part.



Image 5.10 Photo of Protestors for Marriage Equality

Members of the Human Rights Campaign, an interest that supports LGBT rights, march toward the Supreme Court on June 26, 2015, the day that the Obergefell v. Hodges decision is announced. (Credit: OpenStax; modification of work by Matt Popovich)

In addition to lobbying the legislative and executive branches of government, many interest groups also lobby the judicial branch. Lobbying the judiciary takes two forms, the first of which was mentioned above.

This is lobbying the executive branch about judicial appointments the president makes and lobbying the Senate to confirm these appointments. The second form of lobbying consists of filing amicus briefs, which are also known as "friend of the court" briefs. These documents present legal arguments stating why a given court should take a case and/or why a court should rule a certain way.

In *Obergefell v. Hodges* (2015), the Supreme Court case that legalized same-sex marriage nationwide, numerous interest groups filed amicus curiae briefs.[35] For example, the Human Rights Campaign filed a brief arguing that the Fourteenth Amendment's due process and equal protection clauses required that same-sex couples be afforded the same rights to marry as opposite-sex couples. In a 5–4 decision, the U.S. Supreme Court agreed. Measuring the effect of interest groups' influence is somewhat difficult because lobbyists support lawmakers who would likely have supported them in the first place.

Examine websites for the **American Conservative Union** and **Americans for Democratic Action** that compile legislative ratings and voting records. On what issues do these organizations choose to take positions? Where do your representatives and senators rank according to these groups? Are these rankings surprising?

Interest Groups: Questions to Consider

1. Why are there two major theories about why interest groups are formed?
2. What are some ways to overcome collective action problems?
3. Why do some groups have an easier time overcoming collective action problems?
4. What does interest group participation provide to citizens?
5. Why do lower-income groups not participate more in the interest group system?
6. What are some barriers to participation?
7. How do interest groups lobby the judicial branch?
8. How do interest groups and their lobbyists decide which lawmakers to lobby? Where do they do so?

1. *One theory is that interest groups form naturally, when there is a disturbance in the economic, social, and political environment. Another theory is that interest groups form because of effective leadership that organizes the group notwithstanding any event or disturbance.*
2. *interest groups provide both material financial incentives and intangible incentives to members to remain with the group*
3. *some groups may require membership in order to participate in the professions, such as the American Bar Association for lawyers*
4. *organized representation to advance a policy position; working with others, there is more influence than working alone*
5. *lack of time; lack of means; lack of awareness of potential negative impact*
6. *money, time, accessibility challenges, etc.*
7. *bring a suit in a court of law; file an amicus curiae brief, etc.*
8. *question for debate, but Interest groups likely cannot target all lawmakers in both the House and the Senate. In the highly decentralized decision-making environment of the U.S. Congress, it is understandable that interest groups will focus considerable attention on standing committees, which are set up by subject areas. Interest groups also target the budgetary process in order to maximize benefits to their group*

Terms to Remember

disturbance theory—the theory that an external event can lead to interest group formation

fragmentation–the result when a large interest group develops diverging needs

free rider problem–the situation that occurs when some individuals receive benefits (get a free ride) without helping to bear the cost

grassroots movement–a political movement that often begins from the bottom up, inspired by average citizens concerned about a given issue

issue network—a loosely-knit and potentially large community, sometimes in conflict, that consists of various interests about a particular policy issue; includes representatives from interest groups, members of Congress and congressional staff, bureaucratic agency staff, and many other outside policy experts interested in the policy; network is relatively open to outside influence

interest group entrepreneur—interest group organizer or leader associated with the theory that interest group formation happens as the result of a successful organizer, not simply an external event

iron triangle–a narrow and tightly-knit group consisting of congressional committees, interest groups, and the bureaucracy, which is relatively closed to outside influence

voting cues–sources—including fellow lawmakers, constituents, and interest groups—that lawmakers often use to help them decide how to vote, especially on unfamiliar issues

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5.3 Interest Groups: How are they regulated?



Image 5.11 Photo of Sign at the Capitol

Photo of sign "No Lobbyists Beyond This Point"
(Credit: U.S. Term Limits at https://www.termlimits.com/do-lobbyists-and-special-interests-like-term-limits/)

Learning Objectives

- Identify the various court cases, policies, and laws that outline what interest groups can and cannot do.
- Evaluate the arguments for and against whether contributions are a form of freedom of speech.

Chart 5.9 Learning Objectives on Court Cases and Policies on Lobbying

As we noted earlier in the chapter, James Madison viewed factions as a necessary evil and thought preventing people from joining together would be worse than any ills groups might cause. The First Amendment guarantees, among other things, freedom of speech, petition, and assembly. However, people have different views on how far this freedom extends. For example, should freedom of speech as afforded to individuals in the U.S. Constitution also apply to corporations and unions? To what extent can and should government restrict the activities of lobbyists and lawmakers, limiting who may lobby and how they may do it?

Interest Groups and Free Speech

Most people would agree that interest groups have a right under the Constitution to promote a point of view. What people do not necessarily agree upon, however, is the extent to which certain interest group and lobbying activities are protected under the First Amendment.

In addition to free speech rights, the First Amendment grants people the right to assemble. We saw above that pluralists even argued that assembling in groups is natural and that people will gravitate toward

others with similar views. Most people acknowledge the right of others to assemble to voice unpopular positions, but this was not always the case. At various times, groups representing racial and religious minorities, communists, and members of the LGBT community have had their First Amendment rights to speech and assembly curtailed. And as noted above, organizations like the ACLU support free speech rights regardless of whether the speech is popular.

Today, the debate about interest groups often revolves around whether the First Amendment protects the rights of individuals and groups to give money, and whether government can regulate the use of this money. In 1971, the Federal Election Campaign Act was passed, setting limits on how much presidential and vice-presidential candidates and their families could donate to their own campaigns.[1] The law also allowed corporations and unions to form PACs and required public disclosure of campaign contributions and their sources. In 1974, the act was amended to limit the amount of money spent on congressional campaigns. The amended law banned the transfer of union, corporate, and trade association money to parties for distribution to campaigns.

In *Buckley v. Valeo* (1976), the Supreme Court upheld Congress's right to regulate elections by restricting contributions to campaigns and candidates. However, at the same time, it overturned restrictions on expenditures by candidates and their families, as well as total expenditures by campaigns.[2] In 1979, an exemption was granted to get-out-the vote and grassroots voter registration drives, creating what has become known as the soft-money loophole; **soft money** was a way in which interests could spend money on behalf of candidates without being restricted by federal law. To close this loophole, Senators John McCain and Russell Feingold sponsored the Bipartisan Campaign Reform Act in 2002 to ban parties from collecting and distributing unregulated money.

Some continued to argue that campaign expenditures are a form of speech, a position with which two recent Supreme Court decisions are consistent. The *Citizens United v. Federal Election Commission*[3] and the *McCutcheon v. Federal Election Commission*[4] cases opened the door for a substantially greater flow of money into elections. *Citizens United* overturned the soft money ban of the Bipartisan Campaign Reform Act and allowed corporations and unions to spend unlimited amounts of money on elections. Essentially, the Supreme Court argued in a 5–4 decision that these entities had free speech rights, much like individuals, and that free speech included campaign spending. The *McCutcheon* decision further extended spending allowances based on the First Amendment by striking down aggregate contribution limits. These limits put caps on the total contributions allowed and some say have contributed to a subsequent increase in groups and lobbying activities.



Read about the **rights** that corporations share with people.
Should corporations have the same rights as people?

Regulating Lobbying and Interest Group Activity

While the Supreme Court has paved the way for increased spending in politics, lobbying is still regulated in many ways.[5] The 1995 Lobbying Disclosure Act defined who can and cannot lobby, and requires

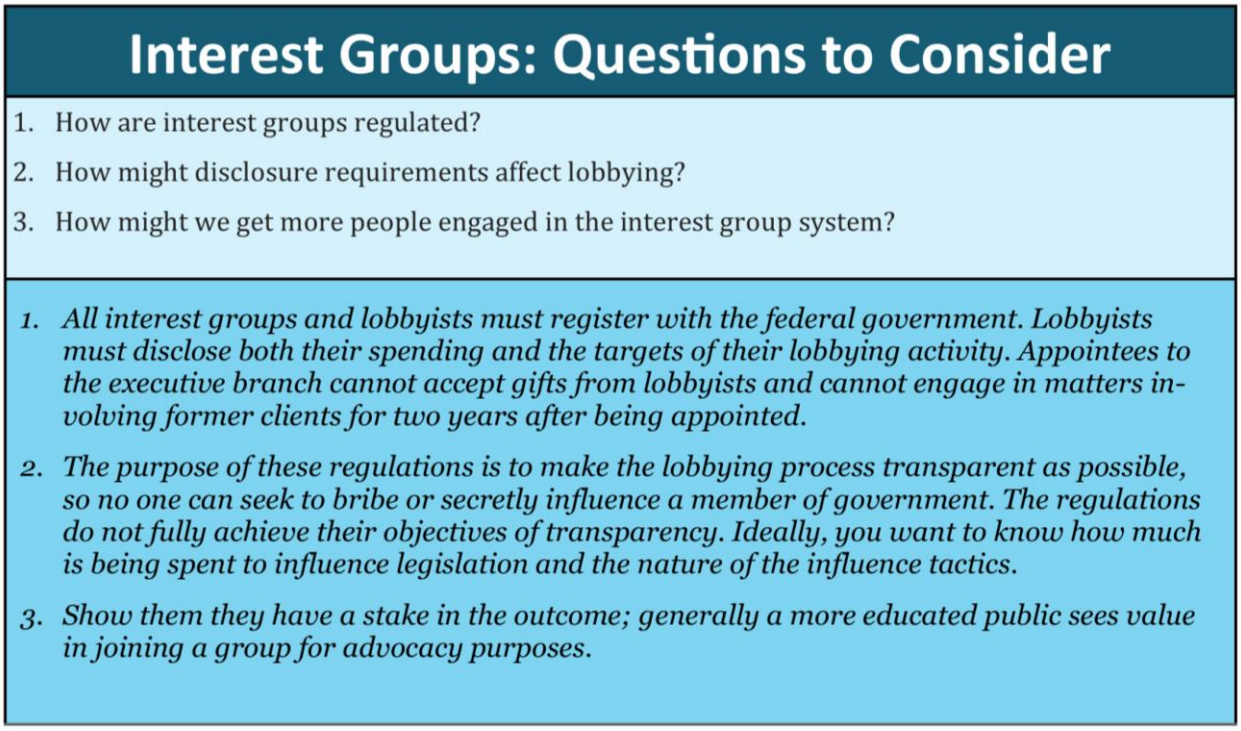
lobbyists and interest groups to register with the federal government.[6] The Honest Leadership and Open Government Act of 2007 further increased restrictions on lobbying. For example, the act prohibited contact between members of Congress and lobbyists who were the spouses of other Congress members.

The laws broadened the definition of lobbyist and require detailed disclosure of spending on lobbying activity; including who is lobbied and what bills are of interest. In addition, President Obama's Executive Order 13490 prohibited appointees in the executive branch from accepting gifts from lobbyists and banned them from participating in matters, including the drafting of any contracts or regulations, involving the appointee's former clients or employer for a period of two years. The states also have their own registration requirements, with some defining lobbying broadly and others more narrowly.

Second, the federal and state governments prohibit certain activities like providing gifts to lawmakers and compensating lobbyists with commissions for successful lobbying. Many activities are prohibited to prevent accusations of vote buying or currying favor with lawmakers. Some states, for example, have strict limits on how much money lobbyists can spend on lobbying lawmakers, or on the value of gifts lawmakers can accept from lobbyists. According to the Honest Leadership and Open Government Act, lobbyists must certify that they have not violated the law regarding gift giving, and the penalty for knowingly violating the law increased from a fine of $50,000 to one of $200,000.

Also, **revolving door laws** also prevent lawmakers from lobbying government immediately after leaving public office. Members of the House of Representatives cannot register to lobby for a year after they leave office, while senators have a two-year "cooling off" period before they can officially lobby. Former cabinet secretaries must wait the same period after leaving their positions before lobbying the department of which they had been the head. These laws are designed to restrict former lawmakers from using their connections in government to give them an advantage when lobbying. Still, many former lawmakers do become lobbyists, including former Senate majority leader Trent Lott and former House minority leader Richard Gephardt. Third, governments require varying levels of disclosure about the amount of money spent on lobbying efforts. The logic here is that lawmakers will think twice about accepting money from controversial donors. The other advantage to disclosure requirements is that they promote transparency. Many have argued that the public has a right to know where candidates get their money. Candidates may be reluctant to accept contributions from donors affiliated with unpopular interests such as hate groups. This was one of the key purposes of the **Lobbying Disclosure Act** and comparable laws at the state level.

Finally, there are penalties for violating the law. Lobbyists and, in some cases, government officials can be fined, banned from lobbying, or even sentenced to prison. While state and federal laws spell out what activities are legal and illegal, the attorneys general and prosecutors responsible for enforcing lobbying regulations may be understaffed, have limited budgets, or face backlogs of work, making it difficult for them to investigate or prosecute alleged transgressions. While most lobbyists do comply with the law, exactly how the laws alter behavior is not completely understood. We know the laws prevent lobbyists from engaging in certain behaviors, such as by limiting campaign contributions or preventing the provision of certain gifts to lawmakers, but how they alter lobbyists' strategies and tactics remains unclear.



TERMS TO REMEMBER

revolving door laws–laws that require a cooling-off period before government officials can register to lobby after leaving office

soft money–money that interests can spend on behalf of candidates without being restricted by federal law

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6.1 Political Parties: Organization & Function

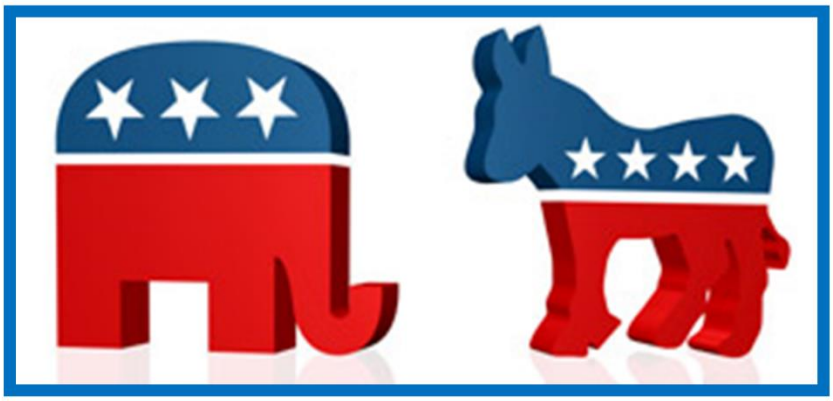


Image 6.1 Visual Representations of Political Party Symbols

Symbols of the two major political parties in the U.S.: the Republican Party symbolized by the elephant and the Democratic Party by the donkey. (Credit: modification of work–Rooster Teeth "Political Party Symbol Change" at http://roosterteeth.com/forum/politics-%26-current-events/topic/2232075)

Learning Objectives
• Describe political parties and what they do. • Describe the role of political parties in the nomination process. • Describe party organization at the local, county, state and national levels. • Describe the effects of winner-take-all elections. • Compare plurality and proportional representation. • Describe the institutional, legal, and social forces that limit the number of political parties.

Chart 6.1 Learning Objectives on the Role of Political Parties

While people love to criticize political parties, the reality is that the modern political system in a representative republic could not exist without them.

Collective action problems are very common in societies, as individuals, groups and entire societies try to solve problems or distribute scarce resources. There are many groups, all with opinions about what should be done and a desire to influence policy. But at some point, a society—operating in a representative republic--must find a way of taking all these opinions and turning them into solutions to real problems. That is where political parties come in. They offer the policy choices to address societal problems directly linked to potential policy makers who once elected will carry out solutions.

Political parties are organized groups of people with similar ideas or ideology about the function and scope of government, with shared policy goals that work together to elect individuals to political office, to

create and implement policies, to further an agenda, and to gain control of the government and the policy-making process. Parties gain control over the government by winning elections with candidates they officially sponsor or **nominate** for positions in government. Political parties nominate candidates to run many levels of government including the national level (Congress and the presidency) as well as state and local levels. They also organize political campaigns to encourage participation in the political process and mobilize voters for those candidates that they **nominate**.

In *Federalist No. 10*, written in the late eighteenth century, James Madison noted that the formation of self-interested groups, which he called factions, was both natural and inevitable in any society. Madison wrote in No. 10, "[…] liberty, which is essential to political life, […] nourishes faction, […] the latent causes of faction are thus sown in the nature of man […] a zeal for different opinions concerning […] government […] an attachment to different leaders ambitiously contending for pre-eminence and power […] have, in turn, divided mankind […]." Interest groups and political parties are two of the most easily identified forms of faction in the United States.[1]

Political parties are points of access/linkage institutions available to the public, though they are not themselves government institutions. Neither interest groups nor political parties are directly mentioned in the U.S. *Constitution*. Their existence, however, is protected by the Bill of Rights' First Amendment guarantee of freedom of assembly.

Where interest groups often work indirectly to influence our leaders, political parties are organizations that try to directly influence public policy through **nominating** and officially sponsoring members who seek to win and hold public office. This is a key difference. Interest groups do not officially nominate or nominate candidates for public office, although they may support them politically and even contribute dollars to their campaign.

Parties accomplish this by identifying and aligning sets of issues that are important to voters in the hopes of gaining support during elections. In this respect, parties provide **policy choices** to the electorate, something they are proposing that is in sharp contrast to their opposition.

These positions on these critical issues are often presented in campaign documents or political advertising. During a national presidential campaign, they also frequently reflect the **party platform**, which is adopted at each party's presidential nominating convention every four years.

If successful, a party can create a large enough electoral coalition to gain control of the government. Once in power, the party is much more likely to be able to deliver, to its voters, the policy preferences they choose by electing its partisans to the government. Political parties **coordinate** among those who win public office from their party in order to work together to carry out party policy preferences.

You can read the full platform of the **Republican Party** and the **Democratic Party** at their respective websites. Or, check out the Green Party at http://www.gp.org/platform and the Libertarian Party at https://www.lp.org/platform/.

List of Functions	Description of the Functions of Political Parties
nomination	officially sponsor individuals to elected office/with shared political beliefs
organization	organize political campaigns to win public office for nominated individuals
policy choices	provide clear choices to voters of individuals nominated for office/differing viewpoints
coordination	coordinate among members elected to office; develop public policy following principles

Chart 6.2 Functions of Parties and Descriptions of the Functions

If the purpose of political parties is to work together to create and implement policies by winning elections, how do they accomplish this task and who participates in the process? The answer was straightforward in the early days of the republic when parties were little more than electoral coalitions an elite political class, mostly in Congress, designed to help win House elections and the presidency focused on the national level of politics and issues.

However, as political parties realized that political success at the national level was dependent on political success at the state and local level, strategies and tactics changed. Moreover, changes in the electorate with broaden political participation in voting, forced the parties to become far more complex and mass organizations that operate on all levels in the U.S. political arena. Modern political parties consist of three components identified by political scientist V. O. Key: 1) the party organization (which helps to coordinate everything the party does in its quest to win elections for political office); 2) the party in the electorate (the voters); and 3) the party in office (the office holders). To understand how these various elements work together, we begin by thinking about a key first step in influencing policy—winning elections.

Nomination Stage and the Political Party Role

Although the *Constitution* explains how candidates for national office are elected, it is silent on how those candidates are selected to run or **nominated**. Political parties have taken on the role of selecting or officially sponsoring nominees for offices, such as the presidency and seats in the Senate and the House of Representatives.

Once nominated, the candidate is considered the official representative of the party for that public office, and the party supports that candidacy with the voters. Because there are no national laws and minimal national guidelines, there is much variation in the nomination process. States pass election laws and regulations, choose the selection method for party nominees, and schedule the election, but the process

also greatly depends on views of the respective political parties at the state level. States, through their legislatures, often influence the nomination method by paying for an election to help parties identify the nominee the voters prefer. Many states fund elections because they can hold several nomination races at once. In 2020, many voters–at the same time–had to choose a presidential nominee, U.S. Senate nominee, House of Representatives nominee, and state-level legislature nominee for their parties.

Primary Elections

The most common method of picking a party nominee for state, local, and presidential contests is the **primary electio**n. In the primary election, voters cast a ballot to indicate which candidate they desire for the party nominee. The United States is unique among governments world-wide in using the election primary process as the driving force to decide who will be the nominee of a particular party. In most other countries, this decision of who to officially sponsor as a party nominee is made by small insider groups of party officials either by some form of central committee or convention.

Despite the ease of voting using a ballot, primary elections have several rules and variations that can still cause confusion for citizens. In a **closed primary**, only members of the political party selecting nominees may vote. A registered Green Party member, for example, is not allowed to vote in the Republican or Democratic primary. Parties often prefer this method, because it ensures the nominee is picked by voters who legitimately support the party.

An **open primary** allows all voters to vote. In this system, a Green Party member can pick either a Democratic or Republican ballot when voting. **Modified primary** (sometimes called semi-closed) allows independent voters, who are not affiliated with any political party, to enter the party primary of their choice.

For state-level office nominations, or the nomination of a U.S. Senator or House member, two states—California and Washington--use the top-two primary method. A **top-two primary**, sometimes called a **jungle primary**, pits all candidates against each other, regardless of party affiliation. The two candidates with the most votes become the final candidates for the general election. Thus, two candidates from the same party could run against each other in the general election. In one California congressional district, for example, four Democrats and two Republicans all ran against one another in the June 2012 primary.

The two Republicans received the most votes, so they ran against one another in the general election in November.[2] More often, however, the top-two system is used in state-level elections for non-partisan elections, in which none of the candidates are allowed to declare a political party.

The Caucus System

Despite the common use of the primary election system, in 2016 fourteen some states used a caucus system.[3] A **caucus** is a meeting of party members in which decisions about party nominees are made

more informally than in primary election process. Caucuses are a form of town hall meeting at which voters get together to voice their preferences, rather than voting individually throughout the day. Caucuses are less expensive than primaries because they rely on voting methods such as dropping marbles in a jar, placing names in a hat, standing under a sign bearing the candidate's name, or taking a voice vote. Volunteers record the votes and no poll workers need to be trained or compensated. Moreover, like primary elections, caucuses can either be closed, open, or modified; thus, caucuses can sometimes be open to voters not aligned with the political party holding the caucus meeting.
The caucus meeting system receives the most national media attention when it is part of the presidential nomination process. During the presidential nomination process, voters at the caucus select **delegates**, who represent their choice at the party's state- or national-level nominating convention. Very often this is a multiple step process whereby delegates selected at the first level of the caucus system then select delegates to conventions at the state level who eventually select delegates pledged to the national convention to cast the official vote for that state's choice for party nominee.

The Iowa Republican Presidential Caucus kicks-off the presidential nomination process generally in late January of a presidential election year and requires its members to go to special meeting places to express their preferences for a nominee and delegates pledged to a candidate. Although abandoned in 2024, the early Iowa Democratic presidential caucus was well-known for its spirited nature.

The caucus meeting system has its proponents and opponents. Many argue that it is more interesting than the primary and brings out more sophisticated voters, who then benefit from the chance to debate the strengths and weaknesses of the candidates. The caucus system is also more transparent than ballots. The local party members get to see the election outcome and pick the delegates who will represent them at the national convention.

Opponents point out that caucus meetings take two to three hours and are intimidating to less experienced voters. Voter turnout for a caucus is generally 20 percent lower than for a primary.[4]

The Nomination Schedule

Regardless of which nominating system, the primary election or caucus, the states and parties choose, states must also determine which day they wish to hold their nomination. When the nominations are for state-level office, such as governor, the state legislatures receive little to no input from the national political parties. In presidential election years, however, the national political parties establish rules to govern the primary or election process and how candidates can acquire the necessary number of pledged delegates to the national convention to be officially nominated by their party.

Finally, the order in which the primary elections and caucus selections are held shape the overall race.[5] In the past, only Iowa, New Hampshire, and South Carolina were given express permission by the national parties to hold presidential primaries or caucuses to allocate convention delegates in January or February. While this remains the schedule for the Republican party, the Democrat party national committee has established a preferred schedule with only South Carolina as an early primary state.

Notwithstanding the preferred Democrat party schedule, New Hampshire may still hold a Democrat primary since a mandated early date has been established by state law. On the other hand, the Iowa Democrat party has cancelled its caucus.

Generally, these three contests have played a major role in reducing the number of viable candidates running for the nomination with the relative ease of campaigning in smaller states.

In the past other states, especially large states like California, Florida, Michigan, and Wisconsin, often have been frustrated that they must wait to hold their presidential primary elections for delegates later in the season.

Their frustration is reasonable: candidates who do poorly in the first few primaries often drop out entirely, leaving fewer candidates to run in caucuses and primaries held later. In 2008, California, New York, and several other states disregarded the national party's guidelines and scheduled their primaries the first week of February.

In response, Florida and Michigan moved their primaries to January and many other states moved forward to March. This was not the first time states participated in **front-loading** and scheduled the majority of the primaries and caucuses at the beginning of the primary season. It was, however, one of the worst occurrences. When the national political parties want to prevent states from **front-loading,** they can change the state's delegate count, which increases or reduces the state's say in who becomes the presidential nominee. This may be the situation in New Hampshire in 2024 in the Democrat Party, although such punishments have not generally been carried out. The states recognize the calendar special status of those states holding January or February primaries or caucuses.

States have been **front-loading** since the 1976 presidential election, with the trend escalating from the 1992 election and later.[6] In the 2020 Democrat Party primary, 42% of pledged delegates were originally scheduled to be allocated by Super Tuesday. Although this schedule was somewhat modified because of the Covid-19 pandemic, it was still essentially front-loaded.

The first major strategy to front-load was to hold an early March "Super Tuesday" primary with multiple state contests on the same date. This practice has so expanded that in 2016 twelve states held primaries on March 1 and sixteen states on Marcy 3, 2020. In fact, in 2020 two states with exceptionally large delegations—California and Texas—held their primaries on "Super Tuesday." Usually, after "Super Tuesday," there is a clear leader among nominees of their respective parties.

For example, in 2020, Joe Biden had nearly an insurmountable lead among delegates. However, this is not always the case. The 2016 Republican presidential nomination campaign was somewhat unusual in that the early March primaries had not really established a clear favorite, although Donald Trump, the eventual nominee, had more pledged delegates than other candidates. This situation of no clear leader also occurred in the 2008 Democratic nomination battle between Barack Obama and Hillary Clinton.

These rules and guidelines differ by party and can change over time. California, the state with the most Democrats, sent 548 delegates to the 2016 Democratic National Convention, while Wyoming, with far fewer Democrats, sent only 18 delegates.

The national committees of each party do not dictate to the states whether they should have a primary or a caucus or the voting eligibility rules (open, close, modified) that govern the state presidential nomination process. They have made rules on how the delegates should be divided among those who participate in the contest. That is, in the Democratic Party, candidates win delegates to the national convention in proportion to the outcome of the primary or caucus. This principle of proportional division of winners of 15% of the vote, governs all nomination contests in the Democratic Party. The rules are different in the Republican Party, where they allow winner-take-all delegate outcomes for contests after March 15 but restrict earlier primaries before that date to proportional division of those receiving at least 15% of the votes. In 2020 in the highly contested Democratic Party Presidential Nomination, the rule of proportional division of delegates coupled with increased number of "front-loaded" primaries and caucuses, suggested to some observers that it might take longer to identify a nominee for the party. [7]

In the case of the Democratic Party in recent presidential nomination cycles, the national committee has set aside approximately 15% of delegates as guaranteed delegate spots for key party officials–known as "Super-Delegates." The Republican Party has no comparable set-aside provision. Therefore, in the Democratic Party nomination process an additional factor besides primaries and caucuses became important. That is, contenders for the 2016 party nomination had to seek support from 712 "Super-Delegates," who are not pledged to support the candidate who happened to win the primary in the state where they reside.

In 2020, the Democratic Party changed the rules so that the "super-delegates" could not vote at the national convention on the initial vote—thus not potentially undermining the vote in the primary or caucus in the state where they reside. Thus, in 2020, "super-delegates" would have played a role in deciding the nominee of the Democratic Party only if no single candidate at the start of the convention had a majority of the delegates allocated through the primaries or caucuses. In 2020, because Joe Biden already had a majority of delegates prior to the convention, any potential role for "super-delegates" was eliminated.

Changes in the Presidential Nominating Process

The rise of the presidential primary and caucus system as the main means by which presidential candidates are selected has had several anticipated and unanticipated consequences. For one, the campaign season has grown longer and more costly. In 1960, John F. Kennedy declared his intention to run for the presidency just eleven months before the general election. Compare this to 2020, where over 20 candidates announced their intention to run nearly two years before the 2020 general election. Today's long campaign seasons are seasoned with an increasing number of debates among contenders for the nomination. In 2016, when the number of candidates for the Republican nomination became large and unwieldy, two debates among them were held, in which only those candidates polling greater

support were allowed in the more important prime-time debate. The runners-up spoke in the other debate.

For the 2020 Democratic Party nomination, the national committee established rules to host a series of debates with the first occurring in June of 2019 in two debates with 10 candidates of the total of twenty participating in each debate.

Finally, the process of going straight to the people through primaries and caucuses has created some opportunities for party outsiders to rise. Neither Ronald Reagan nor Bill Clinton was especially popular with the party leadership of the Republicans or the Democrats (respectively) at the outset. The outsider phenomenon has been most clearly demonstrated, however, in the 2016 presidential nominating process, as those distrusted by the party establishment, such as Senator Ted Cruz and Donald Trump, who never before held political office, raced ahead of party favorites like Jeb Bush early in the primary process. Primaries offer tests of candidates' popular appeal, while state caucuses testify to their ability to mobilize and organize grassroots support among committed followers. Primaries also reward candidates in different ways, depending on the party rules and the date of the primary.

The rise of the primary has also displaced the convention itself as the place where party regulars choose their standard bearer. Once true contests in which party leaders fought it out to select a candidate, by the 1970s, party conventions often simply served to rubber-stamp the choice of the primaries. By the 1980s, the convention drama was gone, replaced by a long, televised commercial designed to extol the party's greatness. Without the drama and uncertainty, major news outlets have steadily curtailed their coverage of the conventions, convinced that few people are interested. The 2016 elections seem to support the idea that the primary process produces a nominee rather than party insiders. Outsiders Donald Trump on the Republican side and Senator Bernie Sanders on the Democratic side had much success despite significant concerns about them from party elites. Whether this pattern could be reversed in the case of a closely contested selection process remains to be seen.

The Political Party Role in the National Convention

Party conventions are typically held between June and September, with state-level conventions earlier in the summer and national conventions later. Conventions normally last four to five days, with days devoted to platform discussion and planning and nights reserved for speeches. Local media covers the speeches given at state-level conventions, showing speeches given by the party nominees for governor and lieutenant governor, and perhaps important guests or the state's U.S. senators. The national media covers the Democratic and Republican conventions during presidential election years, mainly showing the speeches. Some cable networks broadcast delegate voting and voting on party platforms.

Members of the candidate's family and important party members will generally speak during the first few days of a national convention, with the vice-presidential nominee speaking on the next-to-last night and the presidential candidate on the final night. The two chosen candidates will then hit the campaign trail for the general election.

The party with the incumbent president holds the later convention, so in 2020, the Republicans held their convention after the Democrats. However, due to the Covid-19 pandemic, both national party conventions were shorter, and many parts of the conventions were held in a virtual environment. Only time will tell whether longer conventions and a more traditional format will return.



Image 6.2 Photos from Party Conventions

Reince Priebus, then chairman of the Republican National Committee, opens the Republican National Convention in Tampa, Florida, on August 28, 2012 (a). Pageantry and symbolism, such as the flag motifs and political buttons shown on this Wisconsin attendee's hat (b), reign supreme during national conventions. (From OpenStax; Credit a, b: modification of work by Mallory Benedict/PBS NewsHour)

There are rarely surprises at the modern convention. Thanks to party rules, the nominee for each party is generally already clear. In 2008, John McCain had locked up the Republican nomination in March by having enough delegates, while in 2012, President Obama was an unchallenged incumbent and hence people knew he would be the nominee. The naming of the vice president is generally not a surprise either. Even if a presidential nominee tries to keep it a secret, the news often leaks out before the party convention or official announcement. In 2004, the media announced John Edwards was John Kerry's running mate. The Kerry campaign had not made a formal announcement, but an amateur photographer had taken a picture of Edwards' name being added to the candidate's plane and posted it to an aviation message board.

Despite the lack of surprises, there are several reasons to host traditional conventions. First, the parties require that the delegates officially cast their ballots. Delegates from each state come to the national party convention to publicly state who their state's voters selected as the nominee.

Second, delegates will bring state-level concerns and issues to the national convention for discussion. This list of issues that concern party members, like limiting abortions or removing restrictions on gun ownership, are called *planks*, and they will be discussed and voted upon by the delegates and party leadership at the convention. Just as wood planks make a platform, issues important to the party and party delegates make up the **party platform**.

The parties take the cohesive list of issues and concerns and frame the election around the platform. Candidates will try to keep to the platform when campaigning, and outside groups that support them, such as super PACs, may also try to keep to these issues.

The Party Organization: Formal Structure of Party Activists

A significant subset of American voters views their party identification as something far beyond simply a shortcut to voting. These individuals get more energized by the political process and have chosen to become more active in the life of political parties. They are part of what is known as the party organization. The **party organization** is the formal structure of the political party, and its active members are responsible for coordinating party behavior and supporting party candidates. It is a vital component of any successful party because it bears most of the responsibility for building and maintaining the party "brand." It also plays a key role in helping select, and elect, candidates for public office.

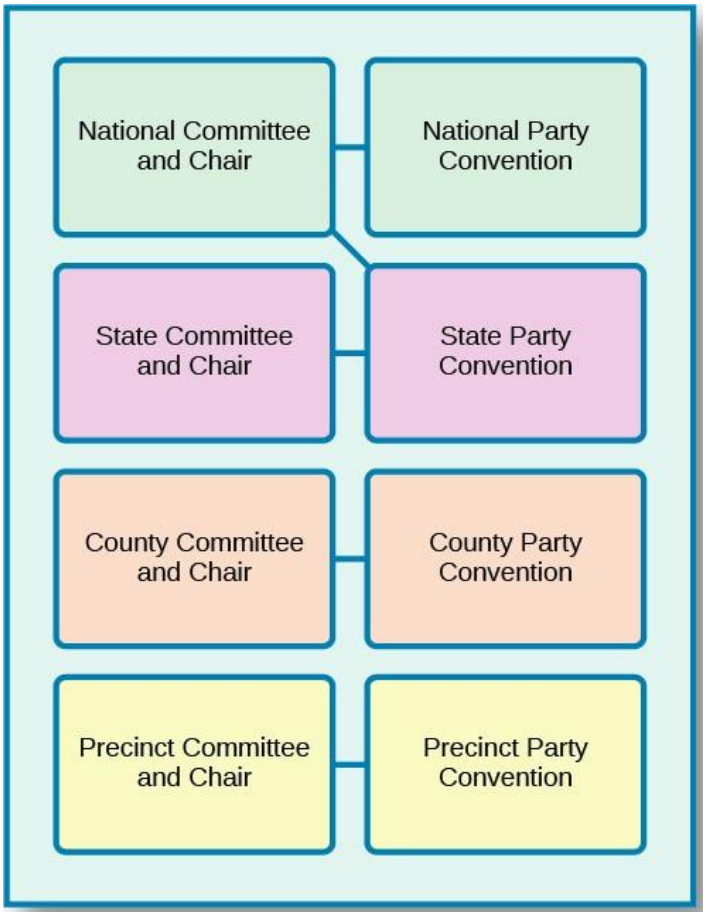


Chart 6.3 Illustrating Party Convention Structure

Political parties are bottom-up structures, with lower levels often responsible for selecting delegates to higher-level offices or conventions. Thus, even the county party can be said to be directed from smaller units, down to the precinct level. In some states, such as Texas, the county chairperson is selected by the precinct chairs who are themselves elected through primary elections of the party voters.

Local Organizations

Since winning elections is the first goal of the political party, it makes sense that the formal party organization mirrors the local-state-federal structure of the U.S. political system. While the lowest level of party organization is technically the **precinct**, many of the operational responsibilities for local elections fall upon the county-level organization. The county-level organization is in many ways the workhorse of the party system, especially around election time. This level of organization frequently takes on many of the most basic responsibilities of a democratic system, including identifying and mobilizing potential voters and donors, identifying and training potential candidates for public office, and recruiting new members for the party. County organizations are also often responsible for finding rank and file members to serve as volunteers on Election Day, either as officials responsible for operating the polls or as monitors responsible for ensuring that elections are conducted honestly and fairly. They may also hold regular meetings to provide members the opportunity to meet potential candidates and coordinate strategy. Of course, all this is voluntary and relies on dedicated party members being willing to pitch in to run the party.

State Organizations

Most of the county organizations' formal efforts are devoted to supporting party candidates running for county and city offices. But a fair amount of political power is held by individuals in statewide office or in state-level legislative or judicial bodies. While the county-level offices may be active in these local competitions, most of the coordination for them will take place in the **state-level organizations**. Like their more local counterparts, state-level organizations are responsible for key party functions, such as statewide candidate recruitment and campaign mobilization. Most of their efforts focus on electing high-ranking officials such as the governor or occupants of other statewide offices (e.g., the state's treasurer or attorney general) as well as candidates to represent the state and its residents in the U.S. Senate and the U.S. House of Representatives. The greater value of state- and national-level offices requires state organizations to take on several key responsibilities in the life of the party.



Visit the following **Republican** and **Democratic** sites to see what party organizations look like on the local level. Although these sites are for different parties in different parts of the country, they both inform visitors of local party events, help people volunteer to work for the party, and provide a convenient means of contributing to the party.

First, state-level organizations usually accept greater fundraising responsibilities than do their local counterparts. Statewide races and races for national office have become increasingly expensive in recent years. The average cost of a successful House campaign was $2.4 million in 2020; for Senate races, it was $27.2 million.[8] While individual candidates are responsible for funding and running their own races, it is typically up to the state-level organization to coordinate giving across multiple races and to develop the staffing expertise that these candidates will draw upon at election time. State organizations are also responsible for creating a sense of unity among members of the state party. Building unity can be very important as the party transitions from sometimes-contentious nomination battles to the all-important general election. The state organization uses several key tools to get its members working together towards a common goal. First, it helps the party's candidates prepare for state primary elections or caucuses that allow voters to choose a nominee to run for public office at either the state or national level.

Second, the state organization is also responsible for drafting a **state platform** that serves as a policy guide for partisans who are eventually selected to public office. These platforms are usually the result of a negotiation between the various coalitions within the party and are designed to ensure that everyone in the party will receive some benefits if their candidates win the election. Finally, state organizations hold a statewide convention at which delegates from the various county organizations come together to discuss the needs of their areas. The state conventions are also responsible for selecting delegates to the national convention.

The political platform adopted by an individual state organization will vary not only by party but also based upon the political culture of that state. In the 1960s, Daniel Elazar researched interviews, voting data, newspapers, and politicians' speeches. He determined that states had unique cultures and that different state governments instilled different attitudes and beliefs in their citizens, creating **political cultures**.

State political cultures can affect the ideology and opinions of those who live in or move to them. For example, opinions about gun ownership and rights vary from state to state. Polls show that 61 percent of all Californians, regardless of political party, stated there should be more controls on who owns guns.[9]

In contrast, in Texas, support for the right to carry a weapon is high. Fifty percent of self-identified Democrats—who typically prefer more controls on guns rather than fewer—said Texans should be allowed to carry a concealed weapon if they have a permit.[10] Within each political party, state political organizations will have different levels of strength and effectiveness reflecting not only the relevant strength of party identification in that state but also the number of public office holders from that state. Post 2016, for their part, Democrats surveying the condition of their party at the state level can see considerable weakness. According to Reid Epstein and Janet Hook of the *Wall Street Journal*, Democrats hold majorities in just 31 of 99 legislative chambers nationwide, having lost 958 seats since former president Obama took office in 2009. Just 43% of elected lawmakers in state legislatures are Democrats. They are less than a majority on state governorships. Therefore, it is not surprising that there has been a renewed effort to build stronger state organizations in the Democratic Party. Populist followers of Bernie Sanders have been mounting a sustained effort to work to take over the party from the bottom up. In fact, Sanders supporters seized control of state parties in Hawaii and Nebraska and have won party positions throughout the country.[11]

National Party Organization

The local and state-level party organizations are the workhorses of the political process. They take on most of the responsibility for party activities and are easily the most active participants in the party formation and electoral processes. They are also largely invisible to most voters. The average citizen knows very little of the local party's behavior unless there is a phone call or a knock on the door in the days or weeks before an election. The same is largely true of the activities of the state-level party. Typically, the only people who notice are those who are already actively engaged in politics or are being targeted for donations. But most people are aware of the presence and activity of the national party organizations for several reasons. First, many Americans are more interested in the topics discussed at the national level than at the state or local level.

A second reason for the prominence of the national organization is that it usually coordinates the grandest spectacles in the life of a political party–the national conventions, where they officially nominate the party nominee for president of the United States. People may see or read an occasional story about the meetings of the state committees or convention but pay little attention. But the **national conventions** organized and sponsored by the national-level party, can dominate the national discussion for several weeks in summer.[12]

National party conventions culminate in the formal nomination of the party nominees for the offices of president and vice president, and they mark the official beginning of the presidential competition between the two parties.

National conventions are not the spectacles they once were, and this fact is almost certainly having an impact on the profile of the national party organization. Both parties have come to recognize the value of the convention as a medium through which they can communicate to the average viewer. To ensure that they are viewed in the best possible light, the parties have worked hard to turn the public face of the convention into a highly sanitized, highly orchestrated media event.

Speakers are often required to have their speeches pre-screened to ensure that they do not deviate from the party line or run the risk of embarrassing the eventual nominee—whose name has often been known by all for several months. And while protests still happen, party organizations have becoming increasingly adept at keeping protesters away from the convention sites, arguing that safety and security are more important than First Amendment rights to speech and peaceable assembly. For example, protesters were kept behind concrete barriers and fences at the Democratic National Convention in 2004.[13]

With the advent of cable TV news and the growth of internet blogging, the major news outlets have found it unnecessary to provide the same level of coverage they once did. Between 1976 and 1996, ABC and CBS cut their coverage of the nominating conventions from more than fifty hours to only five. NBC cut its coverage to fewer than five hours.[14] One reason may be that the outcomes of nominating conventions are also typically known in advance, meaning there is no drama. Today, the nominee's acceptance speech is expected to be no longer than an hour, so it will not take up more than one block of prime-time TV programming.



Image 6.3 Photo of Barack Obama at the Democrat National Convention

U.S. President Barack Obama accepts the 2012 U.S Democratic presidential nomination during the final session of Democratic National Convention in Charlotte, North Carolina, September 6, 2012.
(Credit: REUTERS/Jim Young)

And even though the media is paying less attention, key insiders and major donors often use the convention as a way of gauging the strength of the party and its ability to effectively organize and coordinate its members.

They are also paying close attention to the rising stars who are given time at the convention's podium, to see which can connect with the party faithful.

Most observers credit Barack Obama's speech at the 2004 Democratic National Convention with bringing him to national prominence.[15] Although he was only a candidate for a U.S. Senate seat at the time, his address caught the attention of the Democratic establishment and ultimately led to his emergence as a viable presidential candidate just four years later.

The Two-Party System

Political parties exist for the purpose of winning elections in order to influence public policy. This requires them to build coalitions across a wide range of voters who share similar preferences. Winning elections and implementing policy would be hard enough in simple political systems, but in a country as complex as the United States, political parties must take on great responsibilities to win elections across the many local, state, and national governing bodies. Indeed, political differences between states and local areas can contribute much complexity.

If a party stakes out issue positions on which few people agree and therefore builds too narrow a coalition of voter support, the party may find itself marginalized. But if the party takes too broad a position on issues, it might find itself in a situation where the members of the party disagree with one another, making it difficult to pass legislation, even if the party can secure victory.

Throughout the history of the United States, the political arena has been dominated by a series of two main parties with a periphery of third parties also involved in the process.

One of the cornerstones of a vibrant representative republic is citizens' ability to influence government through voting. For that influence to be meaningful, citizens must send clear signals to their leaders about what they wish the government to do. It only makes sense, then, that voters have several clearly differentiated options available to them at the polls on Election Day. Having these options means voters can select a candidate who more closely represents their own preferences on the important issues of the day. It also gives individuals who are considering voting a reason to participate. After all, you are more likely to vote if you care about who wins and who loses. The existence of two major parties, especially in our present era of strong parties, leads to sharp distinctions between the candidates and between the party organizations.

Election Rules and the Two-Party System

The **two-party system** came into being because the structure of U.S. elections, with one seat tied to a geographic district, tends to lead to dominance by one of two major political parties. Even when there are other options on the ballot, most voters understand that minor parties have no real chance of winning even a single office. Hence, they vote for one candidate of the two major parties to support a potential winner. Of the 535 members of the House and Senate, only a handful identify as something other than Republican or Democrat. Third parties have fared no better in presidential elections. No third-party candidate has ever won the presidency.

Several reasons have been suggested to explain why the structure of U.S. elections has resulted in a two-party system. The most frequent explanation has been the process used to select its representatives. First, most elections at the state and national levels are **winner-take-all**: The candidate who receives the greatest overall number of votes wins. **Winner-take-all** elections with one representative elected for one geographic district allow voters to develop a personal relationship with "their" representative to the government. They know exactly whom to blame, or thank, for the actions of that government. Since

voters do not like to waste votes, third parties must convince voters they have a real chance of winning races before voters will take them seriously. This is a tall order given the vast resources and mobilization tools available to the existing parties.

In a system in which individual candidates compete for individual seats representing unique geographic districts, a candidate must receive a fairly large number of votes to win. A political party that appeals to only a small percentage of voters will always lose to a party that is more popular.[16]

Winner-take-all systems of electing candidates to office, which exist in several countries other than the United States, can require that the winner receive either the majority of votes or a plurality of the votes. U.S. elections are based on plurality voting.

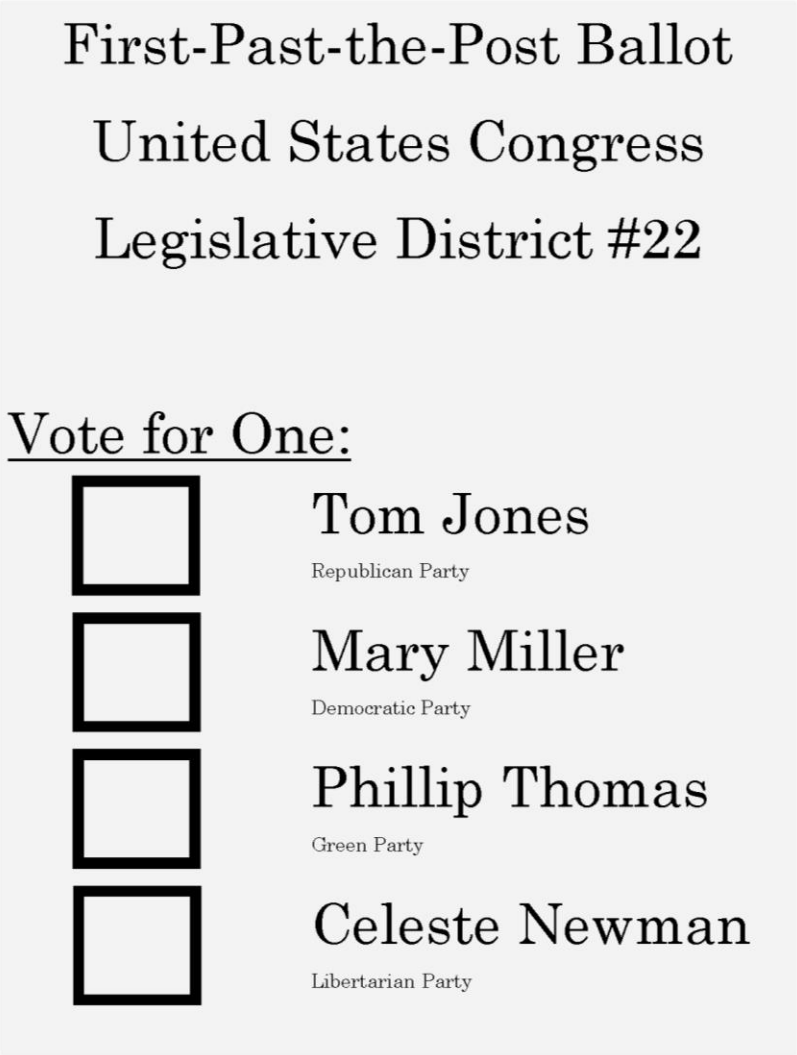


Image 6.4 Examples of Types of Ballots

Plurality voting has been justified as the simplest and most cost-effective method for identifying a victor in a democracy. A single election can be held on a single day, and the victor of the competition is easily selected.

Plurality voting, commonly referred to as **first-past-the-post**, is based on the principle that the individual candidate with the most votes wins, whether he or she gains a majority (51 percent or greater) of the total votes cast.



Abandoning **plurality voting**, even if the winner-take-all election were kept, would almost certainly increase the number of parties from which voters could choose. The easiest switch would be to a majoritarian voting scheme, in which a candidate wins only if he or she enjoys the support of a majority of voters. If no candidate wins a majority in the first round of voting, a run-off election is held among the top contenders. Some states conduct their primary elections within the two major political parties in this way.

Because second-place (or lower) finishers will receive no reward for their efforts, those parties that do not attract enough supporters to finish first at least some of the time will eventually disappear because their supporters realize they have no hope of achieving success at the polls.[171] The failure of third parties to win and the possibility that they will draw votes away from the party the voter had favored before—resulting in a win for the party the voter liked least—makes people hesitant to vote for the third party's candidates a second time.

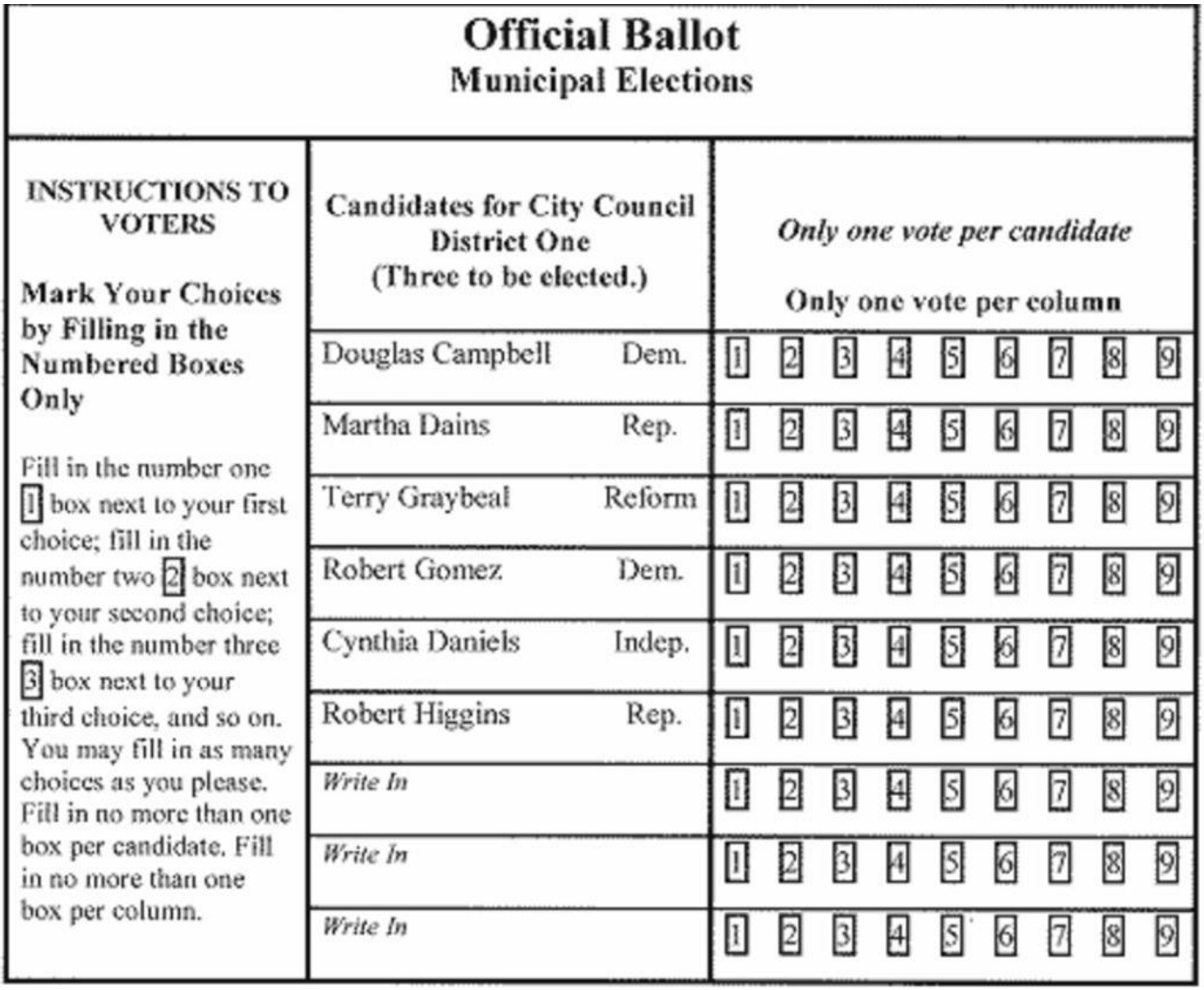
This has been the fate of all U.S. third parties—the Populist Party, the Progressives, the Dixiecrats, the Reform Party, and others.

Third parties, often born of frustration with the current system, attract supporters from one or both existing parties during an election but fail to attract enough votes to win. After the election is over, supporters experience remorse when their least-favorite candidate wins instead. For example, in the 2000 election, Ralph Nader ran for president as the candidate of the Green Party. Nader, a longtime consumer activist concerned with environmental issues and social justice, attracted many votes from people who usually voted for Democratic candidates.

This has caused some to claim that Democratic nominee Al Gore lost the 2000 election to Republican George W. Bush, because Nader won Democratic votes in Florida that might otherwise have gone to Gore.**[18]**

None of these alternatives to the two major political parties had much success at the national level, and most are no longer viable parties. All faced the same fate. Formed by charismatic leaders, each championed a relatively narrow set of causes and failed to gain broad support among the electorate.

Once their leaders had been defeated or discredited, the party structures that were built to contest elections collapsed. And within a few years, most of their supporters were eventually pulled back into one of the existing parties. In the long run, however, many third parties have brought important issues to the attention of the major parties, which then incorporated these issues into their platforms.



Official Ballot
Municipal Elections

INSTRUCTIONS TO VOTERS

Mark Your Choices by Filling in the Numbered Boxes Only

Fill in the number one [1] box next to your first choice; fill in the number two [2] box next to your second choice; fill in the number three [3] box next to your third choice, and so on. You may fill in as many choices as you please. Fill in no more than one box per candidate. Fill in no more than one box per column.

Candidates for City Council District One (Three to be elected.)		*Only one vote per candidate* Only one vote per column
Douglas Campbell	Dem.	1 2 3 4 5 6 7 8 9
Martha Dains	Rep.	1 2 3 4 5 6 7 8 9
Terry Graybeal	Reform	1 2 3 4 5 6 7 8 9
Robert Gomez	Dem.	1 2 3 4 5 6 7 8 9
Cynthia Daniels	Indep.	1 2 3 4 5 6 7 8 9
Robert Higgins	Rep.	1 2 3 4 5 6 7 8 9
Write In		1 2 3 4 5 6 7 8 9
Write In		1 2 3 4 5 6 7 8 9
Write In		1 2 3 4 5 6 7 8 9

Image 6.5 Example of Municipal Ballot

Sample Single Transferable/Choice Voting Ballot—illustrates how candidates are all listed in the same place on the ballot and voters rank candidates by preference. This type of voting system creates an alternative to a run-off and supports majoritarian choices rather than plurality winners. Credit: FairVote.org educational resources at www.fairvote.org.

A Proportional Electoral System

In a **proportional electoral system**, however, parties advertise who is on their candidate list and voters pick a party. Then, legislative seats are doled out to the parties based on the proportion of support each party receives. While the Green Party in the United States might not win a single congressional seat in some years thanks to **plurality voting**, in a **proportional system**, it stands a chance to get a few seats in the legislature regardless.

For example, assume the Green Party gets 7 percent of the vote. In the United States, 7 percent will never be enough to win a single seat, shutting the Green candidates out of Congress entirely, whereas in a proportional system, the Green Party will get 7 percent of the total number of legislative seats available. Hence, it could get a foothold for its issues and perhaps increase its support over time. But with plurality voting, it does not stand a chance. Moving to a **proportional electoral system** would involve the abandonment of the **winner-take-all** approach and would increase the number of parties in the U.S. system.

One proposal to implement proportional representation in the United States would be to allocate legislative seats based on the national level of support for each party's presidential candidate, rather than on the results of individual races. If this method had been used in the 1996 elections, 8 percent of the seats in Congress would have gone to Ross Perot's Reform Party because he won 8 percent of the votes cast. Even though Perot himself lost, his supporters would have been rewarded for their efforts with representatives who had a real voice in government. And Perot's party's chances of survival would have greatly increased. However, this proposal would be a major constitutional change requiring successful passage of a constitutional amendment.

Why does the United States have a two-party system?

Electoral representation systems are not the only reason the United States has a two-party system. We need only look at the number of parties in the British or Canadian systems, both of which are **winner-take-all plurality systems** like that in the United States, to see that it is possible to have more than two parties while still directly electing representatives.

The two-party system is rooted in U.S. history. From the first parties to our current situation, no more than two major parties ever formed. Instead of parties arising based on region or ethnicity, various regions and ethnic groups sought a place in one of the two major parties. What are other possible explanations? Scholars of voting behavior have suggested at least three other characteristics of the U.S. system which explain the persistence of our two-party system.

United States: Reason for Two Party System
winner-take-all plurality voting for elected representation (local, state, national)
the Electoral College voting system with winner-take-all electoral votes per state
campaign and election laws that favor two parties
demobilized ethnic groups

Chart 6.4 Reasons for Two-Party System

The United States has a presidential system in which the winner is selected through the Electoral College. The winner-take-all system also applies. In all but two states (Maine and Nebraska), the total of the state's electoral votes go to the candidate who wins the plurality of the popular vote in that state.

Even if a new, third party is able to win the support of a lot of voters, it must be able to do so in several states in order to win enough electoral votes to have a chance of winning the presidency.[19]

In addition, party success is strongly influenced by local election laws. Someone must write the rules that govern elections, and those rules help to determine outcomes.

In the United States, such rules have been written to make it easy for existing parties to secure a spot for their candidates in future elections. But some states create significant burdens for candidates who wish to run as independents or who choose to represent new parties. For example, one common practice is to require a candidate who does not have the support of a major party to ask registered voters to sign a petition. Sometimes, thousands of signatures are required before a candidate's name can be placed on the ballot; but, a small third party that does not have large numbers of supporters in some states may not be able to secure enough signatures for this to happen.[20]



Visit **Fair Vote** for a discussion of ballot access laws across the country.

Given the obstacles to the formation of third parties, it is unlikely that serious challenges to the U.S. two-party system will emerge. But this does not mean that we should view it as entirely stable either. The U.S. party system is technically a loose organization of fifty different state parties and has undergone several considerable changes since its initial consolidation after the Civil War. Third-party movements may have played a role in some of these changes and resulted in a shifting of party loyalties among the U.S. electorate.

Besides the existence of the Electoral College and local and state election laws, political scientist Gary W. Cox has also suggested that the relative prosperity of the United States and the relative unity of its citizens have prevented the formation of "large dissenting groups" that might give support to third parties.[21] This is similar to the argument that the United States does not have viable third parties, because none of its regions is dominated by mobilized ethnic minorities that have created political parties in order to defend and to address concerns solely of interest to that ethnic group. Such parties are common in other countries.

Political Parties: Questions to Consider

1. Could the modern political system exist without political parties?
2. Why have political parties become so highly structured?
3. What is the difference between a "closed" primary versus and "open" primary? What is the argument advanced for each type?

1. *As entire societies try to solve problems, there are many groups, all with opinions about what should be done. But at some point, a society operating as representative democracy must find a way of taking all these opinions and turning them into solutions to real problems. That is where political parties come in. Political parties build coalitions across a wide range of voters who share similar preferences. They offer competing policy choices to address societal problems directly linked to potential policy makers who once elected by majority will carry out solutions.*
2. *Structure offers better organization and potentially better advocacy and achievement of policy goals at all levels of government. As political parties realized that political success at the national level was dependent on political success at the state and local level, strategies and tactics changed. Moreover, changes in the electorate with broaden political participation in voting, forced the parties to become far more complex and mass organizations that operate on all levels in the U.S. political arena*
3. *A "closed" primary means that the nomination process is restricted to party members only. It is said to build and reinforce strong party ties and prevent the invasion into the party's selection process of non-party members. An "open" primary allows party crossovers (those from other parties) or independents to vote in the party nomination process of a particular party. This potentially is said to lead to mental commitments to the party that carries over to the general election.*

Terms to Remember

caucus–a form of candidate nomination that occurs in a town-hall style format rather than a day-long election; usually reserved for presidential elections

closed primary–an election in which only voters registered with a party may vote for that party's candidates

delegates–party members who are chosen to represent a particular candidate at the party's state- or national-level nominating convention

party platform–the collection of a party's positions on issues it considers politically important

political parties–organizations made up of groups of people with similar interests that try to directly influence public policy through their members who seek and hold public office

platform–the set of issues important to the political party and the party delegates

plurality voting–the election rule by which the candidate with the most votes wins, regardless of vote share

proportional representation–a party-based election rule in which the number of seats a party receives is a function of the share of votes it receives in an election

third parties–political parties formed as an alternative to the Republican and Democratic parties, also known as minor parties

top-two primary–a primary election in which the two candidates with the most votes, regardless of party, become the nominees for the general election

two-party system–a system in which two major parties win all or almost all elections

winner-take-all system–all electoral votes for a state are given to the candidate who wins the most votes in that state

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6.2 Political Parties: The Party-in-the-Electorate



Image 6.6 Photos from National Conventions

Democratic National Convention with President Obama and Candidate Clinton (left) and
Republican National Convention showing last minute opposition to the Trump nomination (right).
Credit: (right) modification of work by "PBS NewsHour" (left) also by "PBS NewsHour" from 18 July 2016 and pbs.org

Learning Objectives
• Ability to differentiate between the party in the electorate and the party organization. • Discuss the importance of voting in a political party organization. • Discuss the concepts of party alignment and realignment.

Chart 6.5 Learning Objectives on Party Organization and Alignment

The Party-In-The-Electorate: The Voters

A key fact about the U.S. political party system is that it is all about the votes. If voters do not show up to vote for a party's candidates on Election Day, the party has no chance of gaining office and implementing its preferred policies.

For much of their history, the two major parties have been adapting to changes in the size, composition, and preferences of the U.S. electorate. It only makes sense, then, that parties have found it in their interest to build a permanent and stable presence among the voters.

By fostering a sense of loyalty, a party can insulate itself from changes in the system and improve its odds of winning elections. The **party-in-the-electorate** are those members of the voting public who consider themselves to be part of a political party and/or who consistently prefer the candidates of one party over the other. What it means to be part of a party depends on where a voter lives and how much he or she chooses to participate in politics. At its most basic level, being a member of the party-in-the-electorate simply means a voter is more likely to voice support for a party. These voters are often called **party identifiers**, since they usually represent themselves in public as being members of a party, and they may attend some party events or functions. Party identifiers are also more likely to provide financial support

for the candidates of their party during election season. This does not mean self-identified Democrats will support *all* the party's positions or candidates, but it does mean that, overall, they feel their wants or needs are more likely to be met if the Democratic Party is successful. **Party identifiers** make up most of the voting public. Gallup, the polling agency, has been collecting data on voter preferences for the past several decades.

Its research suggests that historically, over half of American adults have called themselves "Republican" or "Democrat" when asked how they identify themselves politically. Gallup found in a survey conducted from June 1-22, 2023, that 27% of Americans identified with the Democrats, 25 % with Republicans, and 44% as independents. The number of real independents can be deceptive; because, even among self-proclaimed independents, the overwhelming majority claims to lean in the direction of one party or the other, suggesting they behave as if they identified with a party during elections even if they preferred not to publicly pick a side. Partisan support is so strong that, in the poll about 88 percent of respondents said they either identified with or, if they were independents, at least leaned toward one of the major political parties. At the time of the 2022 mid-term election, the party and party leaner total was 90% of respondents. Generally, this number declines in non-election years.[1]

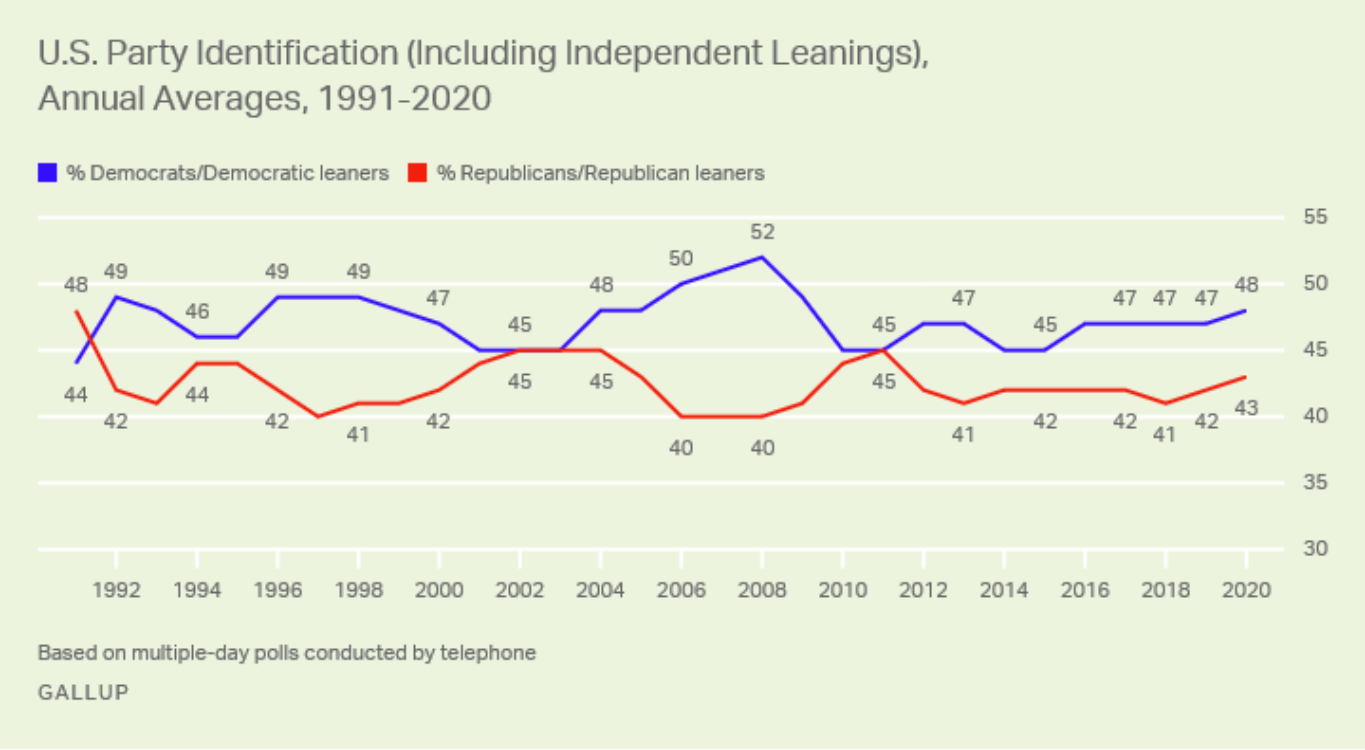


Chart 6.6 Line Graph on Party Identification

Credit: Gallup; "Party ID Average for 2020 Winds Up Similar to Prior Years;" at https://news.gallup.com/poll/328310/party-average-2020-winds-similar-prior-years.aspx

Party affiliation is not quite the same thing as party membership. People may call themselves Republicans or Democrats without being registered as a member of the party, and the Republican and Democratic parties do not require individuals to join their formal organization in the same way that parties in some other countries do. Many states require voters to declare a party affiliation before participating in primaries, but primary participation is irregular and infrequent, and a voter may change

his or her identity long before changing party registration. For most voters, party identification is informal at best. It does matter, however, because party identification guides some voters, who may know little about an issue or candidate, in casting their ballots. If, for example, someone thinks of him- or herself as a Republican and always votes Republican, he or she will not be confused when faced with a candidate, perhaps in a local or county election, whose name is unfamiliar. If the candidate is a Republican, the voter will likely cast a ballot for him or her. Party ties can manifest in other ways as well. The actual act of registering to vote and selecting a party reinforces party loyalty. Moreover, while pundits and scholars often deride voters who blindly vote their party, the selection of a party in the first place can be based on issue positions and ideology. In that regard, voting your party on Election Day is not a blind act—it is a shortcut based on issue positions.

Party Ideology and Polarization

As identified in a prior discussion of political ideology, the ideologies of liberalism and conservatism, while not representing the entire spectrum of U.S. political ideologies are predominately concentrated where conservatives find their major home in the Republican Party while liberals primarily associate with the Democrat Party. A Pew Research Center study found 71% of conservatives either directly identified or leaned to the Republican party while 82% of liberals either identified or leaned to the Democrat party.[2]

In considering libertarianism and populism, these ideologies historically add many libertarians to the Republican ranks and populists divided between Democrat and Republican ranks. The Pew study found 51% of Libertarians either identify or lean to the Republican party, while allegiance of populists somewhat depended on whether it was a social issue or an economic issue.[3]

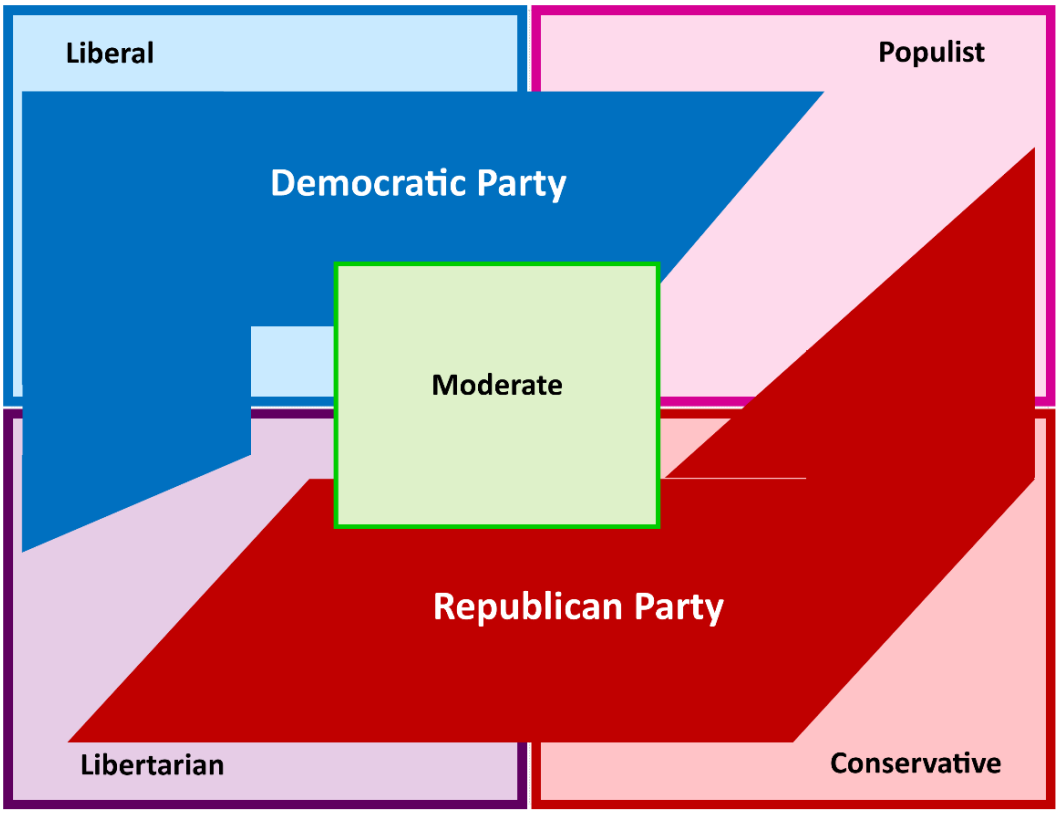


Chart 6.7 Graphic of Party Ideological Leanings

The 2016 and 2020 elections offered a partial variation to this general pattern with a not insignificant number of those adhering to populist viewpoints voting for the Republican Party standard bearer, Donald Trump.

Since most U.S. voters identify themselves as independent of either party and often as moderates,[4] the historical tendency has been for the two parties to compete for "the middle" while also trying to mobilize their more ideological loyal bases.

In fact, within this unaffiliated independent group, "48%" identified themselves as "moderates," and only "30%" as "conservative" while "20%" identified as "liberal" in a January 2022 Gallup Poll. Although in smaller percents, both Republicans and Democrats had those who called themselves "moderates."[5]

Using the chart above, it might be assumed that the two parties would try to appeal to voters toward the center where ideological lines intersect. However, there is evidence that the political party adherents (symbolized in the chart above by party shape) are moving farther apart, making appeals to moderates more difficult. Today, polling organizations have noticed that citizens' beliefs have become far more polarized, or widely opposed, over the last decade.[4]

To track this polarization, Pew Research conducted a study of Republican and Democratic respondents over a twenty-five-year span. Every few years, Pew would poll respondents, asking them whether they agreed or disagreed with "48 value" statements. These statements are referred to as "value questions" or "value statements," because they measure what the respondent values.

Examples of statements include "Government regulation of business usually does more harm than good," "Labor unions are necessary to protect the working person," and "Society should ensure all have equal opportunity to succeed."

After comparing such answers for twenty-five years, Pew Research found that Republican and Democratic respondents are increasingly answering these questions very differently. This is especially true for questions about the government and politics.

In 1987, 58 percent of Democrats and 60 percent of Republicans agreed with the statement that the government controlled too much of our daily lives. In 2012, 47 percent of Democrats and 77 percent of Republicans agreed with the statement. This is an example of polarization, in which members of one party see government from a very different perspective than the members of the other party.[5]

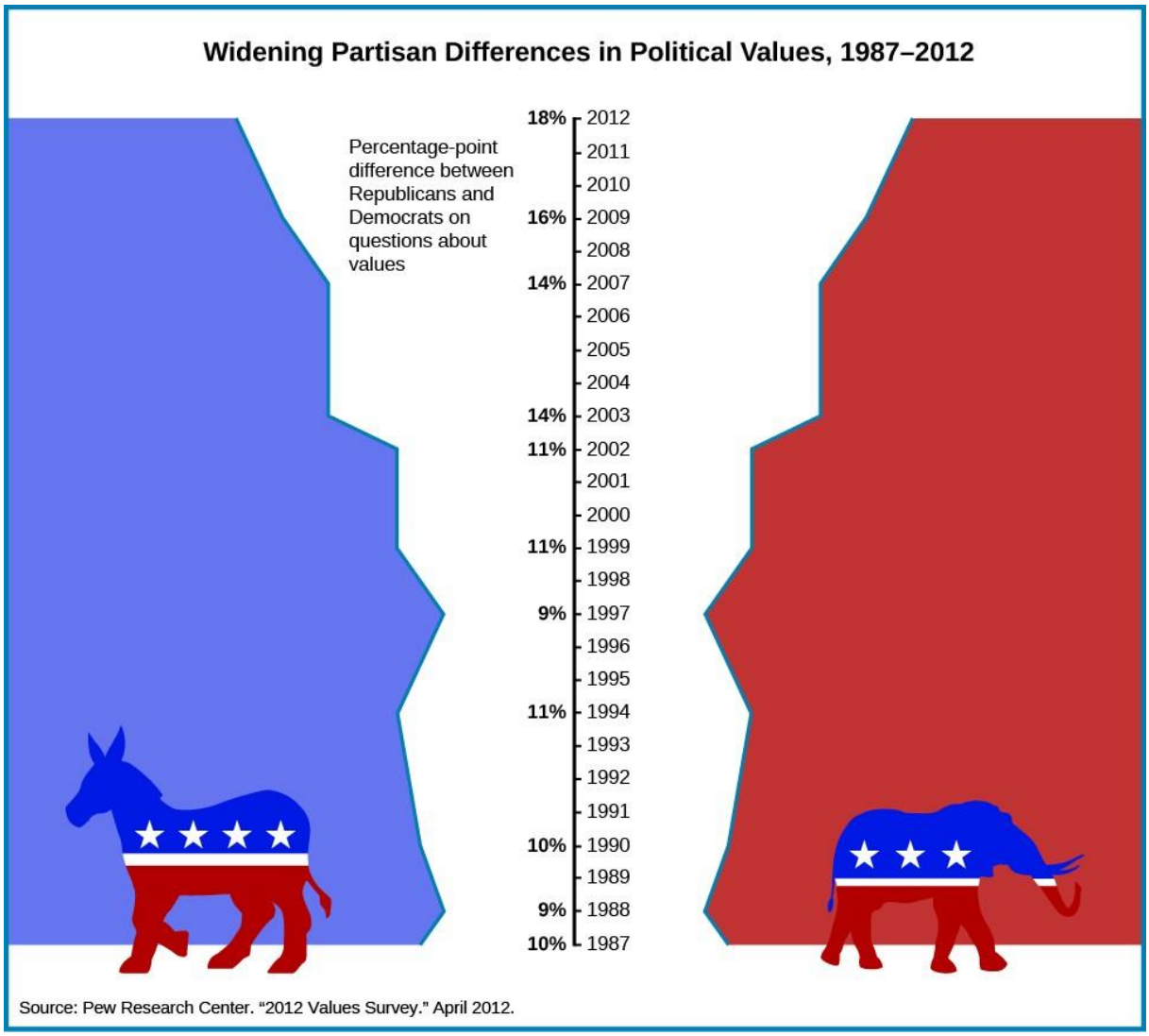


Chart 6.8 Graph of Partisan Differences

Over the years, Democrats and Republicans have moved further apart in their beliefs about the role of government. In 1987, Republican and Democratic answers to forty-eight values questions differed by an average of only 10 percent, but that difference has grown to 18 percent over the last twenty-five years.

According to some scholars, shifts led **partisanship** to become more polarized than in previous decades, as more citizens began thinking of themselves as conservative or liberal rather than moderate.[6]

Committed **partisanship**, which is the tendency to identify with and to support (often blindly) a particular political party, alienates some Americans and particularly younger adults[7] who feel that elected representatives should vote in support of the nation's best interests instead of voting in the way their party wishes. When elected officials ignore all factors other than party position on an issue, some voters become disheartened while others become polarized.

George Washington warned against such extreme partisanship (see "Consider the Original" below). Moreover, some analysts suggest that it is distrust and even dislike of the opposing party even more than an ideological commitment to their own party that is at the heart of most partisanship among voters.[8]

Consider the Original

Excerpt from a Transcript of President George Washington's Farewell Address (1796)

[...] All obstructions to the execution of the laws, all combinations and *associations*, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize *faction*, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation the will of a *party*, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different *parties*, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common counsels and modified by mutual interests.

However combinations or *associations* of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion [...].

President George Washington's Farewell Address (1796); at https://www.ourdocuments.gov/doc.php?flash=false&doc=15; emphasis added; full transcript at **https://www.ourdocuments.gov/doc.php?doc=15&page=transcript**

Chart 6.9 Excerpt from George Washington

Critical Elections and Realignment

If voters' preferences remained stable for long periods of time, and if both parties did a good job of competing for their votes, we could expect Republicans and Democrats to be reasonably competitive in any given election. Election outcomes would probably be based on the way voters compared the parties on the most important events of the day rather than on electoral strategy based on socio-demographic factors. There are many reasons we would be wrong in these expectations, however. First, the electorate is not entirely stable. Each generation of voters has been a bit different from the last. It sometimes happens that over a series of elections, parties may be unable or unwilling to adapt their positions to broader socio-demographic or economic forces.

Parties need to be aware when society changes. If leaders refuse to recognize that public opinion has changed, the party is unlikely to win in a future election. Groups that have felt that the party has served their causes in the past may decide to look elsewhere if they feel their needs are no longer being met. Either way, the party system will be upended as a result of a **party realignment**, or a shifting of party allegiances within the electorate.[9]

The 1932 election is considered an example of a **critical election**, one that represents a sudden, clear, and long-term shift in voter allegiances. Franklin D. Roosevelt (FDR) won the election with almost 58% of

the popular vote and 472 electoral votes, compared to incumbent Herbert Hoover's 59 electoral votes. FDR had determined that his best path toward victory was to create a new coalition based not on region, but on the suffering of those hurt the most during the Great Depression. Thus, after the 1932 election, the political parties were largely identified as being divided by differences in their members' socio-economic status and their views on economic issues. That is, those who would most benefit from changing the economic system usually favored Democrat candidates. Urban based labor union members, ethnic Catholics, and others at the lower end of the socio-economic scale become critical parts of a FDR coalition. These groups were coupled with the historical support of the Democratic Party in the South. Based on this political alignment, the Democratic Party won five consecutive presidential elections and was able to build a political coalition of northern liberals and southern conservatives that dominated Congress into the 1990s, including holding an uninterrupted majority in the House of Representatives from 1954 to 1994.

Most elections are not **critical elections** but are known as **maintaining elections** in which the coalitions of population groups and geographic regions supporting one political party's presidential candidate over the other party's candidate remain somewhat stable. Even in maintaining elections, political analysts will look for shifts form previous elections. Only if the shifts seem to endure for several elections might it be concluded that another electoral realignment has occurred. The 1932 realignment of the parties faced the tension of changing demographic, social and economic challenges that had consequences for Democrats. All these changes particularly impacted a critical element of the 1932 FDR Democratic Party coalition—the **solid south** support for the party, but also the support for the Democrat Party nationwide.

As the South emerged from the adverse economic conditions of the Depression post World War II, the economy broadly diversified away from a predominately rural economy. This brought a large influx of Northerners migrating south to take advantage of these improved economic conditions, along with new attitudes about the role of business and government. These changes were first evident in growing Republican strength in southern cities and in newly emerging suburbs populated by a professional business class, all occurring during the 1950s and early 1960s.[10]

Republican presidential candidates first broke through the solid south in so-called border states such as Virginia and Tennessee; but, Republicans also made inroads in Florida with its large number of northern and midwestern retirees as well as in Texas—due largely to economic changes.[11]

Nationwide, the improved economic conditions, coupled with the movement to the suburbs, diluted the strength of the urban based elements of the FDR coalition. A growing suburban vote, which tended to be Republican was a counter-balancing factor to the FDR Democrat Party coalition during the later half of the twentieth century. However, in recent elections during the first decades of the twenty-first century, new shifts in the suburban electorate have demonstrated that this past consistent Republican support has waned.[12]

As African Americans became an increasingly important part of the Democratic coalition in northern and Midwestern states in the 1940s through the 1960s, the party took steps to support civil rights.[13]

This occurred as many southern blacks had migrated north in search of jobs and better educational opportunities for their children, as well as to avoid many of the then legal racial segregation restrictions placed on them in the South. As civil rights reform moved to the national stage; strong rifts between northern liberal Democrats and southern conservative Democrats, who opposed civil rights, began to emerge.[14] Southern Democrats became increasingly convinced that national efforts to achieve racial integration were violating state sovereignty and existing social norms. Because of issues of civil rights, several "deep south" states saw southern Democrats, known as Dixiecrats, support third party presidential candidates in several elections. Following the passage of the 1964 Civil Rights Act, these "deep south" states failed to support Democratic Party presidential candidates in future elections. Despite these defections at the presidential level, strong local and state organizations allowed conservative Democrats throughout the South to retain control of most local and state offices as well as U.S. House and Senate seats up to the 1990s.[15]

During the 1960s and 1970s, the rise of non-economic issues further frayed the strength of the Democratic Party coalition. These included social and cultural issues such as abortion and gun control. The rise of organized political opposition by Evangelicals and Catholics on the abortion issue became an important factor in weakening the Democratic coalition not only in the South but throughout the nation. The 1960s saw a jump in violent crime, urban street riots, and protests over the Vietnam War, which gave rise to concerns over the basic social order. The national Democrat Party position on the war conflicted with southern conservative foreign policy beliefs about communism and the generally pro-military tradition prevalent in the South.[16] Thus, for a variety of reasons, by the 1970s, many southern voters began to slowly shift allegiance to the Republican Party, whose conservative ideology they shared—including opposition to the growing encroachment of the national government into what they viewed as state and local matters.[17] Almost fifty years after it had begun, a realignment of the two political parties resulted, with urban areas and the Northeast now solidly Democratic, and the South and rural areas overwhelmingly voting Republican. The result today is a political system that provides Republicans with considerable advantages in rural areas and most parts of the South.[18] Democrats dominate urban politics. However, there was no single critical election that led to this current alignment of political parties. That is to say realignment happened gradually, as economic and socio-demographic conditions changed--especially after the 1968 election with the rise of non-economic social issues.[19]

Factors Leading to the Decline of the 1932 Democrat Coalition
1. improved economic conditions in the South
2. rise of a business professional class
3. Northern and Midwestern migration to the South
4. African-American and Black migration North and increased influence in Democrat Party in the North
5. conflict over civil rights
6. rise of non-economic social issues such as abortion
7. adoption of anti-war platform with division on foreign policy goals

Chart 6.10 Factors Leading to Decline of Democrat Coalition

Recent Presidential Elections and Demographic Alignments

A look at the 2012 presidential election shows how the opinions of different demographic groups vary.

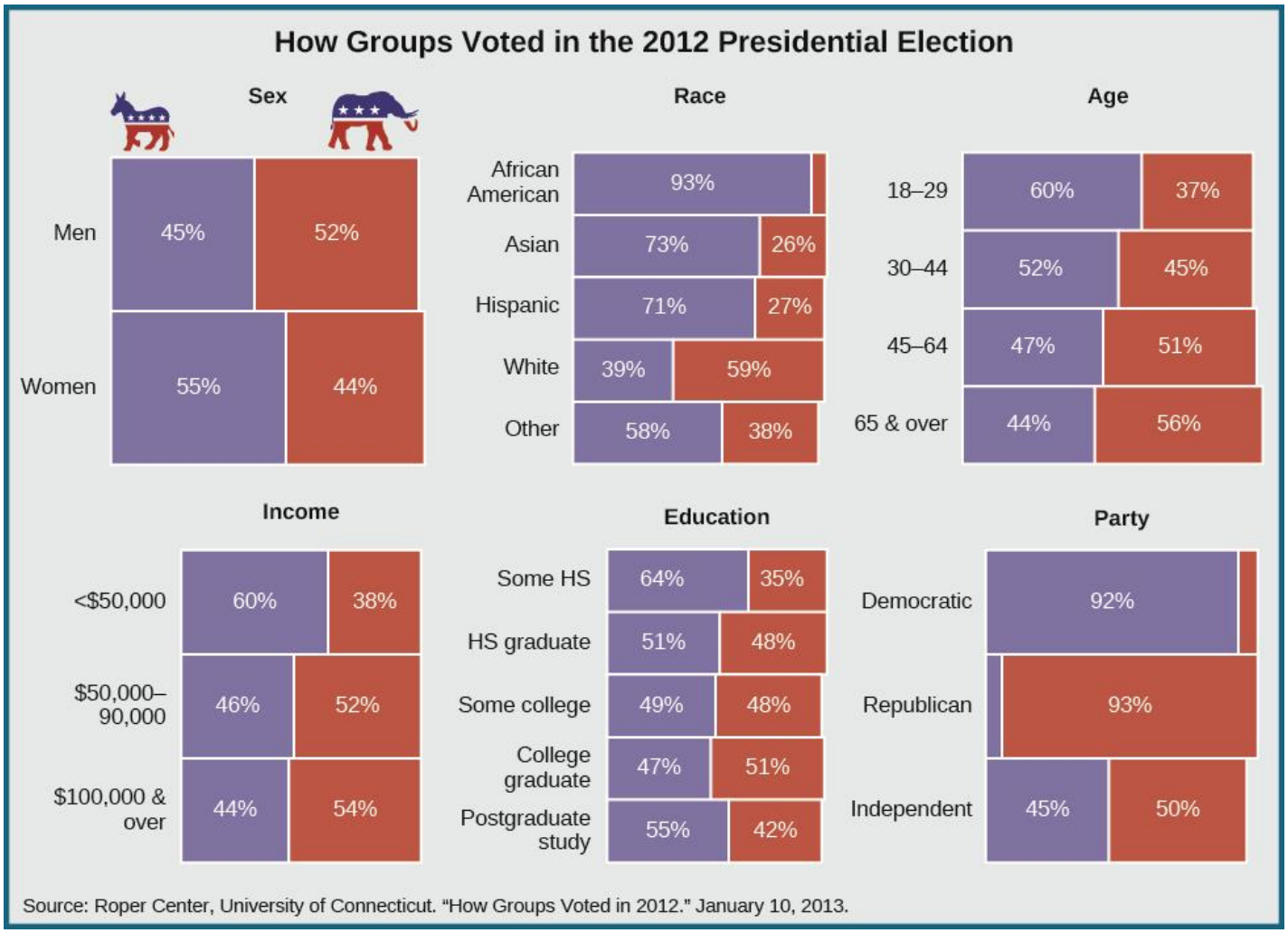


Chart 6.11 Voting Group Comparison for 2012 Election

Breaking down voters by demographic groups may reveal very different levels of support for presidential candidates among the groups.

The 2012-2020 election results show clear advantages for Democratic candidates among women and for Republican candidates among males, indicating a gender gap between the parties.

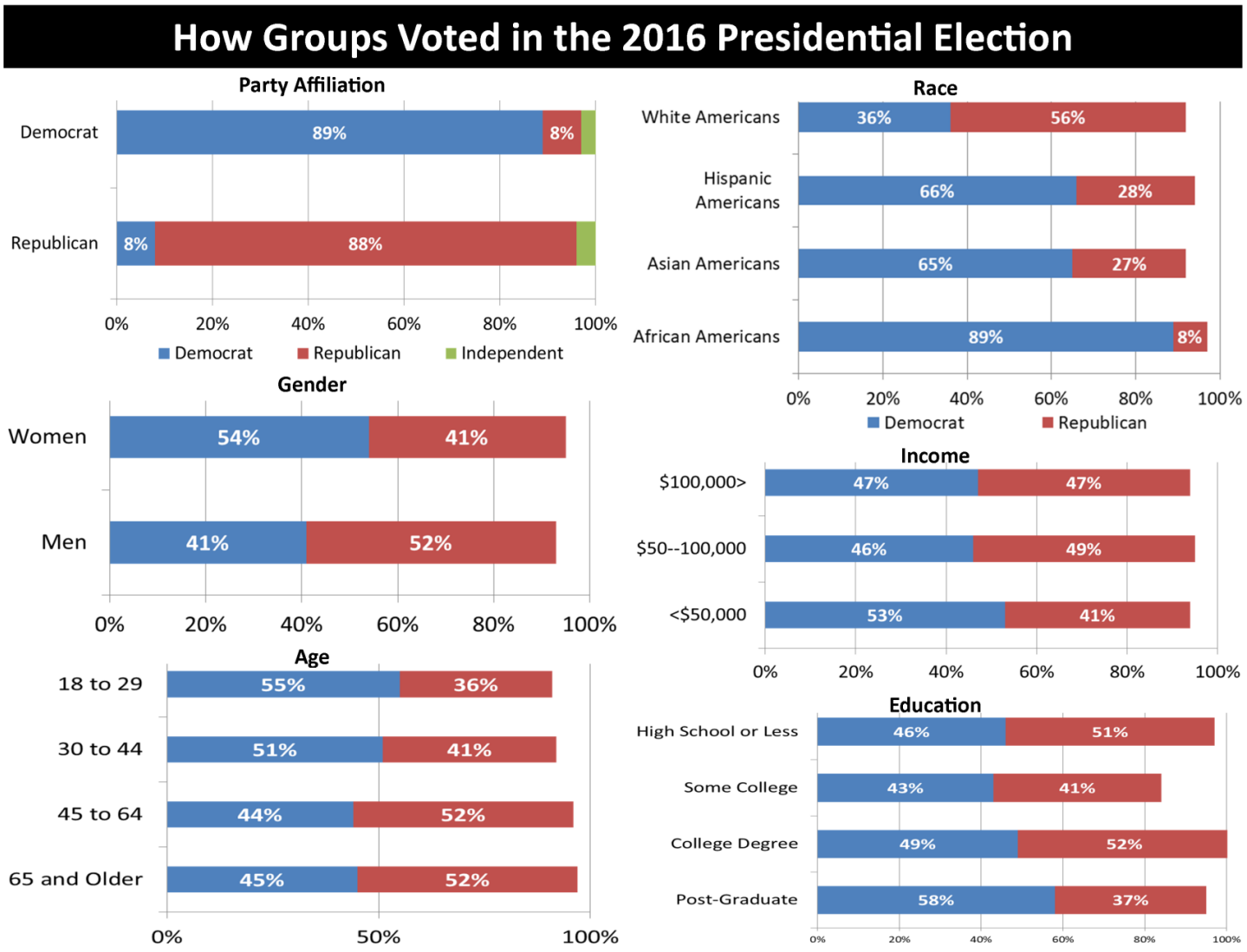


Chart 6.12 Voting Groups in 2016 Election

In 2016, the gender gap existed among voters with Democrat Hillary Clinton winning females 54% to 41%, but Democrats continued to show weakness among males with Clinton losing to Trump 41% to 52%--an eleven point gap. In the 2020 election, statistics indicate the female gender gap widened a further 15 points between Biden and Trump (57% to 42%) with the gap among males narrowing slightly to 8 points (45% for Biden to 53% for Trump).[20]

Over time, the United States has become more socially liberal, especially on topics related to race and gender; and millennials—those aged 18 to 34—are more liberal than members of older generations and show a pattern of voting Democratic.[21] For example, in 2016, age mattered as one significant set of groups—only "36%" percent of voters under thirty voted for Trump, whereas "55%" percent voted for Clinton. While this margin was down from 2012 when candidate Barak Obama received 60% of this group's votes, Joe Biden received 60% in 2020 reaffirming the Democrat advantage among younger voters.[22]

Racial groups also varied in their support of the candidates over these three presidential elections. In 2016 "89%" of African Americans and "66%" percent of Hispanics voted for Clinton/Kane instead of Trump/Pence.[23] Conversely, "56%" of white voters supported Trump.

In 2016, Hillary Clinton won 66% of Hispanic votes, which was lower than the 71% of Hispanics voting for Obama in 2012, despite record turnout of Latinos.[24] Also, African American support for the Democratic Party in 2016 remained very strong but was lower than the 93% given to President Obama during his 2012 reelection campaign.

In 2020, Democrat Joe Biden maintained high margins among both African Americans and Hispanics, but he had slightly reduced margins from 2016. That is, President Donald Trump increased his voting percentages of each of these groups, moving from 8% to 12% among African Americans and Winning 32% of Hispanic votes in 2020 when his prior percentage was 28%.[25]

One of the most significant changes in both 2016 and 2020 occurred when comparing voting by educational background. Democrats continued, in fact increased from past elections, their positive margins with those having post-graduate study; but they also increased among the college educated.[26]

A very traditional Democratic group—those with high school education or less—was lost both in wo16 and 2020 to Republicans, with Trump gaining 51% of this group in 2016 and 54% in 2020. When the data is differentiated for both elections by race and education, the Trump support among those without a college degree was surprising to most analysts. In both elections, 66% of all whites without college degrees supported Trump and 71% of white, non-college men supported Trump.[27] While Democrats continue to win the majority of those in the lowest income bracket (under $50,000 per year), the margin has dropped from 2012.[28]

Following the traditional pattern, identified party voters did support their own party's candidate although in 2016 only by a slightly reduced margin, indicating some greater support for third party candidates. Despite a heated nomination fight among Republicans, the Republican candidate, Donald Trump, still received an estimated 88% of all those who identified themselves with the Republican Party.[29]

Based upon data from the National Exit Poll, both the 2016 and 2020 elections showed continuity and change in voting among socio-economic groups. It is obviously too early to determine whether the changes are permanent, leading to a new voting coalition for both parties; or, whether it is an exception to normal voting patterns.[30]

2020 Election			
Group Voting Preferences			
Biden Advantage		**Trump Advantage**	
Black/African-American	87-12%	**White/Caucasian**	58-41%
Hispanic/Latino	65-32%		
Ages 18-29	60-36%	**Age 65+**	52-47%
Women	57-42%	**Men**	53-45%
College Graduates	55-43%	**White Non-College Graduates**	67-32%
Under $50,000 Income	55-44%	**Above $100,000 Income**	54-42%

Chart 6.13 Voting Groups in 2020 Election

General Elections and Political Party Strategy

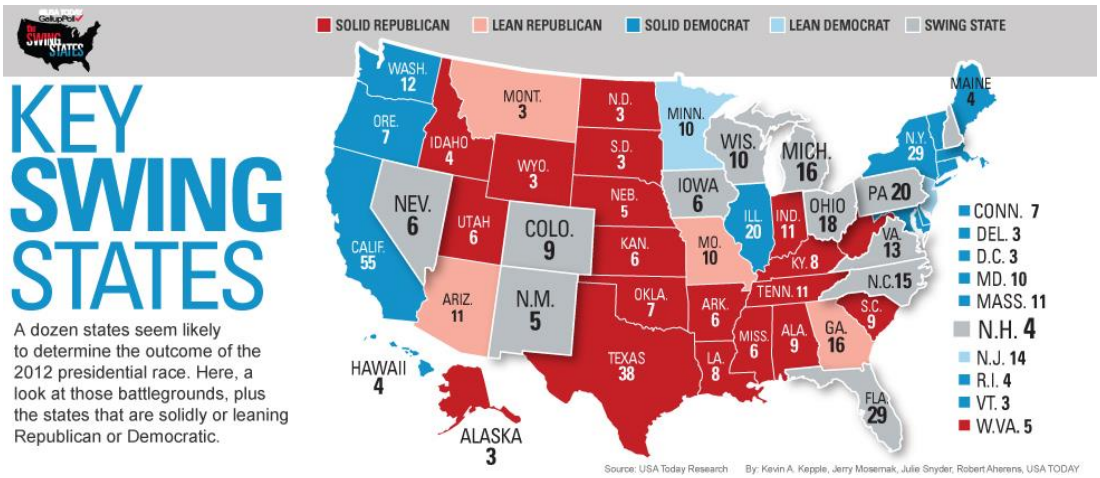


Chart 6.14 Map of Political Party Leanings

Credit for Map: USA Today Research by Kevin A. Kepple, Jerry Mosemak, Julie Snyder, Robert Aherens, USA TODAY

The **general election** campaign period occurs between mid-August and early November. These elections are simpler than primaries and caucuses because there are only two major party candidates and a few minor party candidates. About 50 percent of voters will make their decisions based on party membership, so the candidates will focus on winning over independent voters and visiting **swing states** where the election is close.[31]Since the United States has a presidential system in which the winner is selected indirectly by a group of electors known collectively as the Electoral College, a situation with "swing states" has arisen. The electoral system is mainly winner-take-all except for two states (Maine and Nebraska), where the total of the state's electoral votes go to the candidate who wins the plurality of the popular vote in the state. This has led to campaigns where the objective is to earn 270 electoral votes with primary focus on states that are considered "swing states," in which the state winner is unclear

because neither political party is dominate in that state. Essentially, the other states are either solid or strongly leaning to one party or the other. In recent election cycles, 12 swing states have emerged, although in 2020 two "lean Republican states" (Arizona and Georgia) were considered "swing states."

Political Parties: Questions to Consider

1. What do we mean by the "party-in-the-electorate"?
2. Gallup Polls show most voters identify as "independents," yet the number of real independents is much smaller. Why?
3. What are the two primary ideological groups that comprise the Democrat Party and the two primary groups that comprise the Republican Party?
4. What evidence have polling organizations identified to demonstrate citizen belief in the electorate becoming more polarized?
5. The 1932 presidential election is considered a "critical election" that lead to a realignment of party allegiances in the electorate. What were some key elements of the political coalition that emerged?

1. *Members of the voting public who consider themselves to be part of a political party, often called party identifiers, who consistently prefer the candidates of one party over the other*
2. *Because even among self-proclaimed independents, the overwhelming majority lean in the direction of one party or the other*
3. *The Democrats are comprise of liberals and populists; and the Republicans of conservatives and libertarians*
4. *Republicans and Democrats have moved further apart in their beliefs about the role of government; specific value statements regarding these roles*
5. *Voters in the southern region of the United States along with urban based union members, ethnic Catholics, and others at the lower end of the socio-economic scale became critical to the coalition*

Terms to Remember

critical election—an election that represents a sudden, clear, and long-term shift in voter allegiances and party affiliation

maintaining election—an election in which the coalitions of population groups and geographic regions supporting one political party remain somewhat stable

party affiliation—political party to which an individual identifies

party-in-the-electorate—party identifiers, members of the voting public who consider themselves to be part of a political party and consistently prefer the candidates of one party over the other

partisanship—tendency to identify with and support a particular political party

party realignment—a shifting of party affiliation within the electorate

party organization–the formal structure of the political party and the active members responsible for coordinating party behavior and supporting party candidates

political parties–organizations made up of groups of people with similar interests that try to directly influence public policy through their members who seek and hold public office

swing states–states, in a presidential election year, which neither of the two major political parties are able to dominate; and, therefore the state winner of the electoral votes are unclear until votes are tabulated; non-swing states are solidly leaning to one party or the other

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6.3 Political Parties: The Party-in-Government & Divided Government



Image 6.7 Politicians Greet Heroes of Law Enforcement

In a rare instance of united rather than divided government, members of both major political parties put aside partisan differences to show support for those injured at the Republican party practice session earlier in the week. "Republicans and Democrats came together. Not just for a baseball game. We came together to express our gratitude to law enforcement, show our support for those who were injured, and also to unite as a nation in the face of such tragedy," wrote Speaker Paul Ryan about the 2017 Congressional Baseball Game on June 16, 2017. He is seen in this photo thanking Special Agent Crystal Griner of the Capitol Police. (Credit: Paul Ryan at https://www.speaker.gov/video/we-are-united-2017-congressional-baseball-game)

Learning Objectives

- Compare the perspectives of the party-in-government and the party-in-the-electorate.
- Discuss the problems and benefits of divided government.
- Define party polarization.
- List the main explanations for partisan polarization.
- Explain the implications of partisan polarization for the party-in-government.

Chart 6.15 Learning Objectives on Divided Government and Polarization

The Party-in-Government: Party Members Holding Public Office

One of the first challenges facing the **party-in-government**, or the party identifiers who have been elected or appointed to hold public office, is to achieve their policy goals. One problem facing the **party-in-government** relates to the design of the country's political system.

The U.S. government is based on a complex principle of separation of powers, with power divided among the executive, legislative, and judiciary branches. The system is further complicated by federalism, which relegates some powers to the states, which also have separation of powers. This complexity creates several problems for maintaining party unity. The biggest is that each level and unit of government has different constituencies that the office holder must satisfy. The person elected to the White House is more beholden a national constituency than are members of the House or Senate, because members of Congress must be reelected by voters in very different states, each with its own more local constituencies and state-level and county-level parties. Some of this complexity is eased for the party that holds the executive branch of government. Executive offices are typically more visible to the voters than the legislature, in no small part because a single person holds the office. Voters are more likely to show up at the polls and vote if they feel strongly about the candidate running for president or governor, but they are also more likely to hold that person accountable for the government's failures.[11]

Members of the legislature from the executive's party are under a great deal of pressure to make the executive look good, because a popular president or governor may be able to help other party members win office. Even so, partisans in the legislature cannot be expected to simply obey the executive's orders. First, legislators may serve a constituency that disagrees with the executive on key matters of policy. If the issue is important enough to voters, as in the case of gun control, healthcare, or abortion rights, an office holder may feel his or her job will be in jeopardy if he or she too closely follows the party line, even if that means disagreeing with the executive.

A second challenge is that each house of the legislature has its own leadership and committee structure, and those leaders may not be in total harmony with the president. Key benefits like committee appointments, leadership positions, and money for important projects in their home district may hinge on legislators following the lead of the party. These pressures are particularly acute for the **majority party**, so named because it controls more than half the seats in one of the two chambers. The Speaker of the House and the Senate majority leader, the majority party's congressional leaders, have significant tools at their disposal to punish party members who defect on a vote. Finally, a member of the **minority party** must occasionally work with the opposition on some issues in order to accomplish any of his or her constituency's goals.

This is especially the case in the Senate, which is a super-majority institution. Sixty votes (of the 100 possible) are required to get anything accomplished, because Senate rules allow individual members to block legislation via holds and filibusters. The only way to block the blocking is to invoke *cloture*, a procedure calling for a vote on an issue, which takes 60 votes.



The political **parties in government** must represent their parties and the entire country at the same time. One way they do this is by creating separate governing and party structures in the legislature, even though these are run by the same people. Check out some of the more important leadership organizations and their partisan counterparts in the **House of Representatives** and the **Senate** leadership.

To achieve their policy goals in Congress, elected members hold organization meetings particularly at the start of each session of Congress and occasionally throughout the session.

Republican meetings are called party conferences and Democrat meetings are called party caucuses. Members of each party meet in these closed sessions and discuss what items to place on the legislative agenda and make decisions about which party members should serve on the committees that draft proposed laws. Party members also elect the leaders of their respective parties in the House and the Senate, and their party **whips**. Leaders serve as party managers and are the highest-ranking members of the party in each chamber of Congress. The party **whip** ensures that members are present when a piece of legislation is to be voted on and directs them how to vote. The whip is the second-highest ranking member of the party in each chamber. Thus, both the Republicans and the Democrats have a leader and a whip in the House, and a leader and a whip in the Senate. The leader and whip of the party that holds the majority of seats in each house are known as the majority leader and the majority whip. The leader and whip of the party with fewer seats are called the minority leader and the minority whip. The party that controls the majority of seats in the House of Representatives also elects someone to serve as Speaker of the House. People elected to Congress as independents (that is, not members of either the Republican or Democratic parties) must choose a party to conference or caucus with. For example, Vermont Senator Bernie Sanders, who ran for Senate as an independent candidate, caucuses with the Democrats in the Senate and ran for the presidency as a Democrat in both 2016 and 2020.

In 1950, the American Political Science Association's Committee on Political Parties (APSA) published an article offering a criticism of the current party system. The parties, it argued, were too similar. Distinct, cohesive political parties were critical for any well-functioning democracy. First, distinct parties offer voters clear policy choices at election time. Second, cohesive parties could deliver on their agenda, even under conditions of lower bipartisanship. The party that lost the election was also important to democracy because it served as the "loyal opposition" that could keep a check on the excesses of the party in power. Finally, the paper suggested that voters could signal whether they preferred the vision of the current leadership or of the opposition. This signaling would keep both parties accountable to the people and lead to a more effective government, better capable of meeting the country's needs.

But, the APSA article continued, U.S. political parties of the day were lacking in this regard. Rarely did they offer clear and distinct visions of the country's future, and, on the rare occasions they did, they were typically unable to enact major reforms once elected. Indeed, there was so much overlap between the parties when in office that it was difficult for voters to know whom they should hold accountable for bad results. The article concluded by advocating a set of reforms that, if implemented, would lead to more distinct parties and better government. While this description of the major parties as being too similar may have been accurate in the 1950s; that is no longer the case.[2]

The Problem of Divided Government

The problem of majority versus minority politics is particularly acute under conditions of **divided government**. Divided government occurs when one or more houses of the legislature are controlled by the party in opposition to the executive. Unified government occurs when the same party controls the executive and the legislature entirely.

Divided government can pose considerable difficulties for both the operations of the party and the government. It makes fulfilling campaign promises extremely difficult, for instance, since the cooperation (or at least the agreement) of both Congress and the president is typically needed to pass legislation. Furthermore, one party can hardly claim credit for success when the other side has been a credible partner, or when nothing can be accomplished. Party loyalty may be challenged too, because individual politicians might be forced to oppose their own party agenda if it will help their personal reelection bids.

Divided government can also be a threat to government operations, although its full impact remains unclear.[3] For example, when the divide between the parties is too great, government may shut down. A 1976 dispute between Republican president Gerald Ford and a Democrat-controlled Congress over the issue of funding for certain cabinet departments led to a ten-day shutdown of the government (although the federal government did not cease to function entirely). But beginning in the 1980s, the interpretation that Republican president Ronald Reagan's attorney general gave to a nineteenth-century law required a complete shutdown of federal government operations until a funding issue was resolved.[4]

Clearly, the parties' willingness to work together and compromise can be a very good thing. However, the past several decades have brought an increased prevalence of divided government. Since 1969, the U.S. electorate has sent the president a Congress of his own party in less than one-half of all congressional elections. During George W. Bush's first administration, the Republican majority was so narrow that a combination of resignations and defections gave the Democrats control before the next election could be held.

Over the short term, however, divided government can make for very contentious politics. A well-functioning government usually requires a certain level of responsiveness on the part of both the executive and the legislative branches. This responsiveness is hard enough if government is unified under one party. During the presidency of Democrat Jimmy Carter (1977–1980), despite the fact that both houses of Congress were controlled by Democratic majorities, the government was shut down on five occasions because of conflict between the executive and legislative branches.[5]

Shutdowns are even more likely when the president and at least one house of Congress are of opposite parties. During the presidency of Ronald Reagan, for example, the federal government shut down eight times; on seven of those occasions, the shutdown was caused by disagreements between Reagan and the Republican-controlled Senate on the one hand and the Democrats in the House on the other, over such issues as spending cuts, abortion rights, and civil rights.[6] More such disputes and government shutdowns took place during the administrations of George H. W. Bush, Bill Clinton, and Barack Obama, when different parties controlled Congress and the presidency.

For the first few decades of the current pattern of divided government, the threat it posed to the government appears to have been muted by a high degree of **bipartisanship**, or cooperation through compromise.

Many pieces of legislation were passed in the 1960s and 1970s with reasonably high levels of support from both parties. Most members of Congress had relatively moderate voting records, with regional differences within parties that made bipartisanship on many issues more likely.



Image 6.8 President Reagan and Speaker O'Neil

In the early 1980s, Republican President Ronald Reagan (left) and Democratic Speaker of the house Tip O'Neil (right) worked together to pass key pieces of legislation, even though they opposed each other on several issues. (Credit: OpenStax; Ronald Reagan Presidential Library and Museum)

For example, until the 1980s, northern and Midwestern Republicans were often progressive, supporting racial equality, workers' rights, and farm subsidies. Southern Democrats were frequently quite socially and racially conservative and were strong supporters of states' rights. Cross-party cooperation on these issues was frequent. But in the past few decades, the number of moderates in both houses of Congress has declined. This has made it more difficult for party leadership to work together on a range of important issues, and for members of the minority party in Congress to find policy agreement with an opposing party president.

The Implications of Polarization

The past thirty years have brought a dramatic change in the relationship between the two parties as fewer conservative Democrats and liberal Republicans have been elected to office. As political moderates, or individuals with ideologies in the middle of the ideological spectrum, leave the political parties at all levels, the parties have grown farther apart ideologically, a result called **party polarization**.

In other words, at least organizationally and in government, Republicans and Democrats have become increasingly dissimilar from one another. In the party-in-government, this means fewer members of Congress have mixed voting records; instead they vote far more consistently on issues and are far more likely to side with their party leadership.[7]

It also means a growing number of moderate voters aren't participating in party politics. Either they are becoming independents, or they are participating only in the general election and are therefore not helping select party candidates in primaries.

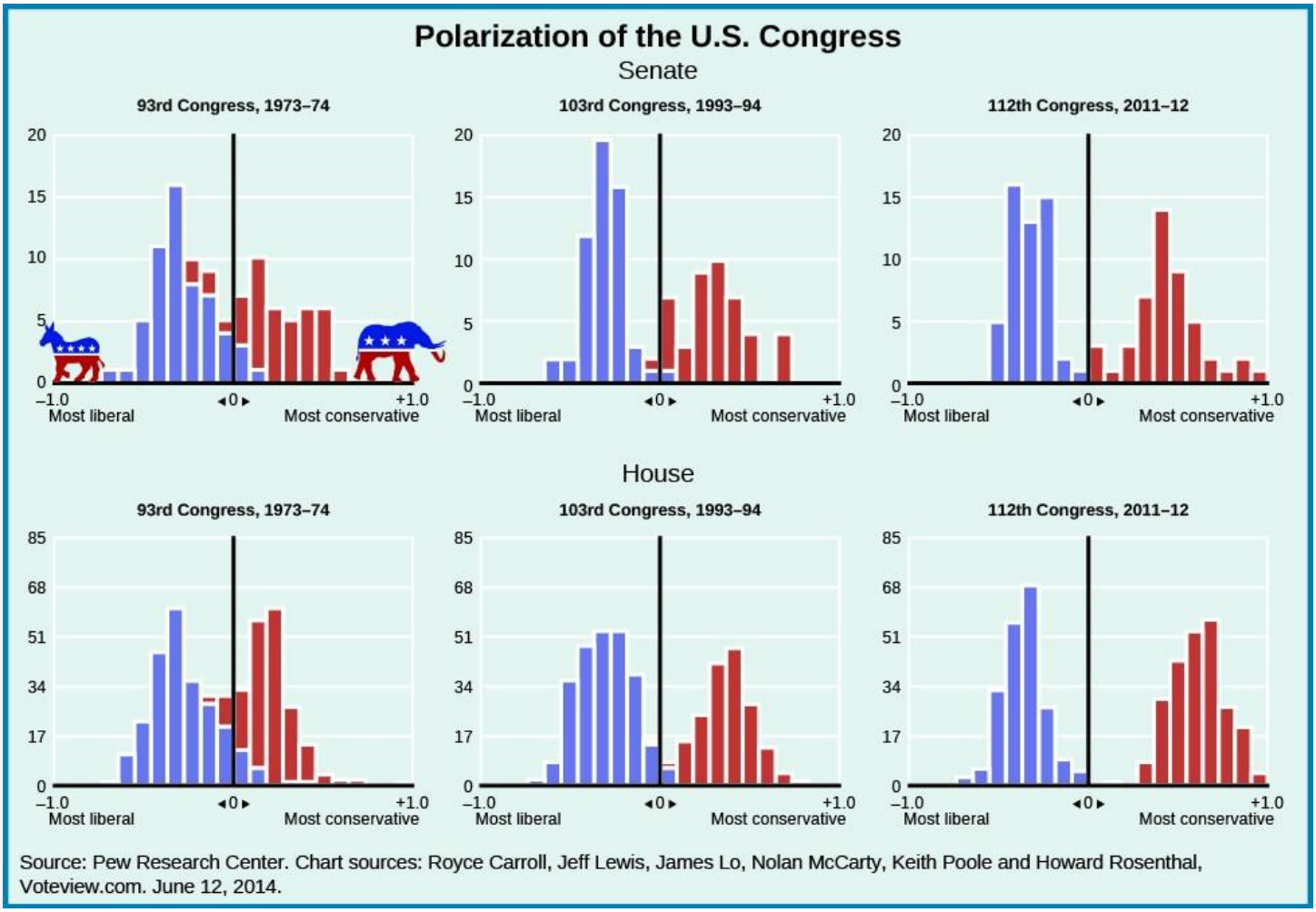


Chart 6.16 Bar Graphs Illustrating Polarization in Congress

The number of moderates has dropped since 1973 as both parties have moved toward ideological extremes.

What is most interesting about this shift to increasingly polarized parties is that it does not appear to have happened as a result of the structural reforms recommended by APSA. Rather, it has happened because moderate politicians have simply found it harder and harder to win elections. There are many conflicting theories about the causes of polarization, some of which we discuss below. But whatever its origin, party polarization in the United States does not appear to have had the net positive effects that the APSA committee was hoping for. Except for providing voters with more distinct choices, positives of polarization are hard to find. The negative impacts are many. For one thing, rather than reducing interparty conflict, polarization appears to have only amplified it. For example, the Republican Party (or

the GOP, standing for Grand Old Party) has historically been a coalition of two key and overlapping factions: smaller government/pro-business social conservatives. The GOP has held the coalition of these two groups together by opposing new social welfare programs designed to redistribute wealth while at the same time arguing for laws preferred by traditional social value conservatives. But it was also willing to compromise with more moderate/pro-business Democrats, often at the expense of social issues, prioritizing economic issues over social issues.

Beginning in the first decade of the 21st century, born in part from a combination of an older third-party movement known as the Libertarian Party and a newly emerging, self-proclaimed, "Tea Party Movement," a much more hostile view emerged toward government and government intervention in all forms. Taxation and the regulation of business were seen as a threat to capitalism and democracy. Although an anti-tax faction within the Republican Party has existed for some time, some factions of the Tea Party movement also became active at the intersection of religious liberty and social issues, especially in opposing such initiatives as same-sex marriage and abortion rights.[8] They argued that government, both directly and by neglect, threatened the ability of traditional value conservatives to observe their moral beliefs.

While the Tea Party movement and not a separate political party, 86 percent of those who identify with the movement voted in 2012 for Republicans.[9] Some members of the Republican Party are closely affiliated with the movement, and before the 2012 elections, Tea Party activist Grover Norquist exacted promises from many Republicans in Congress that they would oppose any bill that sought to raise taxes.[10] The Tea Party Movement remains active in the Republican party although less visible.

Movements on the left have also arisen. The Occupy Wall Street movement was born of the government's response to the Great Recession of 2008 and its assistance to endangered financial institutions, provided through the Troubled Asset Relief Program, TARP. The Occupy Movement believed government moved swiftly to protect the banking industry from the worst of the recession but largely failed to protect the average person, thereby worsening the growing economic inequality in the United States.

While the Occupy Movement itself has largely fizzled, the anti-business sentiment to which it gave voice continues within the Democratic Party, and many Democrats have proclaimed their support for the movement and its ideals, if not for its tactics.[11] Bernie Sanders' presidential run made these topics and causes even more salient, especially among younger voters. Their popularity and the growing visibility of race and social identity issues in the United States have helped sustain a movement toward the left wing of the Democratic Party. In addition to the call for greater intervention in the economy, there has been a demand within the Democrat party for higher social welfare programs following the George Floyd killing and the meeting of concerns of the LGBTQ movement.

The Causes of Polarization

Scholars agree that some degree of **polarization** is occurring in the United States, even if some contend it is only at the elite level. But they are less certain about exactly why, or how, polarization has become such a mainstay of American politics. Several conflicting theories have been offered. The first and perhaps best

argument is that polarization is a party-in-government phenomenon driven by a decades-long sorting of the voting public, or a change in party allegiance in response to shifts in party position.[12] According to the sorting thesis, before the 1950s, voters were mostly concerned with state-level party positions rather than national party concerns. Since parties are bottom-up institutions, this meant local issues dominated elections; it also meant national-level politicians typically paid more attention to local problems than to national party politics.

But over the past several decades, voters have started identifying more with national-level party politics, and they began to demand their elected representatives become more attentive to national party positions. As a result, they have become more likely to pick parties that consistently represent national ideals, are more consistent in their candidate selection, and are more willing to elect office-holders likely to follow their party's national agenda. One example of the way social change led to party sorting revolves around race.

A second possible culprit in increased polarization is the impact of technology on the public square. Before the 1950s, most people got their news from regional newspapers and local radio stations. While some national programming did exist, most editorial control was in the hands of local publishers and editorial boards. These groups served as a filter of sorts as they tried to meet the demands of local markets.

Television was a powerful tool, with national news and editorial content that provided the same message across the country. All viewers saw the same images of the women's rights movement and the war in Vietnam. The expansion of news coverage to cable, and the consolidation of local news providers into big corporate conglomerates, amplified this nationalization. Average citizens were just as likely to learn what it meant to be a Republican from a politician in another state as from one in their own, and national news coverage made it much more difficult for politicians to run away from their votes. The information explosion that followed the heyday of network TV by way of cable, the Internet, and blogs has furthered this nationalization trend.

A final possible cause for polarization is the increasing sophistication of **gerrymandering** or the manipulation of legislative districts—redrawing district lines to improve political power, which occurs following the **census** count of U.S. citizens. According to the gerrymandering thesis, the more moderate or heterogeneous a voting district, the more moderate the politician's behavior once in office. Taking extreme or one-sided positions on many issues would be hazardous for a member who needs to build a diverse electoral coalition. If the district has been drawn to favor a political party or group, it now is necessary for the elected official to serve only the portion of the constituency that dominates.

Gerrymandering is a centuries-old practice. There has always been an incentive for legislative bodies to draw districts in such a way that sitting legislators have the best chance of keeping their jobs. But changes in law and technology have transformed gerrymandering from a crude art into a science. The first advance came with the introduction of the "one-person-one-vote" principle by the U.S. Supreme Court in 1962.

Before then, it was common for many states to practice **redistricting**, or redrawing of their electoral maps, *only* if they gained or lost seats in the U.S. House of Representatives. This can happen once every ten years as a result of a constitutionally mandated **reapportionment** process, in which the number of House seats given to each state is adjusted to account for population changes.

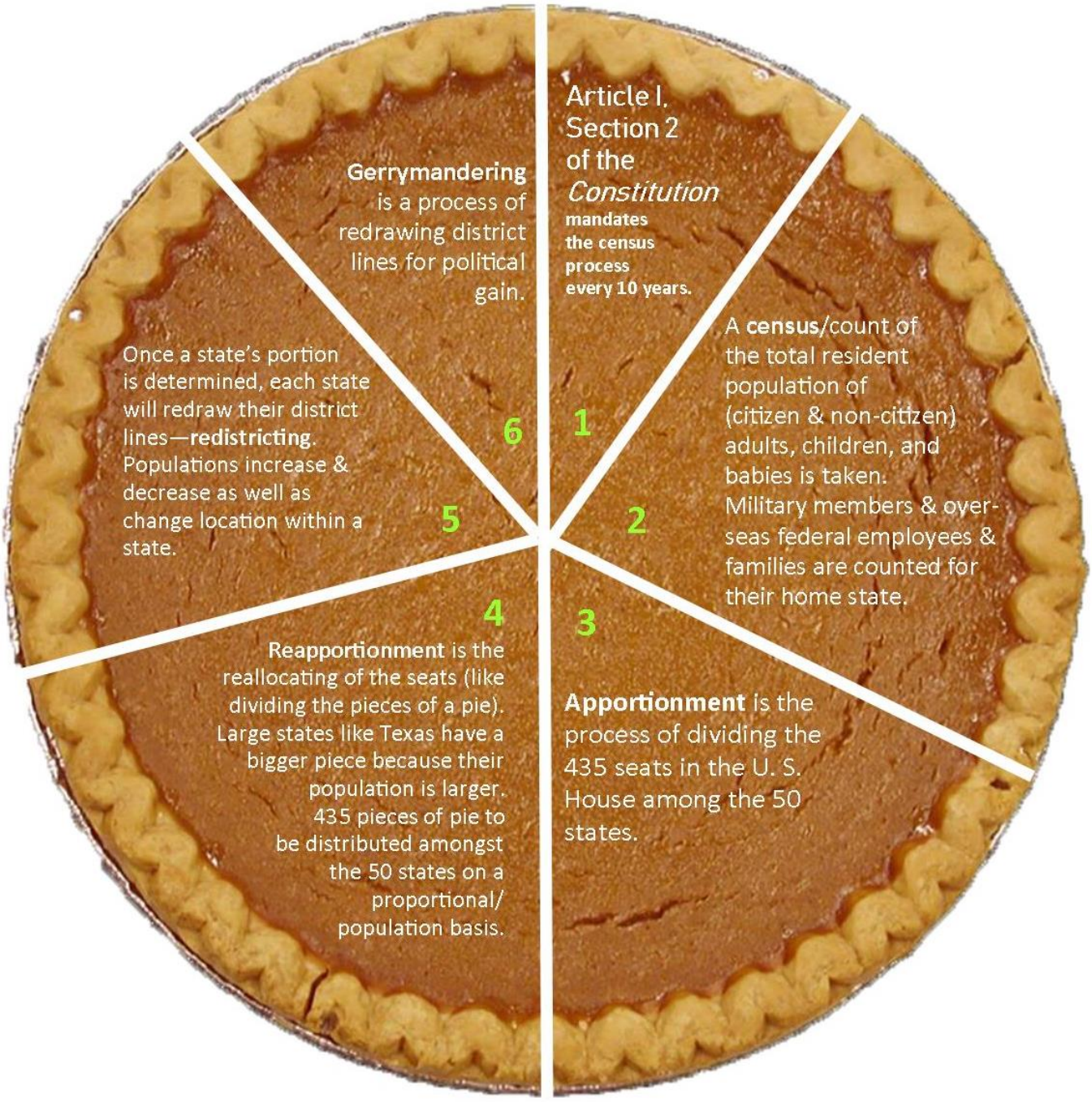


Chart 6.17 Pie Chart illustrating the Apportionment Process

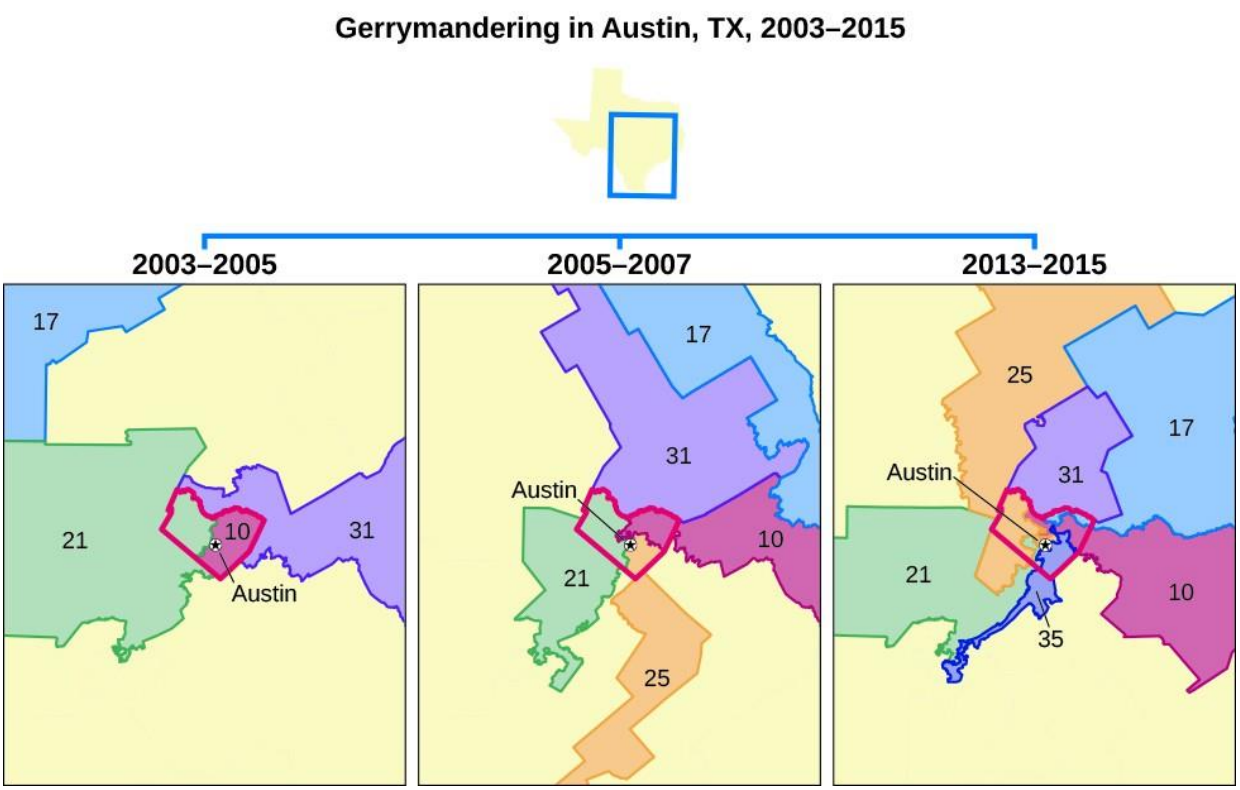
But if there was no change in the number of seats, there was little incentive to shift district boundaries. After all, if a legislator had won election based on the current map, any change to the map could make losing seats more likely. Even when reapportionment led to new maps, most legislators were more concerned with protecting their own seats than with increasing the number of seats held by their party.

As a result, some districts had gone decades without significant adjustment, even as the U.S. population changed from largely rural to largely urban. By the early 1960s, some electoral districts had populations several times greater than those of their more rural neighbors.

However, in its one-person-one-vote decision in *Reynolds v. Simms* (1964), the Supreme Court argued that everyone's vote should count roughly the same regardless of where they lived.[13] Districts had to be adjusted so they would have roughly equal populations.

Several states therefore had to make dramatic changes to their electoral maps during the next two redistricting cycles (1970–1972 and 1980–1982). Map designers, who were no longer certain how to protect individual party members, changed tactics to try and create **safe seats** so members of their party could be assured of winning by a comfortable margin. The basic rule of thumb was that designers sought to draw districts in which their preferred party had a 55 percent or better chance of winning a given district, regardless of which candidate the party nominated.

Of course, many early efforts at post-*Reynolds* gerrymandering were crude since map designers had no good way of knowing exactly where partisans lived. At best, designers might have a rough idea of voting patterns between precincts, but they lacked the ability to know voting patterns in individual blocks or neighborhoods. They also had to contend with the inherent mobility of the U.S. population, which meant the most carefully drawn maps could be obsolete just a few years later. Designers were often forced to use crude proxies for party, such as race or the socio-economic status of a neighborhood. Some maps were so crude they were ruled unconstitutionally discriminatory by the courts.



Examples of gerrymandering in Texas, where the Republican-controlled legislature redrew House districts to reduce the number of Democratic seats by combining voters in Austin with those near the border, several hundred miles away. Today, Austin is represented by six different congressional representatives.

Chart 6.18 Gerrymandering Illustration

Proponents of the gerrymandering thesis point out that the decline in the number of moderate voters began during this period of increased redistricting. But it was not until later, they argue, that the real effects could be seen. A second advance in redistricting, via computer-aided map making, truly transformed gerrymandering into a science. Refined computing technology--the ability to collect data about potential voters--and the use of advanced algorithms have given map makers a good deal of certainty about where to place district boundaries to best predetermine the outcomes. These factors also provided better predictions about future population shifts, making the effects of gerrymandering more stable over time. Proponents argue that this increased efficiency in map drawing has led to the disappearance of moderates in Congress.

According to political scientist Nolan McCarty, there is little evidence to support the redistricting hypothesis alone. First, he argues, the Senate has become polarized just as the House of Representatives has, but people vote for Senators on a statewide basis.

There are no gerrymandered voting districts in elections for senators. Research showing that more partisan candidates first win election to the House before then running successfully for the Senate, however, helps us understand how the Senate can also become partisans.[14] Furthermore, states like Wyoming and Vermont, which have only one Representative and thus elect House members on a statewide basis as well, have consistently elected people at the far ends of the ideological spectrum.[15] Redistricting did contribute to polarization in the House of Representatives, but it took place largely in districts that had undergone significant change.[16] Furthermore, polarization has been occurring throughout the country, but the use of increasingly polarized district design has not. While some states have seen an increase in these practices, many states were already largely dominated by a single party (such as in the Solid South) but still elected moderate representatives. Some parts of the country have remained closely divided between the two parties, making overt attempts at gerrymandering difficult. But when coupled with the sorting phenomenon discussed above, redistricting probably is contributing to polarization, if only at the margins.

THE POLITICS OF REDISTRICTING

Voters in several states have become so worried about the problem of gerrymandering that they have tried to deny their legislatures the ability to draw district boundaries. The hope is that by taking this power away from whichever party controls the state legislature, voters can ensure more competitive districts and fairer electoral outcomes. In 2000, voters in Arizona approved a referendum that created an independent state commission responsible for drafting legislative districts. But the Arizona legislature fought back against the creation of the commission, filing a lawsuit that claimed only the legislature had the constitutional right to draw districts. Legislators asked the courts to overturn the popular referendum and end the operation of the redistricting commission. However, the U.S. Supreme Court upheld the authority of the independent commission in a 5–4 decision titled *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015).[17]

Currently, only five states use fully independent commissions—ones that do not include legislators or other elected officials—to draw the lines for both state legislative and congressional districts. These

states are Arizona, California, Idaho, Montana, and Washington. In Florida, the League of Women Voters and Common Cause challenged a new voting districts map supported by state Republicans, because they did not believe it fulfilled the requirements of amendments made to the state constitution in 2010 requiring that voting districts not favor any political party or incumbent.[18]

Think you have what it takes to gerrymander a district? Play the **redistricting game** and see whether you can find new ways to help out old politicians.

Political Parties: Questions to Consider

1. Is it preferable for the US government to have unified party control or divided government? Explain why.
2. What is the difference between a majority and a minority party?
3. Does gerrymandering lead to increased polarization?

1. *Open to debate: Unified party control makes government function more efficiently in many ways. For example, it is easier to enact legislation if the president and the majority in both houses of Congress are members of the same party and share the same political goals. On the other hand, divided government can provide a check on the President's agenda which may not be favored by the majority of voters who elected the members of the body of Congress from the party that differs from the President. The voters from this party may well have different political goals than the party of the President.*
2. *numbers; who holds the majority of elected seats*
3. *In summary There is little evidence to support gerrymandering as the only cause of polarization, but it appears to have an effect in some states and at the margins but must be coupled with other factors such as increased voter sorting following the switching of party allegiances based upon the nationalization of political issues.*

Terms to Remember

bipartisanship–a process of cooperation through compromise

census–counting citizens for purposes of representation in the U. S. House and the Electoral College; data collected every 10 years to allow for reapportionment of House seats

divided government–a condition in which one or more houses of the legislature is controlled by the party in opposition to the executive

gerrymandering–the manipulation of legislative districts in an attempt to favor a particular candidate

moderate–an individual who falls in the middle of the ideological spectrum

majority party–the legislative party with over half the seats in a legislative body, and thus significant power to control the agenda

minority party–the legislative party with less than half the seats in a legislative body

party identifiers–individuals who represent themselves in public as being part of a party

party-in-the-electorate–members of the voting public who consider themselves part of a political party or who consistently prefer the candidates of one party over the other

party-in-government–party identifiers who have been elected to office and are responsible for fulfilling the party's promises

party polarization–the shift of party positions from moderate towards ideological extremes

reapportionment–the reallocation of House seats between the states to account for population changes

redistricting–the redrawing of electoral maps

safe seat–district drawn so members of a party can be assured of winning by a comfortable margin

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7.1 Political Participation:

How do citizens become engaged in a representative democratic republic?



Image 7.1 Women Suffrage Supporters

Political participation in action with Mrs. J. Hardy Stubbs, Miss Ida Craft, and Miss Rosalie Jones preparing to pass out leaflets encouraging citizens to support legislation allowing women to vote. (Credit: George Grantham Bain, Library of Congress; Summary Photo shows 3 suffragettes with bag "Votes for Women pilgrim leaflets." Published [between ca. 1910 and ca. 1915] ; George Grantham Bain Collection (Library of Congress). - General information about the Bain Collection is available at http://hdl.loc.gov/loc.pnp/pp.ggbain; http://hdl.loc.gov/loc.pnp/pp.print Digital Id ggbain 11100 //hdl.loc.gov/loc.pnp/ggbain.11100 Control Number ggb2005011205 Reproduction Number LC-DIG-ggbain-11100 (digital file from original negative) Rights Advisory No known restrictions on publication.)

Learning Objectives

- Identify ways U.S. citizens participate politically.
- Identify the different forms of and reasons for civic engagement by the people.
- Discuss factors influencing people's willingness to become engaged.
- Explain why some policies are made by elected representatives and others directly by voters.
- Identify characteristics of who runs for elected office.

Chart 7.1 Learning Objectives on Citizen Participation

Citizen Participation Critical to Representative Government

Government based upon the consent of the people presupposes citizen participation in the political process. One of the hallmarks of this participation is voting in elections. In fact, voting is clearly a necessary condition–that is, you cannot have a representative republic without voting. However, voting is not sufficient for a government to be called a representative republic or representative democracy. Totalitarian governments frequently allow citizens to vote but without real and meaningful participation in governing. For example, without real opportunity for citizens to express their opinions in an open

environment or to join a political party or an organization that opposes the government leaders in power, votes have no impact on the direction of governmental policy. Voting must be coupled with civil rights and protected liberties that permit meaningful participation through a broad range of opportunities.

Means of Political Participation

All citizens of the U.S. have numerous opportunities open to them for participating in the political processes of our federal structure. From the local level to the national level, citizens may participate in the processes that affect them. Individuals and groups have worked tirelessly in the U.S. to foster expanded opportunities for participation including a major expansion in those permitted to vote and facilitating our voter registration process. However, more work remains to be done to achieve the goals of maximum political equality with inclusive political participation. Participation in political processes takes many forms from writing a letter petitioning the government for assistance with some problem to marching with a group advocating for a change in government policy. It is obvious that some participatory activities take a much higher initiative on the part of an individual than others. Moreover, some activities are quite normal or **conventional** methods to influence government policy, while other activities are more atypical or **unconventional**. That is, while voting or assisting someone with a campaign is conventional, protesting or boycotting products may be less typical and more unconventional. Under the U.S. Constitution and the Bill of Rights, such activities and methods of participation are protected rights of citizens. Active engagement in civic activities is an important component of democratic ideals and essential in a representative government to achieve **responsiveness** from our public officials. Participation is all about making opinions known, having opinions heard, and attempting to influence the policy making process.

Means of Political Participation	General Description
registering to vote	completing necessary forms to be added to voting rolls
voting	choose elected officials; make decisions about ballot initiatives; etc.
protesting	make opinions known by marching, signs, or other symbols of opinion
petitioning	writing a letter to a public official; blogging; emailing; using social media to express opinions; etc.
electioneering	volunteering for a campaign; donate time and money; posting a political sign on your property; making phone calls; etc.
jury duty	participate in an essential part of judicial procedure
attending a government meeting/hearing	make opinions know by speaking, questioning, etc.
join an interest group	associating with other individuals or entities that share similar opinions on issues/policies; donate time and money
join a political party	associate with a group that shares similar political goals; ideological perspective; policy objectives; donate time & money
run for office	become a direct participant in the policy making process
initiative/proposition*	law passed directly by citizens of a state; bypass legislature & governor; subject to review by courts
referendum*	citizens directly confirm or repeal government decision; legislature of a state may present a law directly to voters for ratification/confirmation
recall*	citizens directly vote to remove a government official from office

Chart 7.2 Illustrating Political Participation in Various Forms

*Forms of political participation marked with asterisks are only available in the United States at the state or local government level, not at the national government level.

An example of **civic participation**, in a representative democratic republic, is voting for legislative representatives. Elections allow the people to pick representatives to serve in government and make policy decisions on the citizens' behalf. Representatives pass laws and carry out this decision/policy making process. Direct democratic ideals are realized when policy questions go directly to the voters for a decision in referenda. Citizens now use these powers at the ballot to change laws and direct public policy in some states. These decisions include local bond funding for schools or state transportation bonds and policy changes such as state constitutional amendments. Not all states allow direct democracy through referenda; moreover, the *Constitution* of the United States does not authorize the use of referenda at the national level for any policy question.

Is there a decline in civic engagement?

Are fewer people active in politics today? Political scientist Robert Putnam has argued that **civic participation** is declining; although many Americans may report belonging to interest groups, these groups are usually large, impersonal ones with thousands of members.[1] People who join interest groups such as Amnesty International or National Rifle Association (NRA) may share certain values and ideals with other members of the group, but they do not actually interact with these other members–allowing them to feel connected to others without having to spend time in their presence. These organizations are different from the types of groups Americans used to belong to, like church groups or bowling leagues—small interactive groups. Putnam considers a number of explanations for this decline in small group membership, including technological developments, such as the internet, that separate people by allowing them to feel connected to others without having to spend time in their presence and societal changes leading to less time for small groups caused by a changing marriage and divorce rate and workforce participation of women.[2]

An Opinion on the Issue

Kenneth Thompson, Austin Community College…

The United States of America and the republic, over the last couple of centuries, have become one of the most powerful and productive nations in the history of the world. One of the guiding principles to this phenomenon is citizen participation in the political process—to ensure government at each level is held accountable. The First Amendment guaranteeing free speech is a direct request for political participation. A society based on government discussion requires a strong civil society that plays an active role in the political debate, and voting is one method of participating in the debate. In fact, voting is clearly a necessary condition—that is—you cannot have a representative republic without voting. However, voter's overall participation is declining with each generation. While many states have increased ways to register, other states have added additional requirements needed to vote. Local, county, state, and national elections are all significant—how funds are spent and how policies are set. Political participation and voter turnout are cornerstones of a healthy civil society.

[Used with permission 06/19/2019 from Kenneth Thompson]

Chart 7.3 Student Opinion on Citizen Participation

Putnam argues that a decline in **social capital,** "the collective value" of the face-to-face civic interactions among citizens, accompanies this decline in membership in small interactive community-based groups. Included in social capital are the value of social networks among people who know and trust each other and are willing to do something constructive for each other, and work with others to find solutions to problems. This decline in social capital makes them less likely to engage in meaning civic participation in representative democracy.[3] If Putnam is correct, this trend is unfortunate, because becoming active in a representative government is important for many reasons, such as responsiveness from those we elect. Young Americans are often reluctant to become involved in traditional forms of political activity. They may believe politicians are not interested in what they have to say, or they may feel their votes do not matter. However, this attitude has not always prevailed. Indeed, today's college students can vote because of the activism of college students in the 1960s. Most states at that time required citizens to be twenty-one years of age before they could vote in national elections. This angered many young people, especially young men who could be drafted to fight the war in Vietnam. They argued that it was unfair to deny eighteen-year-olds the right to vote for the people who had the power to send them to war. As a result, the Twenty-Sixth Amendment, which lowered the voting age in national elections to eighteen, was ratified by the states and went into effect in 1971.



GETTING INVOLVED—Prove Robert Putnum wrong! In many ways, the pluralists were right. There is plenty of room for average citizens to become active in government, whether at a local or national level. Local civic organizations always need volunteers, sometimes for only a short while and sometimes for much longer.

Follow-up activity: Choose one of the following websites to connect with organizations and interest groups in need of help:

- Common Cause "is a grassroots organization dedicated to upholding the core values of American democracy"
- Friends of the Earth "mobilizes people to protect the natural environment"
- Grassroots International "works for global justice"
- The Family Research Council "promotes traditional Judeo-Christian values"
- National Latina Institute for Reproductive Justice "builds Latina power"
- Equality Now "works to end violence and discrimination against women and girls"
- Heritage Action "mobilizes people to support limited government, American values, and a strong national defense"
- Freedom Works "mobilizing citizens supporting individual freedom"

FACTORS OF ENGAGEMENT

Many Americans engage in political activity on a regular basis. A 2008 survey revealed that approximately two-thirds of American adults had participated in some type of political action in the past year. These activities included largely non-personal activities that did not require significant interaction

with others.[4] Americans aged 18–29 were less likely to become involved in political activity than older Americans. A 2015 poll of more than three thousand young adults by Harvard University's Institute of Politics revealed that only 22 percent claimed to be politically engaged, and fewer than 10 percent said that they belonged to any type of political organization or had volunteered for a political campaign.

Only slightly more claimed they had gone to political rallies.[5] However, although Americans under age thirty are less likely than older Americans to engage in traditional types of political participation, many remain engaged in activities on behalf of their communities. One-third reported that they had voluntarily engaged in some form of community service in the past year.[6]

Evidence suggests that younger Americans less likely to become involved in traditional political organizations and a more traditional policy-making path? One answer may be that as American politics become more partisan in nature; young people turn away. Young Americans are particularly likely to be put off by partisan politics. More Americans under the age of thirty now identify themselves as Independents instead of Democrats or Republicans. Instead of identifying with a political party, young Americans are increasingly concerned about specific issues.[7] In summary, the likelihood that people will become active in politics also depends not only on age but on wealth and education. In a 2006 poll, the percentage of people who reported that they were regular voters grew as levels of income and education increased.[8]



Chart 7.4 Illustrating the Policy Making Process

Deciding to Run

Running for office can be as easy as collecting one hundred signatures on a city election form or paying a registration fee of several thousand dollars to run for governor of a state. However, a potential candidate needs to meet state-specific requirements covering length of residency, voting status, and age. Potential candidates must also consider competitors, family obligations, and the likelihood of drawing financial backing. His or her spouse, children, work history, health, financial history, and business dealings also become part of the media's focus, along with many other personal details about the past. Candidates for office are slightly more diverse than the representatives serving in legislative and executive bodies, but the realities of elections drive many eligible and desirable candidates away from running.[9] Despite these problems, most elections will have at least one candidate per party on the ballot. In states or districts where one party holds a supermajority, such as Massachusetts, candidates from the other party may be discouraged from running because they do not think they have a chance to win.[10]

Another factor for potential candidates is whether the seat they are considering is competitive or open. A **competitive seat** describes a race where a challenger runs against the **incumbent**—the current office holder. An **open seat** is one whose incumbent is not running for reelection. But when an incumbent retires, the seat is open and more candidates will run for that seat.

Many potential candidates will also decline to run if their opponent has a lot of money in a campaign war chest. War chests are campaign accounts registered with the Federal Election Commission, and candidates are allowed to keep earlier donations if they intend to run for office again. Incumbents and candidates trying to move from one office to another very often have money in their war chests. Those with early money are hard to beat because they have an easier time showing they are a viable candidate (one likely to win).

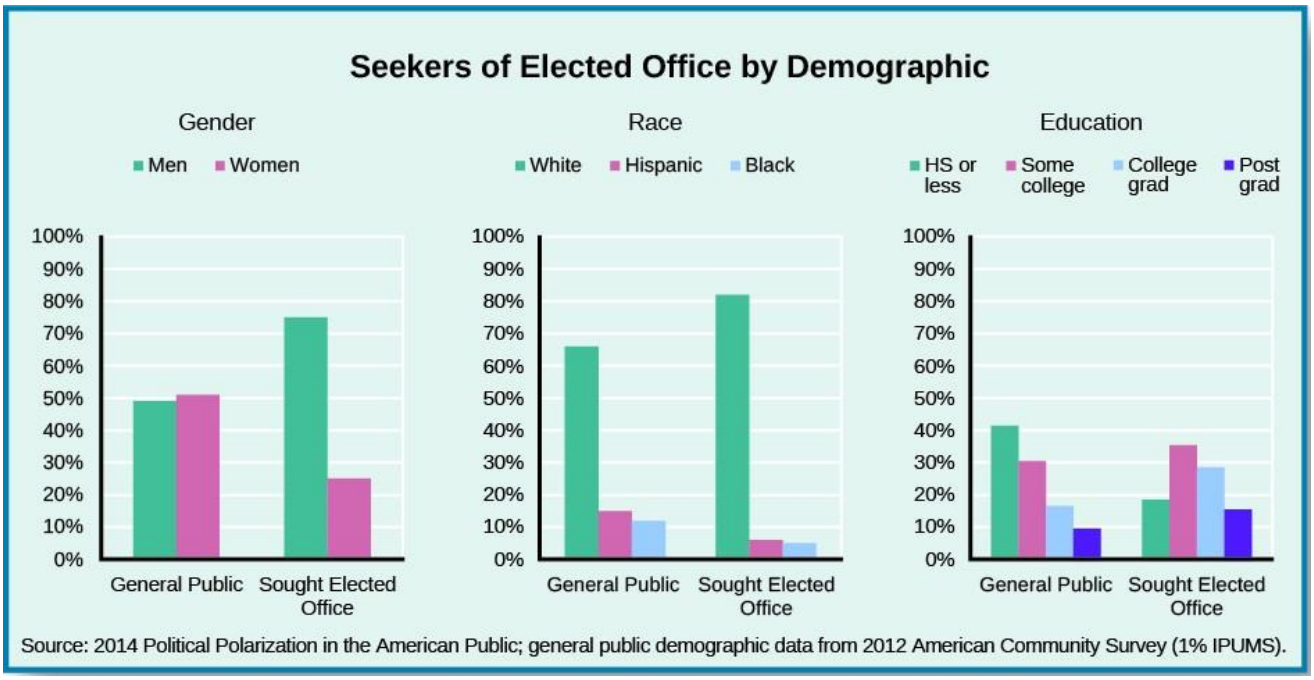


Chart 7.5 Bar Graphs on Seekers of Elected Office by Demographics

Those who seek elected office do not generally reflect the demographics of the general public: They are often disproportionately male, white, and more educated than the overall U.S. population.

They can woo potential donors, which brings in more donations and strengthens the campaign. A challenger who does not have money, name recognition, or another way to appear viable will have fewer campaign donations and will be less competitive against the incumbent.

Candidates are likely to be moving up from prior elected office or are professionals, like lawyers, who can take time away from work to campaign and serve in office.[11] When candidates run for office, they are most likely to choose local or state office first.

For women, studies have shown that family obligations rather than desire or ambition account for this choice. Further, women are more likely than men to wait until their children are older before entering politics.[12] Because higher office is often attained only after service in lower office, there are repercussions to women waiting so long. If they do decide to run for the U.S. House of Representatives or Senate, they are often older, and fewer in number, than their male colleagues. Only 24.4 percent of state legislators and 20 percent of U.S. Congress members are women.[13] The number of women in executive office is often lower as well. 80 percent of members of Congress are male, 90 percent have at least a bachelor's degree, and their average age is sixty.[14]

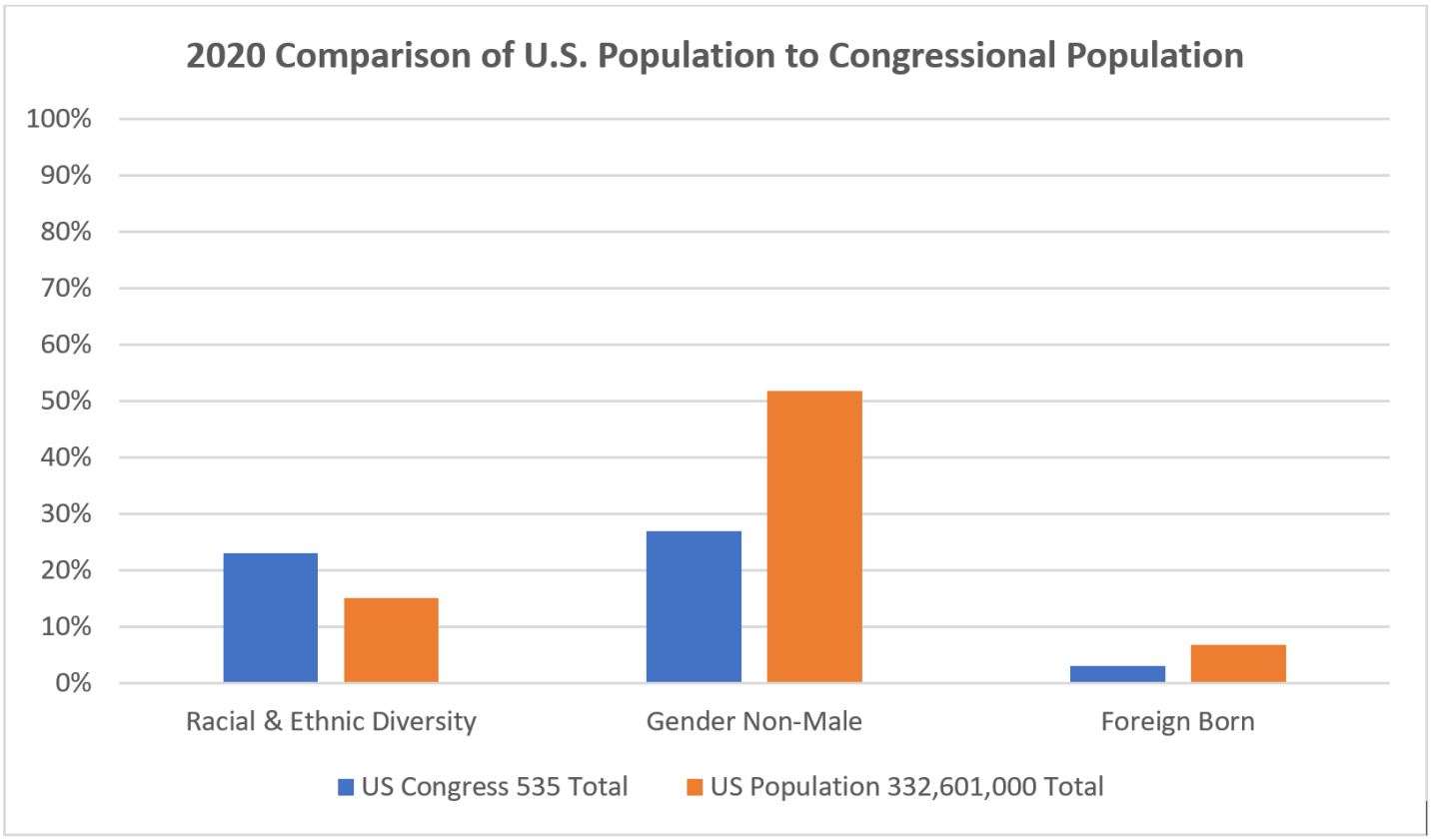


Chart 7.5 Bar Graphs Illustrating Population of US and Population of Congress

Credit: United States Census Bureau, "2020 Demographic Analysis" and "Foreign Born: 2018 Current Population Survey Detailed Tables," 222.census.gov; Pew Research Center "The changing face of Congress in 7 charts," 2021 data; American Community Survey (ACS).

WHERE AND HOW DO WOMEN PARTICIPATE IN THE POLITICAL PROCESS?

This photo shows women marching in national suffrage demonstration, seeking voting rights, in Washington, D.C., May 9, 1914. The suffragists in sashes marching down the street past The Washington Post building were flanked by policemen.



Image 7.2 Women Marching for the Vote

Women marching in national suffrage demonstration in Washington, D.C., May 9, 1914. (Credit: Library of Congress)[15]

Women are a historically disadvantaged group in the arena of political participation. According to the U.S. State Department, women are joining government in growing numbers, holding almost 20 percent of seats in national assemblies worldwide, and serving as heads of government in over 20 countries. Women's political engagement not only increases visibility of women's leadership abilities, but also leads to social and economic benefits for their communities and countries.

Despite this progress, women make up less than 10 percent of the world's leaders, and globally less than one in five members of national parliaments is a woman. A critical mass for women's representation in national parliaments (estimated at approximately 30%) has been reached in only 28 countries and women are too frequently absent at negotiating tables where constitutions are written and conflicts are resolved.

The U.S. Department of State recognizes that democracy cannot flourish without the inclusive and full participation of all its citizens. Women must be engaged in governance and policy-making – not only because they have a right to be involved in the decisions that directly affect their lives, their families, and their communities, but also because their perspectives and experiences improve the outcomes of these deliberations.[16]

Yet, women around the world are still largely absent from national and local decision-making bodies; struggle to have a voice in peace-building transitions and are excluded from political processes. From discrimination and violence to a lack of support and resources, women face countless challenges to participation in the civic and political life of many countries.[17]

Political Participation: Questions to Consider

1. What are some of the ways someone can participate in the political process besides voting?
2. How do the characteristics of people who decide to run for office compare with the general public?
3. Is citizen engagement necessary for government to function? Explain.
4. Are all Americans equally able to become engaged in government?

1. *People can pay attention to the news in order to be aware of the most important issues of the day. They can become active with a political party or interest group,. They can sign a petition or attend a governmental meeting to voice their concerns. They can engage in some constitutionally protected but unconventional behavior such as marching in protest.*
2. *Those who seek elected office do not generally reflect the demographics of the general public. They are often disproportionately male, white, and more educated than the overall population.*
3. *open for debate about the level necessary, but most believe that a republic or democracy cannot function effectively without some level of civic engagement such as voting and making your opinion know to elected government officials*
4. *open for debate; those with higher levels of income and education and more free time can contribute money to fundraising efforts and volunteer for campaigns or become active in interest groups, but there are many examples of individuals becoming quite effective through organized groups. Moreover, there are forms of engagement in which all can participate: listening to the news, answering surveys, and voting*

Terms to Remember

civic engagement/political engagement—citizen involvement with politics/government; being involved in the political process; to ensure the government serves the people and not the other way around

civic participation–citizen involvement in a representative republic; the rights of citizens to participate in government is an important principle of representative government

competitive seat–race where a challenger runs against the incumbent

conventional participation—forms of political participation that are considered quite normal and typical such as voting, writing a letter, sending an email, or joining an organized group

incumbent–a current office holder

open seat–a legislative election in which the current office holder is not running for reelection

social capital—collective value of all 'social networks' [those whom people know] and the inclinations that arise from these networks to do things for each other

responsiveness—governmental decisions or actions that correspond to the identified needs and goals of the citizens or reflect the consent of the governed

unconventional participation—forms of political participation that are considered atypical, such as protesting and boycotting products

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7.2 Political Participation: Voter Turnout and Registration



Image 7.3 Photos of Bus and Musicians Supporting Rock the Vote

Rock the Vote works with musicians and other celebrities across the country to encourage and register young people to vote (a). Sheryl Crow was one of Rock the Vote's strongest supporters in the 2008 election, subsequently performing at the Midwest Inaugural Ball in January 2009 (b).
(Credit to OpenStax, a: modification of work by Jeff Kramer; Credit b: modification of work by "cliff1066"/Flickr)

Learning Objectives

- Understand the concept of voter turnout.
- Analyze reasons for low voter turnout in the United States.
- Understand the registration process to become eligible to vote.
- Identify factors that motivate registered voters to vote.
- Discuss both past and current circumstances that prevent citizens from voting.

Chart 7.7 Learning Objectives on Voter Turnout

Counting Voters and Voter Turnout

One of the key acts of civic participation is voting in elections. In fact, voting is clearly a necessary condition–that is, you cannot have a representative republic without voting. Low **voter turnout** has long caused concern and frustration. A healthy society is expected to be filled with civically engaged citizens who vote regularly and participate in the electoral process.

Calculating voter turnout begins by counting how many ballots were cast in an election. These votes must be cast on time, either by mail or in person. The next step is to count how many people *could* have voted in the same election.

The **voting-age population** (VAP) consists of persons who are eighteen and older. Some of these persons may not be eligible to vote in their state, but they are included because they are of age to do so.[1]

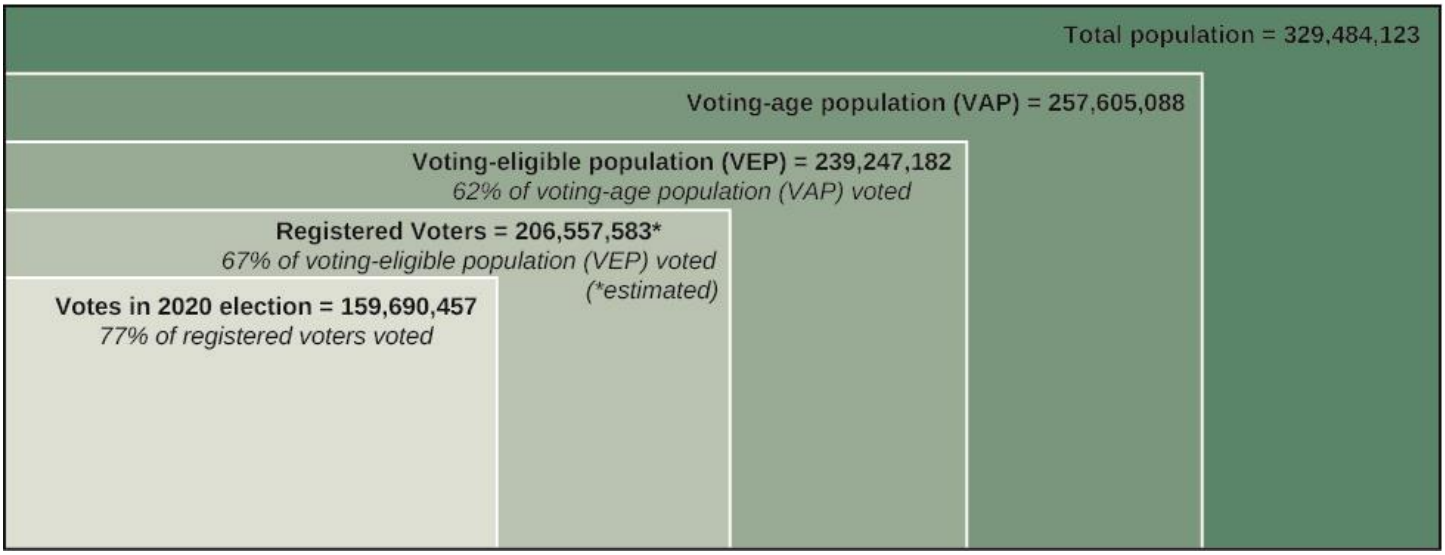


Chart 7.8 Graph Illustrating Voters in Relation to Various Populations

There are many ways to measure voter turnout depending on whether we calculate it using the total population, the voting-age population (VAP), the voting-eligible population (VEP), or the total number of registered voters. (Credit: OFFICIAL 2016 PRESIDENTIAL GENERAL ELECTION RESULTS; General Election Date: 11/08/2016 estimates from United States Census Bureau and the Federal Election Commission)[2]

An even smaller group is the **voting-eligible population** (VEP), citizens eighteen and older who, whether they have registered or not, are eligible to vote because they are citizens, mentally competent, and not imprisoned. If a state has more stringent requirements, such as not having a felony conviction, citizens counted in the VEP must meet those criteria as well. This population is much harder to measure, but statisticians who use the VEP will generally take the VAP and subtract the state's prison population and any other known group that cannot vote. This results in a number that is somewhat theoretical; however, in a way, it is more accurate when determining voter turnout.[3]

The last and smallest population is **registered voters**, who, as the name implies, are citizens currently registered to vote. Now we can appreciate how reports of voter turnout can vary. Although 77 percent of registered voters voted in the 2020 presidential election, this represents only 48.5 percent of the total U.S. population. While 48 percent is indeed low and might cause alarm, some people included in it are under eighteen, not citizens, or unable to vote due to competency or prison status. The next number shows that just over 62 percent of the voting-age population voted, and 67 percent of the voting-eligible population. The best turnout ratio is calculated using the smallest population: 77 percent of registered voters voted. Those who argue that a healthy democracy needs high voter turnout will look at the voting-age population or voting-eligible population as proof that the United States has a problem. Those who

believe only informed and active citizens should vote point to the registered voter turnout numbers instead.

There are several prominent reasons for low national turnout in the United States. First, participation is not mandated. Some countries, such as Belgium and Turkey, have compulsory voting laws, which require citizens to vote in elections or pay a fine. This helps the two countries attain VAP turnouts of 87 percent and 86 percent, respectively, compared to the U.S. turnout of 55.7 percent. Chile's decision to move from compulsory voting to voluntary voting caused a drop in participation from 87 percent to 46 percent.[4]

Since it is unlikely that the United States would ever mandate voting, comparison with one other significant factor–automatic registration of voters–can be identified as a major explanation of U.S. low turn-out when calculated by the voting age population (VAP). That is, for example, Sweden and Germany automatically register their voters, and 83 percent and 66 percent vote, respectively. United States' voting turnout in 2016 is listed as "61.4 percent of the citizen voting-age population" according to the U.S. Census Bureau as reported by Thom File on May 10, 2017. The U.S. system, which requires personal action on the part of the individual to become eligible to vote (registering), is clearly a factor in explaining lower voter turnout of the voting age population.

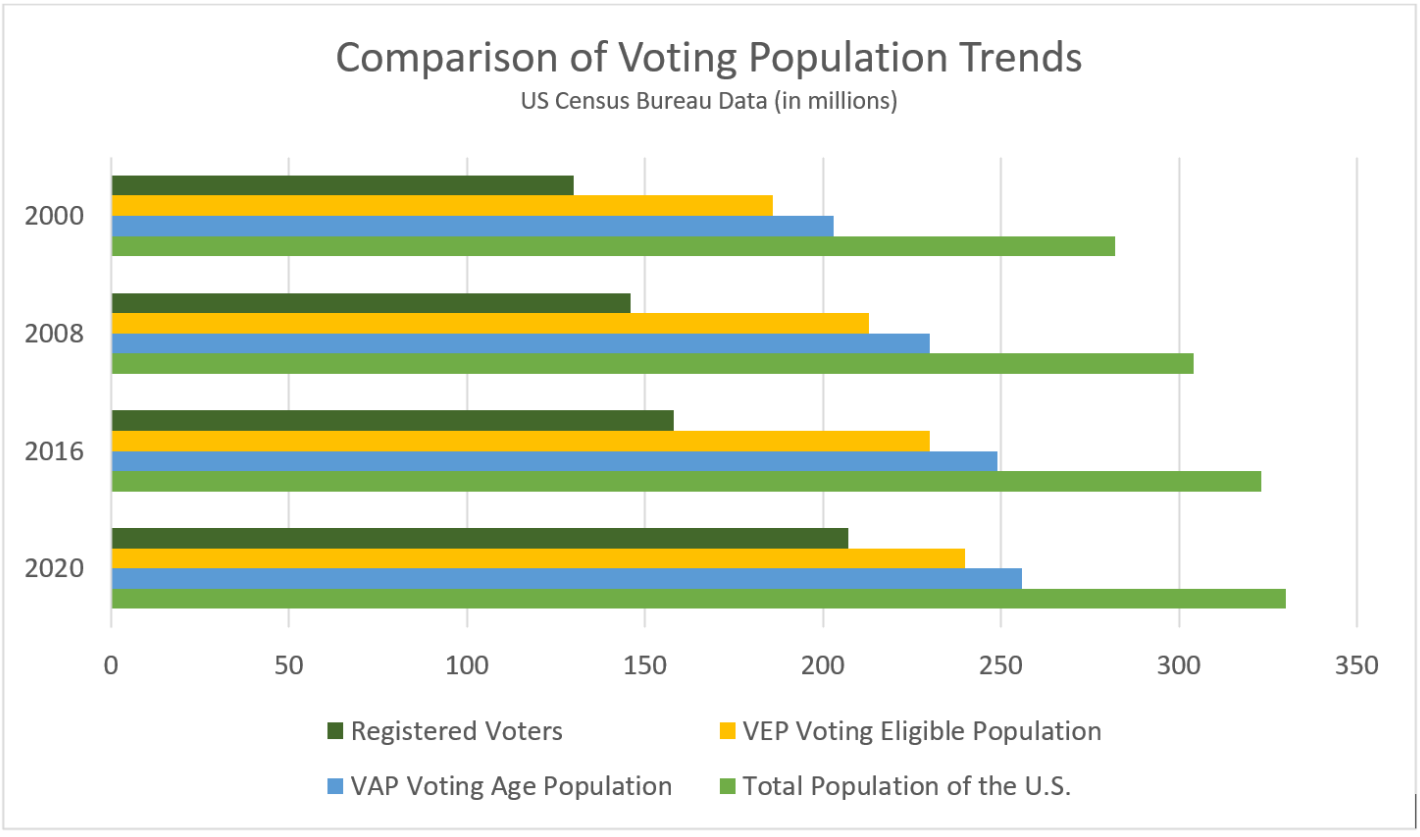


Chart 7.9 Bar Graph Comparing Voting Population Trends Over Time



Do you wonder what voter turnout looks like in other developed countries? Visit the **Pew Research Center report on international voting turnout** to find out.

Who Is Allowed to Register?

In order to register to be eligible to vote in the United States, a person must be a citizen, resident, and eighteen years old. But states often place additional registration requirements on the right to vote or to be part of the **voting-eligible population (VEP)**.

The most common requirement is that voters must be mentally competent and not currently serving time in jail. Some states enforce more stringent or unusual requirements on citizens who have committed crimes.

Kentucky and Iowa permanently bar felons and ex-felons from voting unless they obtain a pardon from the governor, while Mississippi and Nevada allow former felons to apply to have their voting rights restored; and, Florida, who previously denied felons the right to vote, changed their rules in November of 2018 by state constitutional amendment--now allowing felons to regain their voting rights.[5]

On the other end of the spectrum, Vermont does not limit voting based on incarceration unless the crime was election fraud.[6] Maine citizens serving in Maine prisons also may vote in elections. Beyond those jailed, some citizens have additional expectations placed on them when they register to vote. Wisconsin requires that voters "not wager on an election," and Vermont citizens must recite the "Voter's Oath" before they register, swearing to cast votes with a conscience and "without fear or favor of any person."[7]

How Does Someone Register to Vote?

In all states except North Dakota, a citizen wishing to vote must complete an application. Whether the form is online or on paper, the prospective voter will list his/her name, residency address, and in many cases party identification (with Independent as an option) and affirm that he or she is competent to vote. States may also have a **residency requirement**, which establishes how long a citizen must live in a state before becoming eligible to register, often 30 days.

Beyond these requirements, there may be an oath administered or more questions asked, such as felony convictions. If the application is completely online and the citizen has government documents (e.g., driver's license or state identification card), the system will compare the application to other state records and accept an online signature or affidavit if everything matches. Citizens who do not have these state documents are often required to complete paper applications. States without online registration often allow a citizen to fill out an application on a website, but the citizen will receive a paper copy in the mail to sign and mail back to the state.

Another aspect of registering to vote is the timeline. States may require registration to take place as much as thirty days before voting, or they may allow same-day registration. Maine first implemented same-day

registration in 1973. Fourteen states and the District of Columbia now allow voters to register the day of the election if they have proof of residency, such as a driver's license or utility bill.

Many of the more populous states (e.g., Michigan and Texas), require registration forms to be mailed thirty days before an election. Moving means citizens must re-register or update addresses. College students, for example, may have to re-register or update addresses each year as they move.

States that use same-day registration had a 4 percent higher voter turnout in the 2012 presidential election than states that did not.[8]



Image 7.4 Photo of Voter Registration Form

Moving requires a voter to re-register or update his or her address in the system. Depending on the state, this notification can sometimes be completed through the Department of Motor Vehicles. (Credit: Image incorporated by OpenStax)

"Motor-Voter Act" and Voter Registration

Before most voters can cast a ballot, they must register to vote in their state. This process may be as simple as checking a box on a driver's license application (Motor-Voter Act) or as difficult as filling out a long form with complicated questions.[9]

Congress enacted the National Voter Registration Act of 1993 (also known as the "NVRA" and the "**Motor Voter Act**"), to enhance voting opportunities for every American. The Act has made it easier for all Americans to register to vote and to maintain their registration. In addition to whatever other methods of voter registration which States offer, the Act requires states to provide the opportunity to apply to register to vote for federal elections by three means: Section 5 of the Act requires states to provide individuals with the opportunity to register to vote at the same time that they apply for a driver's license or seek to renew a driver's license, and requires the State to forward the completed application to the appropriate state of local election official.[10] Section 7 of the Act requires states to offer voter registration opportunities at all offices that provide public assistance and all offices that provide state-funded programs primarily engaged in providing services to persons with disabilities.

Each applicant for any of these services, renewal of services, or address changes must be provided with a voter registration form of a declination form as well as assistance in completing the form and forwarding the completed application to the appropriate state or local election official. Section 6of the Act provides that citizens can register to vote by mail using mail-in-forms developed by each state and the Election Assistance Commission.[11]

Interested in mobilizing voters? Explore **Rock the Vote**, **The Voter Participation Center** and **True the Vote** for more information.

Voter Registration Across the United States

Elections are state-by-state contests. General elections for president and statewide offices (e.g., governor and U.S. senator) are often organized and paid for by the states. Because political cultures vary from state to state, the process of voter registration varies.

Many states have sought methods of increasing voter registration. In 2002, Arizona was the first state to offer online voter registration, which allowed citizens with a driver's license to register to vote without any paper application or signature.

The system matches the information on the application to information stored at the Department of Motor Vehicles, to ensure each citizen is registering to vote in the right precinct. Citizens without a driver's license still need to file a paper application. More than eighteen states have moved to online registration. The National Conference of State Legislatures estimates, however, that adopting an online voter registration system can initially cost a state between $250,000 and $750,000.[12]

Other states have decided against online registration due to concerns about voter fraud and security. Legislators also argue that online registration makes it difficult to ensure that only citizens are registering and that they are registering in the correct precincts.

A bill to move registration online in Florida stalled for over a year in the legislature, based on security concerns. In other states, such as Texas, both the government and citizens are concerned about identity fraud, so traditional paper registration is still preferred.

Some attempts have been made to streamline voter registration. As previously noted, Motor-Voter was enacted to expedite the registration process, allowing citizens to register to vote when they sign up for driver's licenses and Social Security benefits. On each government form, the citizen need only mark an additional box to also register to vote. Unfortunately, while increasing registrations by 7 percent between 1992 and 2012, Motor-Voter did not dramatically increase voter turnout.[13] In fact, for two years following the passage of the act, voter turnout decreased slightly.[14]

It appears that the main users of the expedited system were those already intending to vote. One study, however, found that preregistration may have a different effect on youth than on the overall voter pool; in Florida, it increased turnout of young voters by 13 percent.[15]

In 2015, Oregon made news when it took the concept of Motor-Voter further. When citizens turn eighteen, the state now automatically registers most of them using driver's license and state identification information. When a citizen moves, the voter rolls are updated when the license is updated. While this policy has been controversial, with some arguing that private information may become public or that Oregon is moving toward mandatory voting.[16]

The Help America Vote Act of 2002 (HAVA) was passed in order to reform voting across the states and reduce these problems. As part of the Act, states were required to update voting equipment; make voting more accessible to those with accessibility challenges, and maintain computerized voter rolls that could be updated regularly.[17]

Over a decade later, there has been some progress. In Louisiana, voters are placed on ineligible lists if a voting registrar is notified that they have moved or become ineligible to vote. If the voter remains on this list for two general elections, his or her registration is cancelled. In Oklahoma, the registrar receives a list of deceased residents from the Department of Health.[18]Twenty-nine states now participate in the Interstate Voter Registration Crosscheck Program, which allows states to check for duplicate registrations.[19]



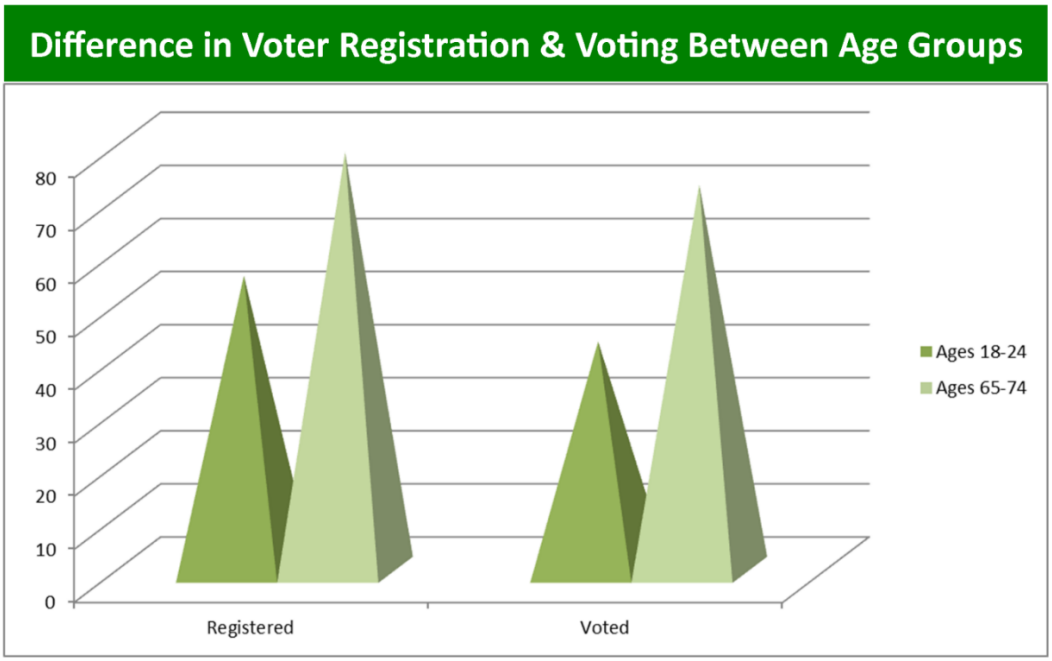
The National Association of Secretaries of State maintains a **website** that directs users to their state's information regarding voter registration, identification policies, and polling locations.

What Factors Drive Voter Turnout?

Those who are registered and did vote in the last election are likely to have a strong interest in politics and elections and will vote again, provided they are not angry with the political system or politicians. Younger people ages 18-24 are less likely to have registered to vote and even, if registered, are less likely to have actually voted. Perhaps, for younger voters, government is a distant concept rather than a daily concern, which may drive down both registration and voter turnout. Younger people are often still in college or only recently graduated and perhaps working part-time and earning low wages and paying low taxes.

They may also be unaware of what a government provides or does. With somewhat circular impact, some have suggested that many youth are less active in government and politics, leading to political parties to neglect them.

Thus, when people are neglected, they are in turn less likely to become engaged in government Older voters have greater experiences and therefore may more clearly see how the government affects their well-being, livelihood and opportunities. In 2016, for example, the Census Bureau reported that only 55.4 percent of eligible voters between the ages of eighteen and twenty-four registered and 43.0 percent voted, while 78.7 percent of sixty-five to seventy-four-year-olds registered and 72.6 percent voted.[20]



Credit: Chart by Deborah Hoag, Austin Community College; Source of Data from U.S. Census Bureau.

Chart 7.10 Chart of Voter Registration Numbers Between Age Groups

Presidential Election Year Voting Turnout

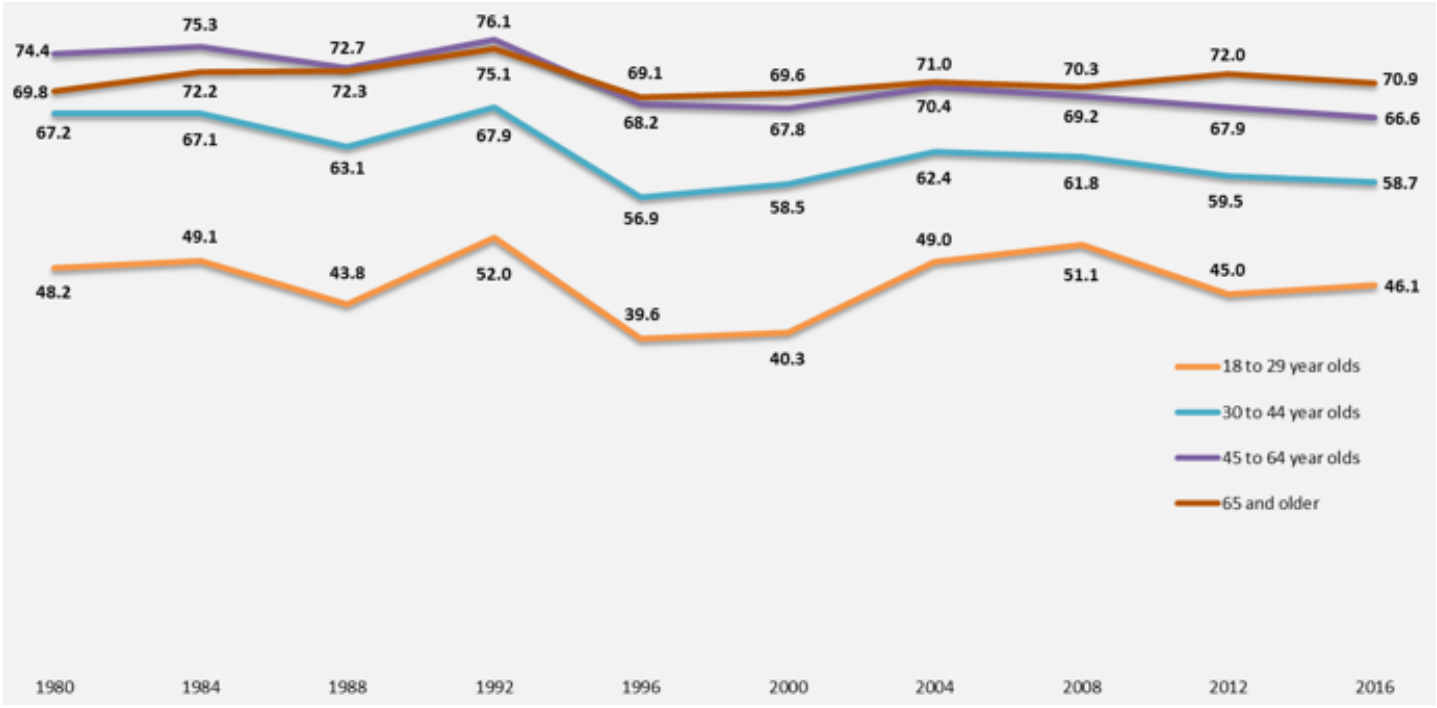


Chart 7.11 Line Chart of Voting Rates by Age

Reported Voting Rates by Age: 1980-2016.
Credit: U.S. Census Bureau at https://www.census.gov/content/dam/Census/newsroom/press-kits/2017/voting-and-registration/figure 04.png.

A citizen's **socioeconomic status**—the combination of education, income, and social status—may also predict whether he or she will vote. Among those who have completed a four year college degree, the 2020 voter turnout rate jumps to 80 percent of eligible voters, compared to about 60 percent for those who have completed only high school.[21] This is due in part to the powerful effect of education, one of the strongest predictors of voting turnout. Income also has a strong effect on the likelihood of voting. Citizens earning over $150,000 a year are very likely to vote and 80 percent of them do, while only 55 percent of those who earn $25,000 vote.[22]

Once high income and college education are combined, the resulting high socioeconomic status strongly predicts the likelihood that a citizen will vote. Race and ethnicity can also be a factor. Caucasians turn out to vote in the highest numbers, with 71 percent of white citizens voting in 2020 presidential election. In comparison, 63 percent of African Americans, 59 percent of Asian Americans, and 54 percent of Hispanic citizens voted in 2020. However, African American voter turn-out exceeded total Caucasian turn-out both in 2012 and 2008 when Barak Obama was on the ballot. Voting turnout can increase or decrease based upon the political culture of a state.

Hispanics, for example, often vote in higher numbers in states where there has historically been higher Hispanic involvement and representation, such as New Mexico, where 59 percent of Hispanic voters turned out in 2020.[23] Overall, Hispanic turn-out has trended upward in recent presidential elections with Latinos making up 11 % of the electorate in 2016—up from 10% in 2012 and 9% in 2008. [24]



Image 7.5 Photo of Suffragettes Voting

Suffragettes voting. (Credit: National Photo Company; Repository Library of Congress Prints and Photographs Division Washington, D.C. 20540 USA Digital Id npcc 29566 //hdl.loc.gov/loc.pnp/npcc.29566 Control Number npc2008010067; No known restrictions on publication)

After 1920, when the Nineteenth Amendment gave women the right to vote, women began slowly turning out to vote, and now they do so in high numbers. Today, more women vote than men. In 2020, 65.0 percent of men and 68.4 percent of women reported voting according to the U.S. Census report.[25]

Check out this **website** to find out who is voting and who is not voting.

What Factors Decrease Voter Turnout?

Just as political scientists and campaign managers worry about who does vote, they also look at why people choose to stay home on Election Day. Over the years, studies have explored why a citizen might not vote, even though they are registered to vote. The reasons range from the obvious excuse of being too busy (14.3 percent) to more complex answers, such as transportation problems (2.6 percent) and

restrictive registration laws (4.4 percent). In the 2016 presidential election, another factor was significant. Approximately twice the percentage of 2012 (that is 24.8% compared to 12.7%, mentioned they "did not like candidates or campaign issues" as the reason for not voting.[26]

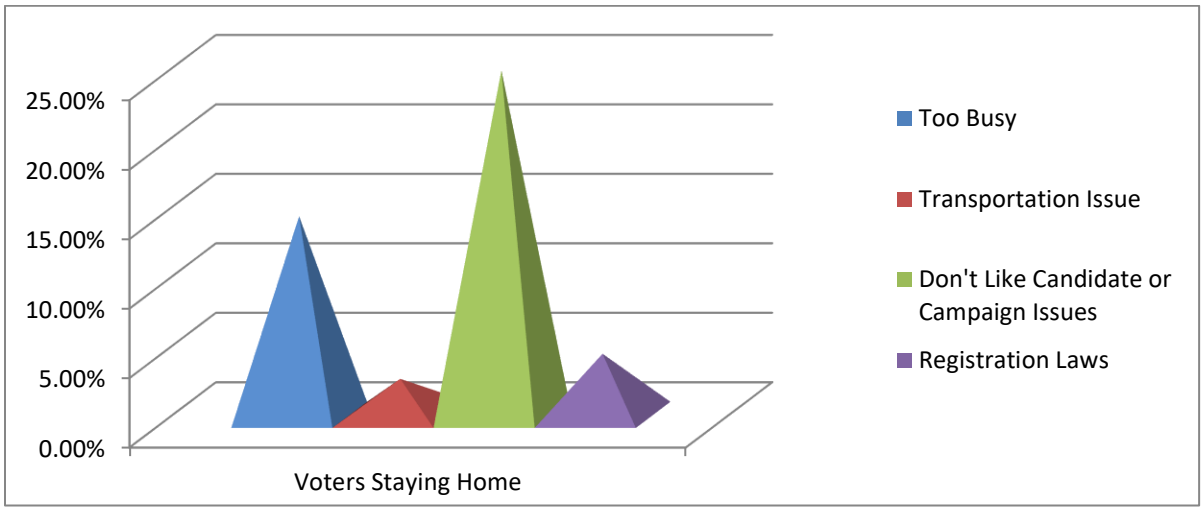


Chart 7.12 Excuses for Not Voting

Credit for Data: "Reported Voting and Registration, by Sex and Single Years of Age: November 2012," https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html (May 2017).

One reason for not voting in the past was that polling places were open only on Election Day. This makes it difficult for voters juggling school, work, and childcare during polling hours. Many states have tried to address this problem with **early voting**, which opens polling places as much as two weeks early. Texas opened polling places on weekdays and weekends in 1988 and initially saw an increase in voting in gubernatorial and presidential elections, although the impact tapered off over time.[27] Other states with early voting, however, showed a decline in turnout, possibly because there is less social pressure to vote when voting is spread over several days.[28]



Image 7.6 Photo of Citizens Waiting in Line to Vote in 2008

On February 5, 2008, dubbed "Super Duper Tuesday" by the press, twenty-four states held caucuses or primary elections—the largest simultaneous number of state presidential primary elections in U.S. history. As a result, over half the Democratic delegates were allocated unusually early in the election season. This polling station, on the Stanford University campus in Palo Alto, California, had long lines, commonly seen only on Election Day, and nearly ran out of Democratic ballots. (Credit: OpenStax; Josh Thompson, photographer)

In a similar effort, Oregon, Colorado, and Washington have moved to a mail-only voting system in which there are no polling locations, only mailed ballots. These states have seen a rise in turnout, with Colorado's

numbers increasing from 1.8 million votes in the 2010 congressional elections to 2 million votes in the 2014 congressional elections.[29]

Apathy may also play a role. Some people avoid voting because their vote is unlikely to make a difference or the election is not competitive. If one party has a clear majority in a state or district, for instance, members of the minority party may see no reason to vote.

Democrats in Utah and Republicans in California are so outnumbered that they are unlikely to affect the outcome of an election, and they may opt to stay home. Because the presidential candidate with the highest number of popular votes receives all of Utah's and California's electoral votes, there is little incentive for some citizens to vote: they will never change the outcome of the state-level election. These citizens, as well as those who vote for third parties like the Green Party or the Libertarian Party, are sometimes referred to as the chronic minority.

Finally, some voters may view non-voting as a means of social protest or may see volunteering as a better way to spend their time. Younger voters are more likely to volunteer their time rather than vote, believing that serving others is more important than voting.[30] Possibly related to this choice is **voter fatigue**. In many states, due to our federal structure with elections at many levels of government, voters may vote many times per year on ballots filled with candidates and issues to research. The less time there is between elections, the lower the turnout.[31]



Image 7.7 Photos of Voter Registration Events

On National Voter Registration Day in 2012, Roshaunda McLean (a, left), campus director of the Associated Students of the University of Missouri, and David Vaughn (a, right), a Missouri Student Association senator, register voters on campus. Cassie Dorman (b, left) and Samantha Peterson (b, right), both eighteen years old, were just two of the University of Missouri students registering to vote for the first time. (Credit to OpenStax; a, b: modification of work by "KOMUnews"/Flickr)

Voting Rights: History and Controversy



Image 7.8 Photo of Voting Integration

Black and white people voting together. (Credit: Warren K. Leffler, photographer, 6 November 1962, U. S. News & World Report Magazine Photograph Collection, Library of Congress, 2016646466)

The varied registration and voting laws across the United States cause controversy. In the aftermath of the Civil War, some states enacted literacy tests, grandfather clauses, and other requirements intended to disenfranchise poor and black voters in Alabama, Georgia, and Mississippi. Literacy tests were long and detailed exams on local and national politics, history, and more. They were often administered arbitrarily with more blacks required to take them than whites.[32] Poll taxes required voters to pay a fee to vote. Grandfather clauses exempted individuals from taking literacy tests or paying poll taxes if they or their fathers or grandfathers had been permitted to vote prior to a certain point in time. While the Supreme Court determined that grandfather clauses were unconstitutional in 1915, states continued to use poll taxes and taxes and literacy tests to deter potential voters from registering.[33] Some states ignored instances of violence and intimidation against African Americans wanting to register or vote.[34]

The ratification of the Twenty-Fourth Amendment in 1964 ended poll taxes, but the passage of the Voting Rights Act (VRA) in 1965 had a more profound effect. The act protected minority voters by prohibiting state laws denying voting rights.

The VRA gave the attorney general of the United States authority to order federal examiners to areas with a history of discrimination. These examiners had the power to oversee and monitor voter registration and elections. States violating or sometimes suspected of violating the VRA were required to get any changes in their election laws approved by the U.S. attorney general or by going through the court system.

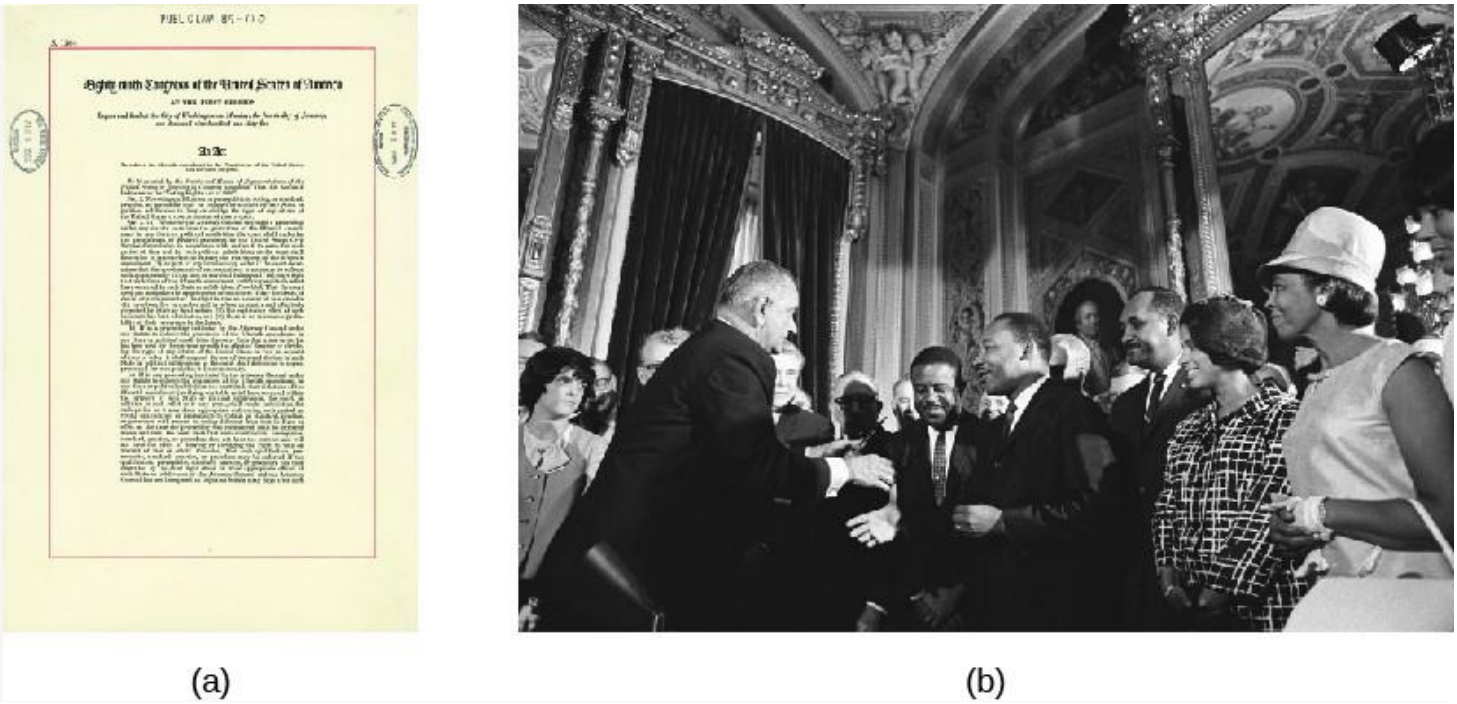


Image 7.9 Photos of President Johnson with Civil Rights Figures and The Voting Rights Act

The Voting Rights Act (a) was signed into law by President Lyndon B. Johnson (b/left) on August 6, 1965, in the presence of major figures of the civil rights movement, including Rosa Parks and Martin Luther King Jr. (b/center). (Credit: images incorporated by OpenStax)

The effects of the VRA were visible almost immediately. In Mississippi, only 6.7 percent of blacks were registered to vote in 1965; however, by the fall of 1967, nearly 60 percent were registered. Alabama experienced similar effects, with African American registration increasing from 19.3 percent to 51.6 percent.

Voter turnout across these two states similarly increased. Mississippi went from 33.9 percent turnout to 53.2 percent, while Alabama increased from 35.9 percent to 52.7 percent between the 1964 and 1968 presidential elections.[35]

Voter turnout may be affected by **voter identification laws**, such as requiring a voter to show a photo identification such as a driver's license to verify their identity at the polling place. The American Civil Liberties Union and other groups argue an unfair burden on people who are poor, older, or have limited finances (who may not have a photo ID), while states argue it would prevent fraud. In *Crawford v. Marion County Election Board* (2008), the Supreme Court decided that Indiana's voter identification requirement was constitutional.[36]

Journalists discovered that many states, including Florida, had large numbers of phantom voters on their rolls, voters had moved or died but remained on the states' voter registration rolls.[37]

An Opinion on the Issue

Nathaniel Gruca, Austin Community College…

In 1830, Congress passed the Indian Removal Act, which forced Native Americans to relocate to the west of the Mississippi River. The Supreme Court ruled this law unconstitutional in the *Cherokee Nation v. Georgia* case, and President Andrew Jackson ignored this ruling. Indigenous people did not get complete citizenship until 1940, when the Nationality Act was passed. Native Americans have been one of the worst treated ethnicities, and I've been to the memorial for Sand Creek and Wounded Knee. It is just truly horrific standing where these events took place. Recently, in 2018, North Dakota passed a law that required citizens to have an address to vote. It disproportionately affected Native Americans more than anyone since they usually only have a P.O. box. This law, in my opinion, is unconstitutional because citizens of the United States do not stop becoming citizens just because they do not have an address. This is fundamental to our *Constitution*; yet, *Spirit Lake Tribe v. Jaeger* was not deemed unconstitutional by the Supreme Court.

[Used with permission 06/25/2019 from Nathaniel Gruca; Credit to The Department of Justice, 30 U.S. (5 Pet.) 1 (1831) and *Richard Brakebill, et al., Plaintiffs v. Alvin Jaeger*, Tuesday, April 5, 2016, 586 U.S. (2018) No. 18A335, No. 1:16-CV-oo8, and the Native American Rights Fund, March 1, 2019, "Discriminatory North Dakota Voter ID Law Still in Effect"]

Chart 7.13 Student Opinion on Treatment of Native Americans

In 2011, Texas passed a photo identification law for voters, allowing concealed-handgun permits as identification. The Texas law was blocked by the Obama administration before it could be implemented, because Texas was on the Voting Rights Act's pre-clearance list. Other states, such as Alabama, Alaska, Arizona, Georgia, and Virginia similarly had laws and districting changes blocked.[38] As a result, Shelby County, Alabama, and several other states sued the U.S. attorney general, arguing the Voting Rights Act's pre-clearance list was unconstitutional and that the formula that determined whether states had violated the VRA was outdated. In *Shelby County v. Holder* (2013), the Supreme Court agreed. In a 5–4 decision, the justices in the majority said the formula for placing states on the VRA pre-clearance list was outdated and reached into the states' authority to oversee elections.[39] States and counties on the pre-clearance list were released, and Congress was told to design new guidelines for placing states on the list.

Political Participation: Questions to Consider

1. What challenges do college students face regarding voter registration?
2. Have you registered to vote in your college area or back home? What factors influence your decision about where to vote?
3. What recommendations would you make to increase voter turnout in the United States?
4. Why does age affect whether a citizen will vote?
5. If you were going to predict whether your classmates would vote in the next election, what questions would you ask them?

1. *Home is out-of-state or not near campus and unable to register in person; state by state rules regarding mail-in ballots and registration.*
2. *personal opinion*
3. *Open to discussion. For Example, states could make registration easier by allowing registration closer to election day or even on Election Day or automatically registering citizens to vote when they turn eighteen, and/or allowing online registration. States could also allow more early voting including voting on weekends or more mail-in ballots.*
4. *Younger people ages 18-24 are less likely to have registered to vote and even, if registered, are less likely to have actually voted. . Perhaps, for younger voters, government is a distant concept rather than a daily concern, which may drive down both registration and voter turnout. Older voters have greater experiences and therefore may more clearly see how the government affects their well-being, livelihood and opportunities.*
5. *I would ask them their age, whether they are registered to vote, educational background or level, interest in politics, income level, and whether they voted in the last election*

Terms to Remember

early voting–an accommodation that allows voting up to two weeks before Election Day

Motor Voter Act–federal law making it easier for Americans to register to vote and to maintain registration by requiring states to provide individuals with an opportunity to register at the same time they apply for, change, or renew a driver's license

registered voters–citizens who have taken the necessary steps to place and maintain themselves on voter registration rolls to be able to participate by voting in elections

residency requirement–which establishes how long a citizen must live in a state before becoming eligible to register, often 30 days

socioeconomic status— combination of education, income, and social status of an individual or group

voter fatigue–the result when voters grow tired of voting and stay home from the polls

voter identification laws–requiring a voter to show a photo ID such as a driver's license in order to verify identity at the polling place

voter turnout–number of citizens voting in a given election

voting-age population (VAP)–persons who are 18 and older

voting-eligible population (VEP)–citizens 18 and older who, whether registered or not, are eligible to vote because of citizenship, mental competence, and non-imprisonment

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7.3 Political Participation:
How do we choose representatives through elections and voting?



Image 7.10 Photo Inside the U.S. House of Representatives

The United States House of Representatives in 2016.
(Credit: U.S. Congressional District Resource; http://www.congressional-maps.com/what-is-the-house-of-representatives/)

Learning Objectives

- Explain how fundamental characteristics of the House and Senate shape their elections.
- Discuss the effects of incumbency in the House and Senate.
- Analyze the way congressional elections have become more nationalized.

Chart 7.14 Learning Objectives on Fundamental Characteristics of Congress

Who can be elected to Congress?

The U.S. Congress is composed of two bodies or chambers—a House of Representatives and a Senate. House of Representative members are elected by the voters for two-year terms in their specific, geographically-defined, congressional districts.

There are currently 435 congressional districts in the United States and thus all 435 House members are elected every two years. Each state has several House districts roughly proportional to its share of the total U.S. population, with states guaranteed at least one House member. Two senators are elected by each state for six-year terms. Since there are 50 states, there are 100 senators.

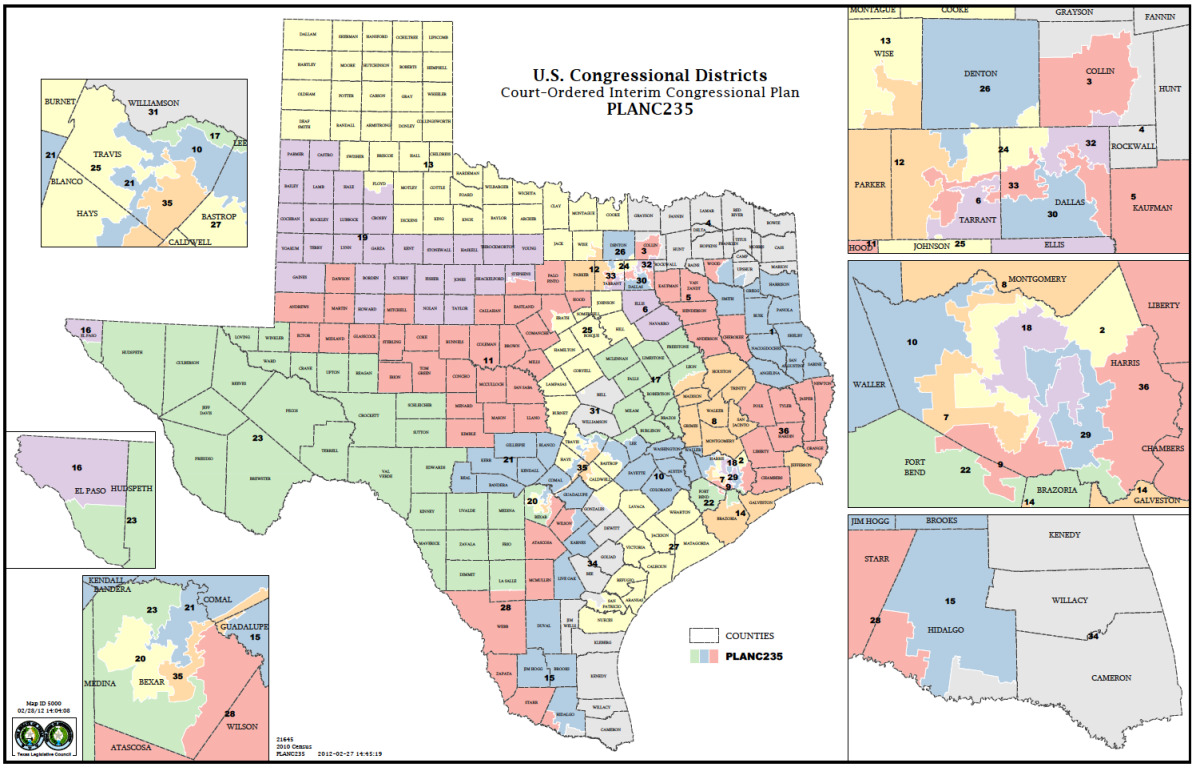


Image 7.12 New Speaker of the House Kevin McCarthy Welcomes President Joe Biden to a Joint Session of Congress (Credit: house.gov)

Elections to the U.S. Senate are staggered, so that one-third of all senate seats are up for election every two years. Unless there has been a vacancy (due to death or resignation) within an existing six term, only one senate seat in a state is up for election at any single time.

The State of Texas has 38 House congressional districts with one member of Congress elected by the voters of each district. Texas has two senators elected at-large by all voters in the state.

In a system in which individual candidates compete for individual seats representing unique geographic districts, election winners are required to receive either a **majority** (simply the greater number/typically more than half) of votes or at least a **plurality** (one candidate receives more than another) of the votes, also known as **first-past-the-post** voting system.



Map of United States Representatives Congressional Districts for the State of Texas (Credit: Texas Legislative Council).

Chart 7.15 Map of U.S. Congressional Districts in Texas

The election to Congress involves a two-step election process. Thus, the first step in election to the U.S. Congress is to be nominated by a major political party.

An individual must first win the nomination in a primary election and then win in the fall general election to earn the right to serve in the U.S. Congress.

Moreover, many House congressional districts and Senate seats across the country are considered **safe seats** or noncompetitive districts, meaning candidates from a party are statistically likely to consistently win the seat. Because of this structure of U.S. congressional elections, there has been a strong tendency to have one of the two major political parties dominant in who wins these legislative seats.

Therefore, the "real" decision of who will serve in Congress for these safe seats occurs during the party primary election, not in the general election. In recent election cycles, most political analysts suggest there may be only 50 to 75 seats in the House of Representatives that are really competitive, where each of the two major parties has a good chance of capturing the seat. [1]

Because its members serve short two-year terms they must regularly answer to the demands of their constituency when they run for election or reelection. This allows voters to develop a personal relationship with, and awareness of, "their" government elected representative and his or her actions. They know exactly whom to blame, or thank, for actions taken.

In contrast, members of the Senate are furthest removed from the demands and scrutiny of their constituents. Because of their longer six-year terms, they will see every member of the House face his or her constituents multiple times before they themselves seek reelection. Originally, when a state's two U.S. senators were appointed by the state legislature, the Senate chamber's distance from the electorate was even greater. Unlike House members who can seek the narrower interests of their district, senators must maintain a broader appeal across their entire state.

What are the effects of incumbency?

Incumbents are elected officials who currently hold an office and they have very high reelection rates. In the House, the percentage of incumbents winning reelection has stayed between 85 and 100 percent for the last half century. The Senate sees slightly more variation given the statewide nature of the race, but it is still a very high majority of incumbents who win reelection. As these rates show, even in the worst political environments incumbents are very difficult to defeat. The historical difficulty of unseating an incumbent in the House or Senate is often referred to as the **incumbent advantage** or the **incumbency effect**.

One of the many reasons incumbents win a large majority of congressional races each electoral cycle is that incumbents attract more money because people want to give to a proven winner. The amount of money they raise against their challengers demonstrates their advantage. In 2020, for example, the average Senate incumbent raised $28,649,593, whereas the average inexperienced challenger raised only $5,264,022.[2]

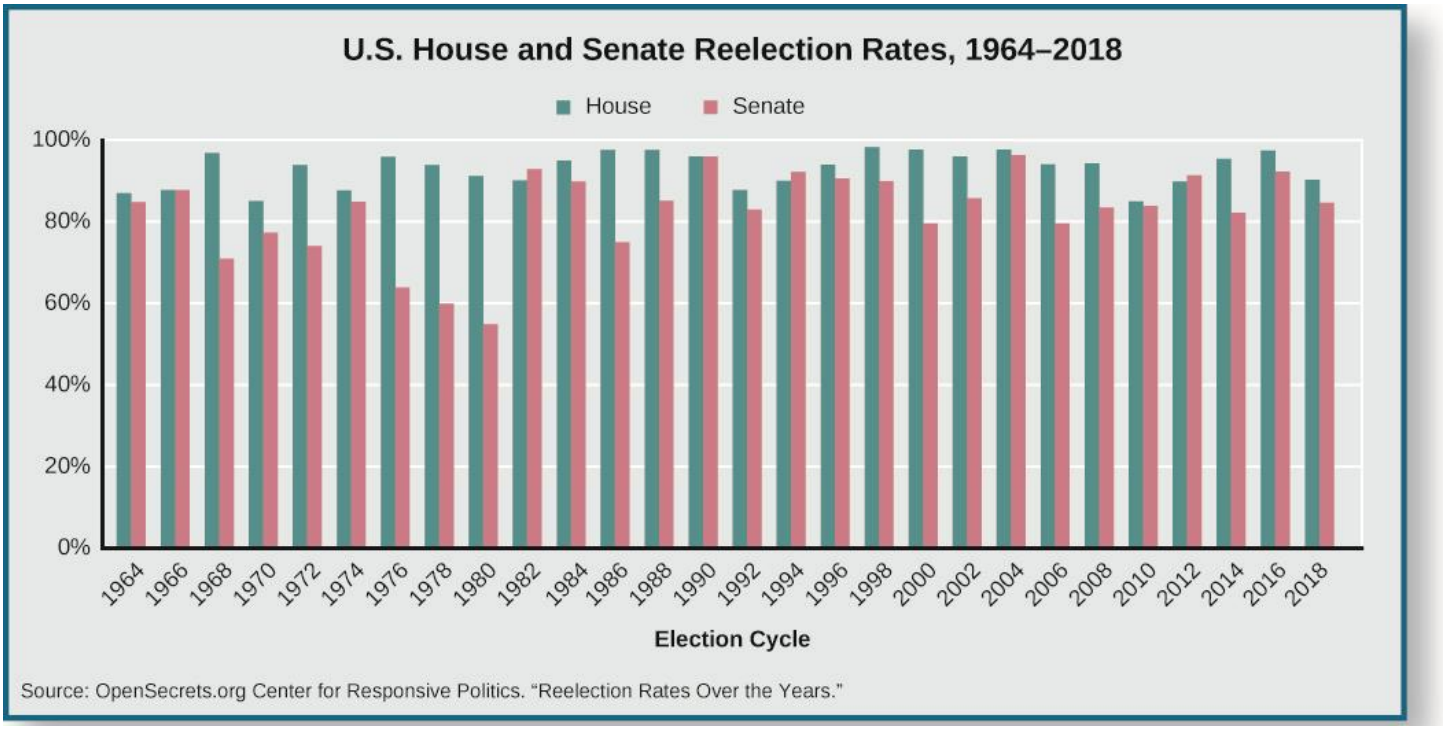


Chart 7.16 Bar Graph Illustrating Reelection Rates

The financing advantage is a significant part of an incumbent's advantage in reelection, but it is not the only contributor.

What contributes to this advantage and often persuades competent challengers not to run? First, incumbents have name recognition and voting records. The media is more likely to interview them because they have advertised their name over several elections and have voted on legislation affecting the state or district. Incumbents also have won elections before, which increases the odds that political action committees and interest groups will give them money; most interest groups will not give money to a candidate destined to lose.

Incumbent Advantage
Name Recognition
Fundraising Advantage—Connections to $
Constituent Casework—History of Assistance
Paid Staff
Franking Privilege—Mailings to Constituents
House District Gerrymandering

Chart 7.17 Incumbent Advantage Noted

The way the party system itself privileges incumbents is even more important. The leadership of major political parties in general prefers to support incumbents because incumbents are considered stronger candidates, and their record of success supports this conclusion. However, on occasion, popular individual candidates and challengers with strong ideological leanings that appeal to a party's base electorate sometimes prevail. In recent years Republican incumbents have been "primaried" by challengers more conservative than they.

Likewise, in the aftermath of the 2016 presidential elections, some Democrat incumbents were being threatened with challenges by more leftist or progressive elements within the party. Incumbents wield another advantage over their challengers through the state power they have at their disposal.[2] Sitting congresspersons are responsible for **constituent casework**. Constituents routinely reach out to their congressperson for powerful support to solve complex problems, such as applying for and tracking federal benefits or resolving immigration and citizenship challenges.[3]

Incumbent members of Congress have paid staff, influence, and access to specialized information that can help their constituents in ways other persons cannot. And congresspersons are not shy about their constituent support. Often, they publicize their casework on their websites or create television advertisements that boast of their helpfulness. Election history demonstrates that this publicity is very effective in garnering voter support. Incumbents also have **franking privileges**, which allows them a limited amount of free mail to communicate with the voters in their district. While these mailings may not be sent in the days leading up to an election–sixty days for a senator and ninety days for a House member–congressional representatives are able to build a free relationship with voters through them.[4] Moreover, incumbents have existing campaign organizations, while challengers must build new organizations from the ground up. Lastly, incumbents have more money in their war chests than most challengers. Another incumbent advantage is **gerrymandering**, the drawing of district lines to advantage one political party's chances to win a district over the other party.

Every ten years, following the U.S. Census, the number of House of Representatives members allotted to each state is determined based on a state's population. If a state gains or loses seats in the House, the state must redraw districts to ensure each district has a roughly equal number of citizens. States may also choose to redraw these districts at other times and for other reasons.[5] If the district is drawn to ensure that it includes a majority of Democratic or Republican Party members within its boundaries, for instance, then candidates from those parties will have an advantage.



Image 7.13 Cartoon of Gerrymandering

Printed in March 1812, this political cartoon was drawn in reaction to the newly drawn state senate election district of South Essex created by the Massachusetts legislature to favor the candidacy of Elbridge Gerry. The caricature satirizes the bizarre shape of a district as a dragon-line "monster." Political opponents at the time likened the district shape to a salamander, and the word gerrymander was a blend of that word and Governor Gerry's last name. (Credit: *Boston Gazette* on March 26, 1812; OpenStax)

Gerrymandering helps local legislative candidates and members of the House of Representatives, who win reelection over 90 percent of the time. Senators and presidents do not benefit from gerrymandering because they are not running in a district.

Presidents and senators win states, so they benefit only from war chests and name recognition. This is one reason why senators running in 2014, for example, won reelection only 82 percent of the time.[6]

Local and National Elections

The importance of publicizing constituent casework during campaigns supports the popular saying, "All politics is local." This phrase, attributed to former Speaker of the House Tip O'Neill (D-MA), asserts that

the most important motivations directing voters are rooted in local concerns. In general, this is true. People naturally feel more driven by the things that affect them daily. Examples are the quality of the roads, availability of good jobs, and cost and quality of public education. Good senators and representatives understand this and seek to influence these issues for their constituents. This is an age-old strategy for success in office and elections.

Political scientists have taken note of some voting patterns that may challenge this common assumption, however. In 1960, political scientist Angus Campbell proposed the **surge-and-decline theory** to explain these patterns.[7]

Campbell noticed that since the Civil War, with the exception of 1934, the president's party has consistently lost seats in Congress during the **midterm elections**—that is the election that occurs in the middle of the four-year presidential term of office.[8] So called Midterm elections occur because all members of the House of Representatives and one-third of the senators come up for reelection every two years.

Campbell proposed that the reason was "a surge" in political stimulation during presidential elections, which contributes to greater turnout and brings in voters who ordinarily abstain. These voters, Campbell argued, tend to favor the party holding the presidency. [9]

In contrast, midterm elections witness the opposite effect. They are less stimulating and have lower turnout because less-active voters stay home. Campbell asserts this shift helps the party not currently occupying the presidency. During a presidential election year, members of Congress often experience the **coattail effect**, which gives members of a popular presidential candidate's party an increase in popularity and raises their odds of retaining office.[10]

During a midterm election year, however, the president's party often is blamed for the president's actions or inaction. Representatives and senators from the sitting president's party are more likely to lose their seats during a midterm election year.

A recent congressional realignment, in which the House changed from Republican to Democratic control, occurred because of this reverse-**coattail effect** during midterm elections. The most recent example is the 2018 election, in which control of the House returned to the Democratic Party after two years of Donald Trump's presidency. The 2018 and 2022 midterm elections were somewhat unusual, even under the Campbell Theory, in that there was a relatively high voter turnout.

In the decades since Campbell's influential theory was published, a number of studies have challenged his conclusions.[11] Nevertheless, the pattern of midterm elections benefiting the president's opposition has persisted.[12]

Only in exceptional years has this pattern been broken.

The evidence does suggest that national concerns, rather than local ones, can function as powerful motivators at the polls. Consider, for example, the role of the Iraq War in bringing about a Democratic rout of the Republicans in the House in 2006 and in the Senate in 2008. Unlike previous wars, the war in Iraq was fought by a very small percentage of the population.[13]

Nationwide, voters in large numbers were motivated by the war to vote for politicians they believed would end it.

Congressional elections may be increasingly driven by national issues. Just two decades ago, straight-ticket, party-line voting was still rare across most of the country.[14] In much of the South, which began to vote overwhelmingly Republican in presidential elections during the 1960s and 1970s, Democrats were still commonly elected to the House and Senate. The candidates themselves and the important local issues, apart from party affiliation, were important drivers in congressional elections. This began to change in the 1980s and 1990s, as Democratic representatives in the South declined. The South is not alone; areas in the Northeast and the Northwest have grown increasingly Democratic. Indeed, the 2018 and 2022 midterm election were the most nationalized election in many decades. Voters who favor a particular party in a presidential election are now much more likely to also support that same party in House and Senate elections than was the case just a few decades ago.

Political Participation: Questions to Consider

1. What does Campbell's surge-and-decline theory suggest about the outcome of midterm elections?
2. Explain the factors that make it difficult to replace incumbents.

1. *the president's party has consistently lost seats in Congress*
2. *financing advantage; higher level of name recognition; voters are more likely to select the name they recall; donors give to a proven winner*

TERMS TO REMEMBER

coattail effect–gives members of a popular presidential candidate's party an increase in popularity and raises their odds of retaining office

constituent casework—use of staff of a member of Congress to help a constituent solve a problem they are having with a governmental agency or program, such as applying for and tracking federal benefits or obtaining specialized information from the federal government

first-past-the-post—the principle that the individual candidate with the most votes wins, whether or not he or she gains a majority (51% or greater) of the total votes cast; also known as **plurality voting**

franking privileges—allows members of Congress a limited amount of free mail to communicate with the voters in their district

gerrymandering—the manipulation of the boundaries/lines of a legislative district in an attempt to favor a particular political party's candidate; redrawing district lines for political gain

incumbents–current office holder

incumbent advantage—the historic difficulty in unseating a current elected member of Congress

midterm election–occurs in the middle of a presidential term because all members of the House of Representatives and one-third of the senators come up for reelection every two years, including years in which there is no presidential election

surge-and-decline theory–a theory proposing that the surge of stimulation occurring during presidential elections subsides during midterm elections, accounting for the differences we observe in turnouts and results

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7.4 Political Participation: How do we select and elect a president?



This Photo by Unknown Author is licensed under CC BY-SA-NC

Image 7.14 Photo of President Joe Biden and Vice President Kamala Harris

Learning Objectives
• Describe the process of electoral voting for President. • Describe the changes over time in the way the President and Vice-President are selected through the nomination process. • Explain the role of the general election in the modern presidential selection process. • Assess the advantages and disadvantages of the Electoral College voting system and the possible alternatives.

Chart 7.18 Learning Objectives on the Electoral Process

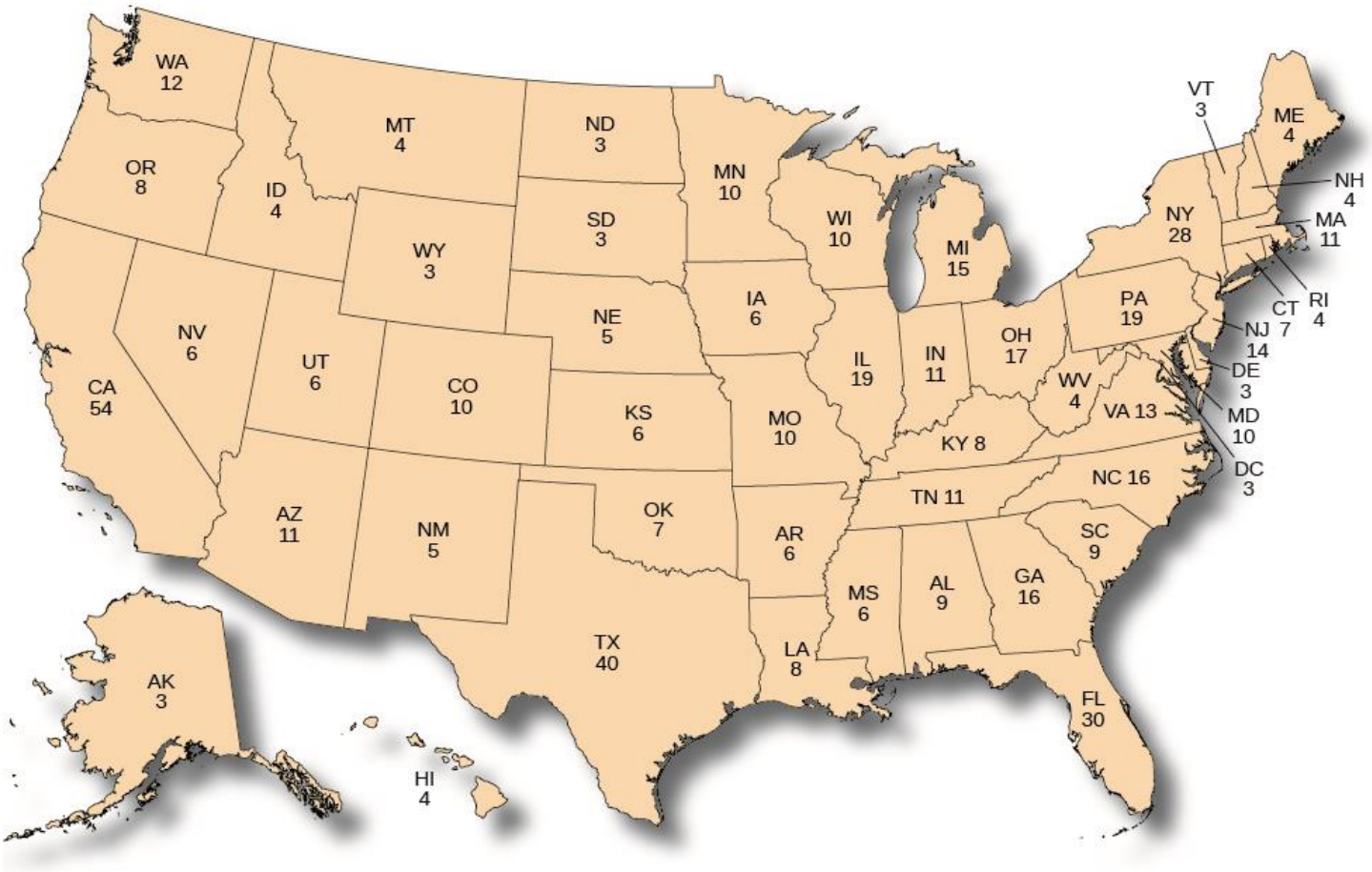


Chart 7.19 Map Showing Distribution of Electoral Votes

This map shows the distribution by state of 538 electoral votes available in the 2024 national election.
The number of electoral votes granted to each state equals the total number of representatives and senators that state has in the U.S. Congress or, in the case of Washington, DC, as many electors as it would have if it were a state.
Under the U.S. *Constitution*, a majority of electoral votes (currently 270) is required to elect the president.
(Credit: Image used in OpenStax)

The Electoral Voting and "The Electoral College"

Once the voters have cast ballots in November and all the election season would seem to come to a close, races for senators and representatives may be over, but the constitutional process of officially electing a president has technically only begun. Despite media coverage that proclaims who the next president will be, it is not official. Under the U.S. *Constitution*, presidential electors, chosen by the political party that won the presidential race in that state, must travel to their respective state capitols and cast the official votes for president in mid-December. In nearly all cases, presidential electors, political party loyalists, cast their ballots for the candidate who won the majority of votes in their state. Although not mentioned in the *Constitution*, we have come to call these 538 **electors**, the **Electoral College**–though they never gather together in one place to vote. The Electoral College is a state-by-state process (each state conducting their own democratic majoritarian popular vote election to inform how electors will vote) and not a place or an organized entity. Once voting has occurred in each state, the states then forward the official voting results to the U.S. Senate.

Only after the electoral votes have been officially opened and read into the Congressional record by the president of the Senate (i.e., the vice president of the United States) during a special joint session of Congress in January, is the presidential candidate who received most electoral votes officially named president. Normally this session is "pro-forma" (done as a matter of form) with little drama. In 2020, this process was lengthened due to two occurrences: 1) objections by some senators and representatives to the legitimacy of several states' slates of electors requiring an extensive debate over the objections and 2) a number of rioters forcibly entering the Capitol building and causing damage and a temporary "lockdown." The official certification of electoral votes continued later that evening after order had been restored by law enforcement and objections were rejected.

The number of electors granted to each state equals the total number of representatives and senators that state has in the U.S. Congress or, in the case of Washington, DC, as many electors as it would have if it were a state. The number of representatives may fluctuate based on state population, which is determined every ten years by the U.S. Census, mandated by Article I, Section 2, of the *Constitution*. There are 538 electors. A majority of 270 electoral votes is required to elect the President. Read more about **the allocation of electoral votes**. The map at the front of this section shows the distribution of electoral votes by state. Electors cannot be elected officials, nor can they work for the federal government. Since the Republican and Democratic parties choose faithful party members who have worked hard for their candidates, the modern system decreases the chance they will vote differently from the state's voters. But how do we know how these electors will vote well before the official vote? We know since the electors (with rare exception, when they are called **faithless electors**) will follow the wishes of the electorate in each state. What is important to know is which party's candidate won a state to estimate accurately the results of electoral voting. Under our current two-party political system, in forty-eight states and the District of Columbia, the candidate who wins the most votes in November receives all the state's electoral votes, and only the electors from that party will vote. This is often called the **winner-take-all system**.



Image 7.15 Photo of Protester Encouraging "Faithless Electors"

Sign at a Women and Allies protest in New York on December 12. (Credit: Pacific Press/LightRocket via Getty Images and *New Yorker* Magazine)

Faithless electors who do not follow the dictates of the electorate in their state are extremely rare. In fact, in the 2016 election despite a determined effort including thousands of emails and phone calls to sway 37 electors in states won by Trump to vote for another candidate, the effort completely fizzled. In fact, there were more faithless electors away from Hillary Clinton (5) than for Donald Trump (2).[1]

The District System—The Two State Exception

In two states, Nebraska and Maine, the electoral votes are divided. The candidate who wins the state gets two electoral votes, but the winner of each congressional district also receives an electoral vote. In 2008, for example, Republican John McCain won two congressional districts and the majority of the voters across the state of Nebraska, earning him four electoral votes from Nebraska. Obama won in one

congressional district and earned one electoral vote from Nebraska.[2] In 2016, Donald Trump lost the state of Maine, but won the majority in one congressional district earning him one electoral vote. This voting method is referred to as the **district system**, since electoral votes are calculated by the presidential candidate receiving the majority of the vote with a particular congressional district.

Electing the President

The process of electing a president every four years has evolved over time. This evolution has occurred because of political parties' power as gatekeepers to the presidency. Political parties impact both the beginning and end of the process to elect a president. The political parties select, through a nomination process, who will run for president and in the end the winning political party in each state picks the electors who cast the official ballots for president. The framers of the *Constitution* made no provision in the document for the establishment of political parties. Following the first election of Washington, the political party system gained steam and power in the electoral process, creating separate **nomination** and **general election** stages. The U.S. *Constitution* established a federal system of government in which the role of state government is preserved and protected. The existence of the federal system significantly impacts both the nomination and general election phases of the election of the president.

Selecting the Candidate: The Party Nomination Process

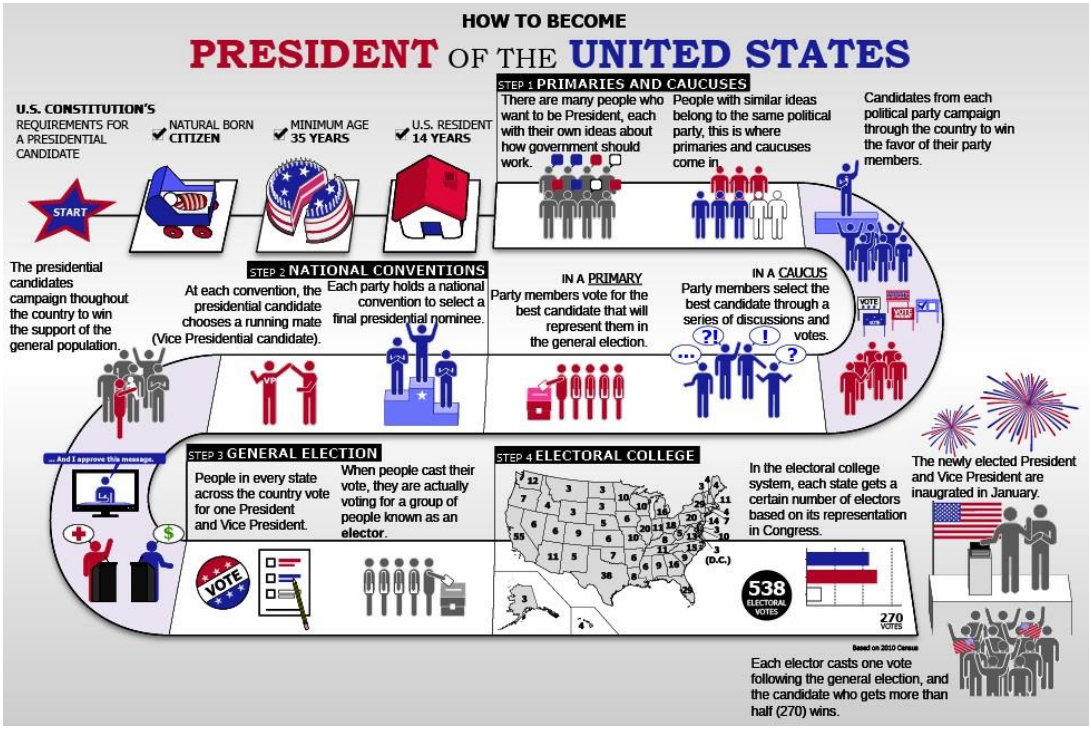


Chart 7.20 Map Illustrating the Process of Becoming President

The process of becoming president has become an increasingly longer one, but the underlying steps remain largely the same. (Credit: modification of work by the U. S. General Services Administration, Federal Citizen Information Center, Ifrah Syed)

Over the last several decades, how parties have chosen candidates has trended towards a drawn-out series of state by state contests, either primaries or caucuses, which generally begin in January prior to the November general election during the presidential election year. Over the course of the 20th century, the individual state primaries gradually became a most important part of the process. The national party leadership controls the timetable nomination through the convention rules impacting delegate distribution by state and the calendar of primaries. In recent decades, a majority of the delegates, pledged to a particular candidate, are chosen through primary elections well before the party convention, thus the national party conventions themselves are little more than a widely publicized rubber-stamping event of the candidate that already won the support of a majority of the delegates to the convention. This was not the situation in the past. Well into the middle of the 20th century, state leaders and workers met in national conventions to choose their nominees, sometimes after long struggles that took place over multiple ballots to pick the eventual nominee.

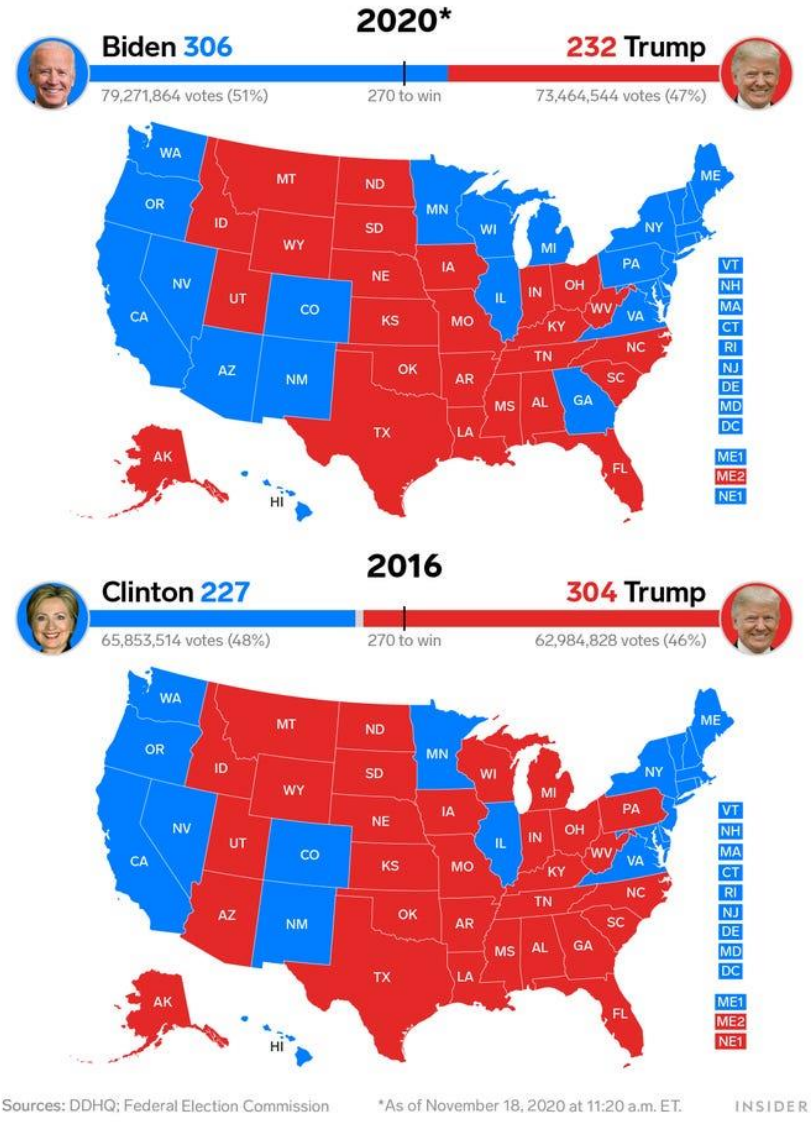


Chart 7.21 Maps Illustrating Electoral Votes in 2016 and 2020

Credit: *Business Insider* and John L. Dorman and Shayanne Gal, 16 November 2020, 5:07 pm; from "How the final 2020 Electoral College map compares to 2016."

The General Election

The Twelfth Amendment, ratified in 1804, provided for our current process of using electoral voting for the election of president and vice president as well as setting out a backup system to choose a winner if no one received a majority of the electoral votes.

Only once since the passage of the Twelfth Amendment, during the election of 1824, has the House of Representatives selected the president under these rules of the backup system.

In several elections, such as in 1876 and 1888, and more recently in 2000 and 2016, a candidate who nationwide received less popular votes has won the presidency, including cases when the losing candidate secured a nationwide majority of the popular vote.

In the 2000 election, Democratic nominee Al Gore won the popular vote, while Republican nominee George W. Bush won the Electoral College vote and hence the presidency.

In 2016, Hillary Clinton won the nationwide popular vote 48% to 45.9% with 2.9 million votes more than Donald Trump, who interestingly won an overwhelming majority of total counties in the U.S. Donald Trump became president by winning more votes than Hillary Clinton in enough states to capture a majority of the electoral votes—building a successful coalition of state majority elections to create an electoral college victory.

In fact, 77,774 combined votes in Michigan, Pennsylvania, and Wisconsin gave Trump 46 critical electoral votes by winning narrow victories in each of these states. Most of Hillary Clinton's popular vote margin can be accounted for by the margins she won in a few highly populated areas of states such as California and New York.[3]

Of course, both sides in the 2016 and 2020 elections understood the rule of the game–that winning 270 electoral votes was much more important than winning the national popular vote. Both the Clinton and Trump campaigns accordingly planned strategies in 2016 that lead them to win the popular vote in enough states with enough electoral votes to reach the magic number of 270. In 2020, the Biden campaign achieved narrow majorities of the popular vote in Michigan, Pennsylvania, and Wisconsin, reversing Trump's 2016 electoral vote victories in those states.

Campaign dollars for advertising and campaign visits were focused on achieving sufficient elector votes; thus, the federal nature of the United States has presidential campaigns adopting strategies that recognize the reality that there are 50 campaigns rather than a single national campaign for president. Moreover, since some states are overwhelmingly dominated by one party or another, presidential campaigns focus most of their attention on so-called **swing states** that could go to either candidate.

ELECTORAL COLLEGE: SHOULD WE CHANGE THE WAY WE COUNT THE VOTES FOR PRESIDENT?

Not everyone is satisfied with how the Electoral College voting system shapes the election. Yet movements for change in the voting system for presidential elections, including proposals for a straightforward nationwide direct election by popular vote, have gained little traction.[4]

Following the 2000 presidential election, when then-governor George W. Bush won by a single electoral vote and with over half a million fewer individual votes than his challenger, many voters called for "Electoral College reform," that is the manner under which we determine who is elected president. Years later, even after 2016 election, however, nothing of any significance had been done. The absence of reform in the wake of such elections is a testament to the staying power of the Electoral College or our current system of electing the president. Supporters of the current system defend it as a manifestation of federalism, arguing that it also guards against the chaos inherent in a multiparty environment by encouraging the current two-party system. They point out that under a system of direct election; candidates would focus their efforts on more populous regions and ignore others.[5]

Voting for President: Comparing Plans

Name of Plan	Advantages	Disadvantages
Electoral College current system, mainly winner-take-all	preserves role of states; requiring separate majorities by state; majority mandate, usually stronger with higher % than popular vote; encourages candidates to campaign in rural areas rather than relying solely on television and focus on urban areas; avoid nationwide recounts, encourages 2 major parties who must moderate views to capture independent support	no national majority; possible winner may have less popular votes; 2 votes given to states based on equality not population; candidates ignore states without close races; impossible for 3rd parties to ever win or even impact election; electoral votes may not reflect wishes of voters in state
Direct Popular Vote need Constitutional Amendment to implement this plan	creates national majority winner with nationwide mandate; every vote counts equally; states are not a factor; might encourage nationwide campaign because concept of swing state focus is eliminated	strong possibility candidate will get less than a majority requiring a run-off second-round election; might encourage 3rd parties with extreme views; possibility of nationwide recounts; voters in less populated states largely ignored; voters on coasts and in highly populated urban areas may decide election for the entire country
Proportional Vote division of votes in each state based on candidate results; need Constitutional Amendment to implement	retains electoral votes but electoral division more accurate reflection of popular vote; generally most plans provide "federalism bonus" of 2 additional electoral votes for a state-wide winner which should encourage campaigning in most states; retains advantage of Electoral College without disadvantage of direct popular vote run-off elections and nationwide recounts	undermines principle of political equality if "federalism bonus" is retained; might encourage 3rd and 4th parties to form, possible disputes about how to divide whole numbers of electoral votes, especially the last electoral vote; might encourage recounts for a single electoral vote in close contested states
District Voting division of votes on candidate who wins geographic area of congressional district; need Constitutional Amendment	retains electoral votes; unlike current system, might encourage candidates to campaign throughout country for contested/swing districts not swing states; might be closer linkage between president/congress; most district voting plans retain "federalism bonus" of 2 additional electoral votes for state-wide winner	lack of real swing districts means narrow campaigning; voters in non-swing districts ignored; district gerrymandering; "federalism bonus" not eliminated without amendment, which would have strong opposition from low population states
Interstate Compact mandate a popular vote winner	unlike other plans does not require amendment, easier to achieve prime objective of direct popular vote of assuring candidate with most votes wins; can be achieved through formal agreement among states, who together have a majority of electoral votes; retains electoral votes and avoids disadvantage of run-off elections	highly dependent of action by state legislatures, may have built-in bias for current system depending on political balance in the state; may encourage more recounts in closely contested states if ever implemented

Chart 7.22 Comparison of Voting Plans for Presidential Elections

One alternative to the Electoral College is to scrap it all together and replace it with a **direct nationwide popular vote**. The popular vote would be the aggregated totals of the votes in the fifty states and District of Columbia, as certified by the head election official of each state. As previously noted, this could result in candidates ignoring much of the country's voters—especially those living in less populated states—and focusing on highly populated urban areas or east and west coast regions.

Critics charge that the current system negates the one-person, one-vote basis of U.S. elections, subverts majority rule, and might lead, in theory, to chaos should enough electors desert a candidate, thus thwarting the popular will. Moreover, public opinion polls show majority support for a direct popular vote on a national level not understanding that the system allows for state-wide majority elections. Despite all this, the system remains in place. It appears that enough people are more comfortable with the perceived problems of the current system than with the uncertainty of change.[6] Of course a change to a system of a single nationwide majority rule election would require a constitutional amendment supported by a majority of both houses of Congress and approval of 3/4ths of the states.

Those who insist that the Electoral College should be reformed argue that its potential benefits pale in comparison to the way the current system depresses voter turnout. This thinking does not consider the depressed voter turnout for the less-populated states should an abolishment of the Electoral College occur. In addition to favoring less-populated states, since individual votes there count more than in larger states due to the mathematics involved in the distribution of electors, the Electoral College results in a significant number of "safe" states that receive no real electioneering, such that nearly 75 percent of the country is ignored in the general election. Again, the Electoral College voting system does preserve the idea of 51 individual majoritarian elections rather than a single nationwide majority. This not only keeps less populated states in the mix, but it forces candidates to build coalitions to secure the election victory. The *Constitution* includes this protection in order that the President of the United States would not become the president of the most populated state or the most urban state. Another alternative to the current system often mentioned is to have a **proportional system** of division of the electoral vote in each state. That is, as each state assigns it electoral votes, it would do so based on the popular vote percentage in their state, rather with the winner-take-all approach almost all the states use today. Sometimes this suggestion is coupled with a "federalism bonus" which gives the winner of the state two votes but divides the rest of the electoral vote proportionally. Although individual states could currently adopt this system by state law, to mandate this system nationwide would require a constitutional amendment.

Another proposal mentioned is to have voting method referred to as the **district system**, in which electoral votes are calculated by the presidential candidate receiving the majority of the vote within a congressional district. That is, the candidate who received the most votes in the geographic area of a congressional district would win one electoral vote. Under this system, 435 electoral votes would be divided up by districts. Usually, this suggestion is also coupled with the "federalism bonus" to allocate the additional 100 electoral votes. Two states have currently adopted this system on their own, to mandate this system national would require a constitutional amendment.

Another alternative for electing the president has been proposed by an organization called National Popular Vote. Rather than seeking a constitutional amendment to achieve a nationwide national popular vote, supporters advocate for a **National Popular Vote Interstate Compact** between multiple states. Once a combination of states constituting 270 electoral votes supports the movement, each state entering the compact pledges all its Electoral College votes to the national popular vote winner. Again the negative possibility with this alternative may result in more populated states being pitted against the less populated, which could depress voter turnout. As of April 2021, sixteen jurisdictions representing 196 electoral votes have joined this interstate compact. Some constitutional issues arise from the NPV movement's approach. The current system is designed to offer state-wide democratic elections, with each state's voters choosing the candidate the state wishes to support. The NPV method does not require a candidate to secure a coalition of these state majorities to win the Electoral College majority, which means a president could politically ignore most states and focus all attention on a few populated areas. NPV also makes it theoretically easier to commit fraud to secure an election. In this instance, fraud can be targeted to just a few small strategic areas. Under the NPV system, the wishes of the majority of voters in a state could be ignored, if different than the overall national majority. Voters in individual states give up state vote sovereignty to participate in NPV. The legal constitutionality of this approach is open to challenge.

Political Participation: Questions to Consider

1. What are the positive and negative points to the Electoral College voting system?
2. In what ways does the current system protect the representative power of small states and less-densely populated regions?

1. *The Electoral College voting system forces candidates to build a broad coalition of states to win and protects the role of states in our political system and strengthens our two-party system. The greatest criticism of the electoral college system is that a candidate winning the popular vote might not receive a majority of electoral votes. Moreover, the system depresses voter turn-out, since the Electoral College results in a significant number of "safe" states that receive no real electioneering.*
2. *It means the more densely populated coastal areas of the country will not have enough electoral voting strength alone to elect the president based solely on numerical majority, since the electoral votes of smaller states and less densely populated states will also be needed to achieve a majority of 270 electoral votes.*

Terms to Remember

Electoral College–The unofficial name given to a voting process by which the U.S. president is officially elected through votes officially cast by state *electors* pledged to support the presidential candidate who has won the most votes in that state. The Electoral College is not an organized entity since electors never meet but cast their votes in their separate state capitols.

faithless electors—official presidential electors who do not follow the wishes of the electorate in each state and vote their "elector vote" for some presidential candidate other than the winner of the state's majority vote. This happens rarely.

swing states—U.S. states which could potentially be won by either major candidate for president and therefore presidential campaigns focus most of their attention on these states.

winner-take-all system--Under this system, the candidate who wins the most votes in November receives all the state's electoral votes, and only the electors from the winning candidate's party will vote.

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7.5 Political Participation: Fundraising, Campaign Finance and Elections



Image 7.16 Photo of One Dollar Bill

Image of a one dollar bill. (Credit: The U.S. Bureau of Engraving and Printing at the U.S. Department of Treasury; https://www.uscurrency.gov/seven-denominations; The first $1 Federal Reserve note was issued in 1963, and its design—featuring President George Washington and the Great Seal of the United States—remains unchanged)

Campaigns for elected office run on currency, and raising funds is big business in U.S. politics today. Fundraising significantly impacts elections, and numerous laws control the financing of political campaigns.

Learning Objectives

- Understand the role of campaign fundraising and the impact on elections.
- Review the current state of campaign finance laws and the impact of Supreme Court decisions.

Chart 7.23 Learning Objectives on Campaign Finance

Fundraising

Even with a carefully planned and orchestrated presidential run, early fundraising is vital for candidates. Money helps them win, and the ability to raise money identifies those who are viable. In fact, the more money a candidate raises, the more he or she will continue to raise. EMILY's List, a political action group, was founded on this principle; its name is an acronym for "Early Money Is Like Yeast" (it makes the dough rise). This group helps progressive women candidates gain early campaign contributions, which in turn helps them get further donations.

Want to know how much money federal candidates and PACs are raising? Visit the Campaign Finance Disclosure Portal at the **Federal Election Commission** website.



(a) (b)

Image 7.17 Women Politicians from Emily's List

EMILY's List candidates include members of Congress, such as Tammy Duckworth (D-IL) (a), and governors, such as Maggie Hassan (b) of New Hampshire, who ran successfully for U.S. Senate. (Credit to OpenStax images; a, b: modification of work by Roger H. Goun)

Early in the 2016 election season, several candidates had fundraised well ahead of their opponents. Hillary Clinton, Jeb Bush, and Ted Cruz were the top fundraisers by July 2015. Clinton reported $47 million, Cruz with $14 million, and Bush with $11 million in contributions. Bush later reported over $100 million in contributions, while the other Republican candidates continued to report lower contributions.

Media stories about Bush's fundraising discussed his powerful financial networking, while coverage of the other candidates focused on their lack of money. Donald Trump, the eventual Republican nominee, showed a comparatively low fundraising amount because he was self-funded during most of the nomination campaign and was able to generate considerable free publicity.

The Democratic field in 2020 was initially crowded before winnowing down to only Senator Bernie Sanders and the former Vice President Joseph Biden. The March "cash-on-hand" amounts for these two candidates, $11.2 for Sanders and $6.0 for Biden far exceeded other candidates who remained in the race at the time.

Campaign Finance Laws

In the 2020 presidential election cycle, candidates for all parties raised a total of over $5.7 billion dollars for campaigns.[1] Congressional candidates raised $ 8.7 billion.[2] This, however, pales in comparison to the amounts raised by **political action committees (PACs)**, which are organizations created to raise and spend money to influence politics and contribute to candidates' campaigns.[3] How does the government monitor the vast amounts of money that are now a part of the election process?

The complex problem of funding campaigns has a long history in the United States. For nearly the first hundred years of the republic, there were no federal campaign finance laws. Then, between the late nineteenth century and the start of World War I, Congress pushed through a flurry of reforms intended to bring order to the world of campaign finance. These laws made it illegal for politicians to solicit contributions from civil service workers made corporate contributions illegal and required candidates to report their fundraising.

As politicians and donors soon discovered, however, these laws were full of loopholes and were easily bypassed by those who knew the ins-and-outs of the system. While these laws intended to create

transparency in campaign funding, government did not have the power to stop the high levels of money entering elections, and little was done to enforce the laws. In 1971, Congress again tried to fix the situation by passing the Federal Election Campaign Act (FECA), which outlined how candidates would report all contributions and expenditures related to their campaigns. The FECA also created rules governing the way organizations and companies could contribute to federal campaigns, which allowed for the creation of political action committees.[4]

Finally, a 1974 amendment to the act created the Federal Election Commission (FEC), which operates independently of government and enforces the elections laws. While some portions of the FECA were ruled unconstitutional by the courts in ***Buckley v. Valeo*** (1976), such as limits on personal spending on campaigns by candidates not using federal money, the FEC began enforcing campaign finance laws in 1976.[5]

Even with the new laws and the FEC, money continued to flow into elections. By using loopholes in the laws, political parties and political action committees donated large sums of money to candidates, and new reforms were soon perceived to be needed. 2002 brought another important reform when Senators John McCain (R-AZ) and Russ Feingold (former D-WI) cosponsored the Bipartisan Campaign Reform Act of 2002 (BCRA), also referred to as the **McCain–Feingold Act**. The McCain–Feingold Act limited the use of **soft money**, which is raised for purposes like party-building efforts, get-out-the-vote efforts, and issue-advocacy ads.[6]

Unlike **hard money** contributed directly to a candidate, which is heavily regulated and limited, soft money has almost no oversight. Soft money was not a problem before the mid-1990s, when several very imaginative political operatives developed creative ways to spend this money. After this, soft money donations skyrocketed; however, McCain-Feingold brought some scrutiny and control to this type of fundraising.[7] McCain-Feingold places limits on total contributions to political parties, prohibits coordination between candidates and PAC campaigns, and requires candidates to include personal endorsements on their political ads.[8] Until 2010, it also limited advertisements run by unions and corporations thirty days before a primary and sixty days before a general election.

Soon after the passage of the McCain-Feingold Act, the FEC's enforcement of the law spurred court cases challenging it. A controversial decision handed down by the Supreme Court (2010) is the ruling on *Citizens United v. Federal Election Commission* led to the removal of spending limits on corporations. Justices in the majority argued that the BCRA violated a corporation's free speech rights.[9] The *Citizens United* case began as a lawsuit against the FEC filed by Citizens United, a non-profit organization that wanted to advertise a documentary critical of former senator and Democratic hopeful Hillary Clinton on the eve of the 2008 Democratic primaries.[10]

Advertising or showing the film during this time window was prohibited by the McCain-Feingold Act. The Court found that this type of restriction violated the organization's First Amendment right to free speech. As critics of the decision predicted at the time, the Court opened the floodgates to private soft money flowing into campaigns again.[11]

In the wake of the Court ruling, a new type of advocacy group emerged, the **super PACs**, or Independent Expenditures-Only Committees. These organizations cannot contribute directly to a candidate, nor can they strategize with a candidate's campaign.

They can, however, raise and spend as much money as they please to support or attack a candidate, including running advertisements and hosting events.[12] In the 2020, the Senate Leadership Fund, a conservative super PAC, spent $293.7 million supporting conservative candidates while the Senate Majority PAC spent $230.4 million supporting liberal candidates. The total expenditure by super PACs alone was $2.13 billion in the 2020 election.[13]

In contrast, a traditional **PAC** is an organization designed to raise hard money to elect or defeat candidates. Such traditional PACs tended to be run by businesses and other groups, like the Teamsters Union and the National Rifle Association, to support their special interests. They are highly regulated on the amount of money they can take in and spend. Super PACs are *not* bound by these regulations.

Several limits on campaign contributions have been upheld by the courts and remain in place. Individuals may contribute up to $2,900 per candidate per election. This means a teacher living in Nebraska may contribute $2,900 to Ron DeSantis for his campaign to become to the Republican presidential nominee, and if DeSantis becomes the nominee, the teacher may contribute another $2,900 to his general election campaign. Individuals may also give $5,000 to political action committees and $36,500 to a national party committee. PACs that contribute to more than one candidate are permitted to contribute $5,000 per candidate per election, and up to $15,000 to a national party.

PACs created to give money to only one candidate are limited to only $2,900 per candidate, however.[14] The amounts are adjusted every two years, based on inflation. These limits are intended to create a more equal playing field for the candidates, so that candidates must raise their campaign funds from a broad pool of contributors.



The **Center for Responsive Politics** reports donation amounts that are required by law to be disclosed to the Federal Elections Commission. One finding is that, counter to conventional wisdom, the vast majority of direct campaign contributions come from individual donors, not from PACs and political parties.

CONTRIBUTION LIMITS FOR 2021–2022 FEDERAL ELECTIONS					
DONORS	RECIPIENTS				
	Candidate Committee	PAC[1] (SSF and Nonconnected)	State/District/ Local Party Committee	National Party Committee	Additional National Party Committee Accounts[2]
Individual	$2,900* per election	$5,000 per year	$10,000 per year (combined)	$36,500* per year	$109,500* per account, per year
Candidate Committee	$2,000 per election	$5,000 per year	Unlimited Transfers	Unlimited Transfers	
PAC-Multicandidate	$5,000 per election	$5,000 per year	$5,000 per year (combined)	$15,000 per year	$45,000 per account, per year
PAC-Nonmulticandidate	$2,900 per election	$5,000 per year	$10,000 per year (combined)	$36,500* per year	$109,500* per account, per year
State/District/Local Party Committee	$5,000 per election (combined)	$5,000 per election (combined)	Unlimited Transfers		
National Party Committee	$5,000 per election[3]	$5,000 per year			

*- Indexed for inflation in odd-numbered years.

[1] "PAC" here refers to a committee that makes contributions to other federal political committees. Independent-expenditure-only political committees (sometimes called "super PACs") may accept unlimited contributions, including from corporations and labor organizations.

[2] The limits in this column apply to a national party committee's accounts for: (i) the presidential nominating convention; (ii) election recounts and contests and other legal proceedings; and (iii) national party headquarters buildings. A party's national committee, Senate campaign committee and House campaign committee are each considered separate national party committees with separate limits. Only a national party committee, not the parties' national congressional campaign committees, may have an account for the presidential nominating convention.

[3] Additionally, a national party committee and its Senatorial campaign committee may contribute up to $51,200 combined per campaign to each Senate candidate.

Source: Federal Election Commission. "Contribution Limits for 2021–2022 Federal Elections." January, 2021.

Chart 7.24 Contribution Limits for Federal Elections

How are Congressional campaigns funded?

Modern political campaigns in the United States are expensive, and they have been growing more so. For example, in 1986, the costs of running a successful House and Senate campaign were $849,111 and $7,243,782, respectively, in 2020 dollars. By 2020, those values had shot to $2.4 million and $27.2 million.[15] Raising this amount of money requires significant time and effort. Indeed, a presentation for incoming Democratic representatives suggested a daily Washington schedule of five hours reaching out to donors and only three or four hours for actual congressional work. As this advice reveals, raising money for reelection constitutes a large proportion of the work a congressperson does. However, overall the largest share of direct campaign contributions in congressional elections comes from individual donors, who are less influential than the political action committees (PACs) that contribute the remainder and demand their time.[16]

Political Participation: Questions to Consider

1. What is the difference between soft money and hard money in connection to political campaigns?
2. Has the amount of money in politics truly become a corrupting influence?

1. *hard money is direct contation to a candidate or campaign; soft money goes to an interest group or other entity usually for more generalized influence such as voter registration*
2. *personal opinion*

Terms to Remember

hard money–contributed directly to a candidate, which is heavily regulated and limited, soft money has almost no oversight.

incumbent–the current holder of a political office

open primary–an election in which any registered voter may vote in any party's primary or caucus

political action committees (PACs)–organizations created to raise money for political campaigns and spend money to influence policy and politics

soft money–raised for purposes like party-building efforts, get-out-the-vote efforts, and issue-advocacy ads.

super PACs–officially known as Independent Expenditure-Only Committees; organizations that can fund raise and spend as they please to support or attack a candidate but not contribute directly to a candidate or strategize with a candidate's campaign

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7.6 Political Participation: Campaigns and the Voting Process



Image 7.18 Photo of Harris and Sanders Running for Office

Presidential candidates often spend a significant amount of time campaigning in states with early caucuses or primaries. Kamala Harris (left) and Bernie Sanders (right) part of the 2020 group of candidates for the Democratic presidential nomination. (Credit: PBS NewsHour, 21 January 2019 by Daniel Bush and Lisa Desjardines, "What does Kamala Harris believe? Where the candidate stands on 9 issues" at pbs.org and PBS NewsHour, 18 May 2015, "Sen. Bernie Sanders on taxes, trade agreements and Islamic State" at pbs.org)

Learning Objectives
• Compare campaign methods for different types of elections. • Identify strategies campaign managers use to reach voters. • Analyze the factors that typically affect a voter's decision.

Chart 7.25 Learning Objectives on Campaigning

Campaign managers know that to win an election, they must do two things: reach voters with their candidate's information and get voters to show up at the polls. To accomplish these goals, candidates and their campaigns will often try to target those most likely to vote. Unfortunately, these voters change from election to election and sometimes from year to year. Primary and caucus voters are different from voters who vote only during presidential general elections. Some years see an increase in voter turnout in younger voters, voters of some demographic, or voters with interests. Elections are unpredictable, and campaigns must adapt to be effective.

Comparing Primary and General Campaigns

Although candidates have the same goal for primary and general elections, which is to win, these elections are very different from each other and require a very different set of strategies. **Primary elections** are more difficult for the voter.

There may be more candidates vying to become their party's nominee, and party identification is not a useful cue because all candidates are running in "party elections" seeking to be nominated by a party.

In the 2016 presidential election, Republican voters in the early primaries were presented with twelve options, while in 2020 Democratic voters were offered over 20 candidates seeking the Presidency.

Whether a candidate is running for the nomination for President, U.S. Senate, U.S. House of Representatives or some state or local office, voters in each party must find more information about each candidate to decide which is closest to their preferred issue positions or who have the experience or personal attributes they seek in their party's nominee.

Due to time limitations, voters may not research all the candidates. Nor will all the candidates get enough media or debate time to reach the voters. These issues make campaigning in a primary election difficult, so campaign managers tailor their strategy depending on the candidate.

First, name recognition is extremely important. Voters are unlikely to cast a vote for an unknown. In 2016, some candidates for President of the United States, such as Hillary Clinton or Donald Trump, were well known. Most candidates for president were governors or senators who were less well-known nationally and who needed to gain name recognition.

Of course, for the federal offices for U.S. Senate or U.S. Representative, candidates for the nomination for these offices are even more likely to be less known to the primary election voters. During the 2008 Democratic presidential nomination contest, Barack Obama had been only a junior senator from Illinois prior to running for president. Voters across the country had little information about him and he needed to adopt campaign strategies to become better known. While well-known candidates generally have longer records that can be attacked by the opposition, they also have an easier time raising campaign funds because of their odds of winning being perceived as better.

Second, increasing visibility as a campaign strategy is crucial when a candidate is one in a long parade of faces. Given that voters will want to find quick, useful information about each, candidates will try to get the media's attention and pick up momentum. Media attention is especially important for newer candidates. Most voters assume a candidate's website and other campaign material will be skewed, showing only the most positive information.

The media, on the other hand, are generally considered more reliable and unbiased than a candidate's campaign materials, so voters turn to news networks and journalists to pick up information about the candidates' histories and issue positions. Candidates are aware of voters' preference for quick information and news and try to get interviews or news coverage for themselves. Candidates also benefit from news coverage that is longer and cheaper than campaign ads. In 2016, both Donald Trump (in the Republican nomination process) and Bernie Sanders (in the Democratic nomination process) benefited from "free" news coverage of their political events and rallies.

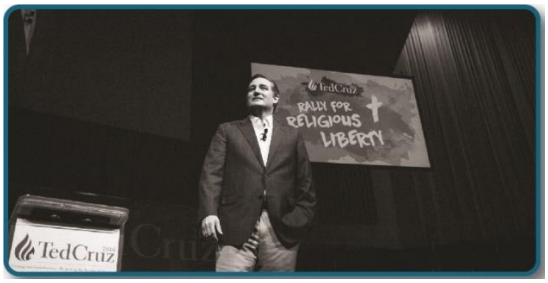


Image 7.19 Ted Cruz at Political Rally

Senator Ted Cruz (R-TX) hosts a Rally for Religious Liberty at Bob Jones University, a Christian university in Greenville, South Carolina, on November 14, 2015. Cruz announced his campaign for president on March 23, 2015, at Liberty University in Lynchburg, Virginia. (Credit: OpenStax; modification of work by Jamelle Bouie)

The first Republican candidate to throw a hat into the ring for 2016, Ted Cruz had been preparing for his presidential run since 2013 when he went hunting in Iowa and vacationed in New Hampshire, both key states in the nomination process.[1]

Like candidates for office at all levels of U.S. government, Cruz understood that campaigns must reach out to the voters to increase name recognition and visibility with voters.

Campaign ads in primary elections focus on issue positions or name recognition or favorable attributes of the candidate. Many of the best primary ads help the voters identify issue positions they have in common with the candidate.

General Elections and Election Day

The general election campaign period occurs between mid-August and early November. These elections are simpler than nomination primaries, because there are only two major party candidates and a few minor party candidates. In 1845, Congress passed legislation that moved the presidential election day to the first Tuesday after the first Monday in November; and, in 1872, elections for the House of Representatives were also moved to that same Tuesday.[2]

General elections in years in which we elect a president garner the most attention from the media and the voters. Yet, they are not the only important elections. The even-numbered years between presidential years, like 2018 and 2022, are reserved for congressional elections–sometimes referred to as **midterm elections** because they are in the middle of the president's term. Midterm elections are held because all members of the House of Representatives and one-third of the senators come up for reelection every two years.

General Election Campaign Strategy

By the **general election** (whether in a presidential year or in a **midterm** year) each party has selected their candidates, and campaigns adopt different strategies to reach different voters. Because most party-affiliated voters will cast a ballot for their party's candidate, the campaigns must try to reach the independent and undecided, as well as try to convince their party members to get out and vote. Accordingly, some ads will focus on issue and policy positions, or personal positive attributes or experiences, comparing the two main-party candidates. Other ads will remind party loyalists why it is important to vote. General campaigns also try to get voters to the polls in closely contested swing or battleground states. In Ohio in 2004, George W. Bush's campaign adopted a campaign strategy focused on getting the state's Republican voters to the polls. The volunteers walked through precincts and knocked on Republican doors to raise interest in Bush and the election. Volunteers also called Republican and

former Republican households to remind them when and where to vote.[4] The strategy worked, and it reminded future campaigns that an organized effort to get out the vote, rather than relying primarily on paid advertising, is still a viable way to win an election, especially in swing states that can go in either direction on Election Day. In 2016, both candidates sensed shifts in the electorate that led them to adopt a campaign strategy to visit states that were not recently battleground states. For example, past conventional campaign strategies, Trump spent many hours over the last days of the campaign in the largely Democratic Rust Belt states, namely Michigan and Wisconsin. President Trump ended up winning both states and industrial Pennsylvania as well.

Positive and Negative Advertising

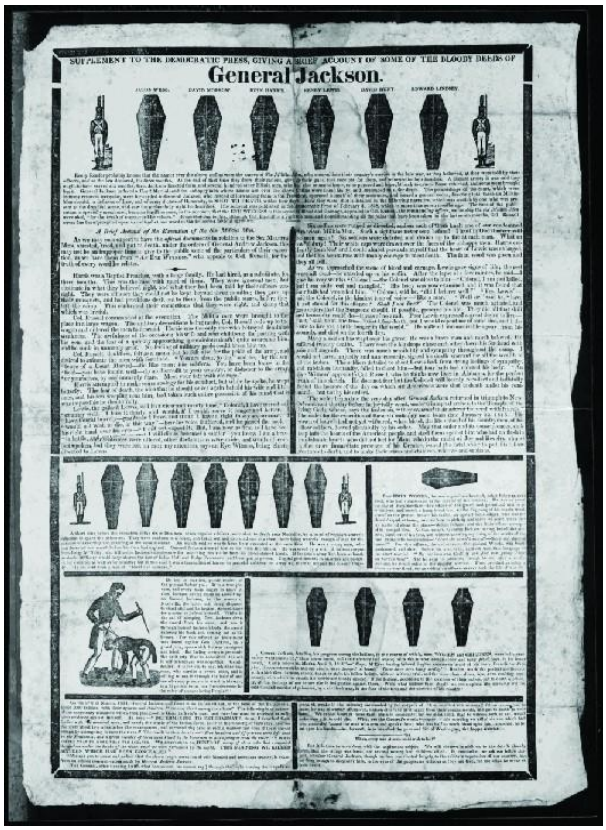


Image 7.20 Photo of Handbill Used for Negative Political Advertising

The infamous "coffin handbill" used by John Quincy Adams against Andrew Jackson in the 1828 presidential election. This is an early version of negative advertising. (Credit: Library of Congress, OpenStax included image)

Campaigns have always been expensive. Also, they have sometimes been negative and nasty. The 1828 "Coffin Handbill" that John Quincy Adams ran, for instance, listed the names and circumstances of the executions his opponent Andrew Jackson had ordered. This was in addition to gossip and verbal attacks against Jackson's wife, who had accidentally committed bigamy when she married him without a proper divorce. Campaigns and candidates have not become more amicable in the years since then.

Once television became a fixture in homes, campaign advertising moved to the airwaves. Television allowed candidates to connect with the voters through video, allowing them to appeal directly to and connect emotionally with voters.

While Adlai Stevenson and Dwight D. Eisenhower were the first to use television in their 1952 and 1956 campaigns, the ads were more like jingles with images. John Kennedy's campaign was the first to use images to show voters positive personal attributes of the candidates suggesting that the candidate was the choice for everyone. His ad, "Kennedy," combined the jingle "Kennedy for me" and photographs of a diverse population dealing with life in the United States.

The **Museum of the Moving Image** has collected presidential campaign ads from 1952 through today, including the "Kennedy for Me" spot mentioned above. Take a look and see how candidates have created ads to get the voters' attention and votes over time.

Over time, however, ads became more negative and manipulative. President Lyndon B. Johnson used the infamous "Daisy Girl" ad, which cut from a little girl counting daisy petals to an atomic bomb being dropped, to explain why voters needed to turn out and vote for him. If the voters stayed home, Johnson

implied his opponent, Barry Goldwater, might start a war. The ad aired once as a paid ad on NBC before it was pulled, but the footage appeared on other news stations as newscasters discussed the controversy over it.[5]



Image 7.21 Photos from Negative Campaign Ad

President Lyndon B. Johnson's "Peace Little Girl (Daisy)" campaign ad aired only once, during an NBC broadcast of "Monday Night at the Movies," yet it was one of the most notorious ads ever shown during a political campaign. (Credit: *The Greenfield Recorder* and the *Los Angeles Times* at http://www.recorder.com/Long-before-Trump-4244993).

Another source of negative ads is from groups outside the campaigns. Sometimes, shadow campaigns, run by political action committees and other organizations without the coordination or guidance of candidates, also use negative ads to reach voters. Even before the *Citizens United* decision allowed corporations and interest groups to run ads supporting candidates, shadow campaigns existed. In 2004, the Swift Boat Veterans for Truth organization ran ads attacking John Kerry's military service record, and MoveOn attacked George W. Bush's decision to commit to the wars in Afghanistan and Iraq. In 2014, super PACs poured more than $300 million into supporting candidates.[6]

The Bipartisan Campaign Reform Act of 2002, or McCain–Feingold, included a requirement that candidates stand by their ad and include a recorded statement within the ad stating that they approved the message whether it was positive or negative in tone. Although ads, especially those run by super PACs, continue to be negative, candidates can no longer dodge responsibility at least for those they directly run.

Campaigns and the Infotainment Strategy

Candidates are also frequently using interviews on late night television to get messages out. Soft news, or infotainment, is a new type of news that combines entertainment and information. Shows like *The Daily Show* and *Last Week Tonight* make the news humorous or satirical while helping viewers become more educated about the events around the nation and the world.[7]

In 2008, Obama and McCain visited popular programs like *The Daily Show*, *The Colbert Report*, and *Late Night with Conan O'Brien* to target informed voters in the under-45 age bracket. The candidates were able to show their funny sides and appear like average Americans, while talking a bit about their policy preferences. By fall of 2015, *The Late Show with Stephen Colbert* had already interviewed most of the potential presidential candidates, including Hillary Clinton, Bernie Sanders, Jeb Bush, Ted Cruz, and Donald Trump. Similar strategies were utilized by Democratic presidential hopefuls during the 2020 nomination process.

Candidate Debates

Debates are an important element of both the primary and the general election season, allowing voters to see candidates answer questions on policy and prior decisions. While most voters think only of presidential debates, the general election season sees many debates. In a number of states, candidates for governor are expected to participate in televised debates, as are candidates running for the U.S. Senate. Debates not only give voters a chance to hear answers, but also to see how candidates hold up under stress. Because television and the Internet make it possible to stream footage to a wide audience, modern campaign managers understand the importance of a debate. During the primary election phase of presidential candidate efforts, debates represent a critical opportunity for candidates to gain visibility. However, this can be a difficult challenge when there is a large number of candidates seeking the nomination of their party. Candidates who are unsuccessful during the early debate phase of the presidential nomination process often drop out of the race even before the first official primary or caucus in New Hampshire or Iowa.



Image 7.22 Trump and Clinton at Presidential Debate

Photo of the presidential debate in St. Louis (2016). (Credit: Jim Lo Scalzo/EPA and the *Chicago Tribune*; "Hillary Clinton and Donald Trump during the second Presidential Debate at Washington University in St. Louis, Missouri" at http://www.chicagotribune.com/ news/nationworld/ct-photos-presidential-debate-between-donald-trump-hillary-clinton-20161009-photogallery.html)

In 1960, the first televised presidential debate showed that answering questions well is not the only way to impress voters. Senator John F. Kennedy, the Democratic nominee and Vice President Richard Nixon, the Republican nominee, prepared in slightly different ways for their first of four debates. Although both studied answers to possible questions, Kennedy also worked on the delivery of his answers, including accent, tone, facial displays, and body movements, as well as overall appearance. Nixon, however, was ill in the days before the debate and appeared sweaty and gaunt. He also chose not to wear makeup, a decision that left his pale, unshaven face vulnerable.[8] Interestingly, while people who watched the debate thought Kennedy won, those listening on radio saw the debate as more of a draw.

While debates are not just about a candidate's looks, most debate rules contain language that prevents candidates from artificially enhancing their physical qualities. For example, prior rules have prohibited shoes that increase a candidate's height, banned prosthetic devices that change a candidate's physical

appearance, and limited camera angles to prevent unflattering side and back shots. Candidates and their campaign managers are aware that visuals matter.

Debates are generally over by the end of October, just in time for Election Day.

The Internet has given candidates a new platform and a new way to target voters. In the 2000 election, campaigns moved online and created websites to distribute information. They also began using search engine results to target voters with ads. Candidates also use social media, such as Facebook, Twitter, and YouTube, to interact with supporters and get the attention of younger voters.

Consider the Original



Three-quarter portrait of Abraham Lincoln standing, holding a book, facing right–1809-1865. (Credit: Library of Congress)

from ***Abraham Lincoln…***

"The people of these United States are the rightful masters of both congresses and courts, not to over-throw the Constitution, but to over-throw the men who pervert that Constitution."

Many consider the 1858 debates between Abrahma Lincoln and Stephen Douglas—during the campaign for the U.S. Senate from Illinois—to be one of the first debates to reach a national audience. In the primary source set on "Lincoln's Rise to Prominence," people may read the correspondence between Lincoln and Douglas as they worked to arrange the debates.

A description of one of the debates can be found in the article "Abraham Lincoln: A History." Though Lincoln lost this election to Douglas, when he ran for presiden the next year, he had the transcripts of the debate published and they were sold around the country. This helped voters learn about Lincoln and may have led to his election as president.

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Chart 7.26 Excerpt from Abraham Lincoln

Voter Decision Making

The election environment is complex, and most voters do not have time to research everything about the candidates and issues. Yet they will need to make a fully rational assessment of the choices for an elected office. To meet this goal, they tend to take shortcuts.

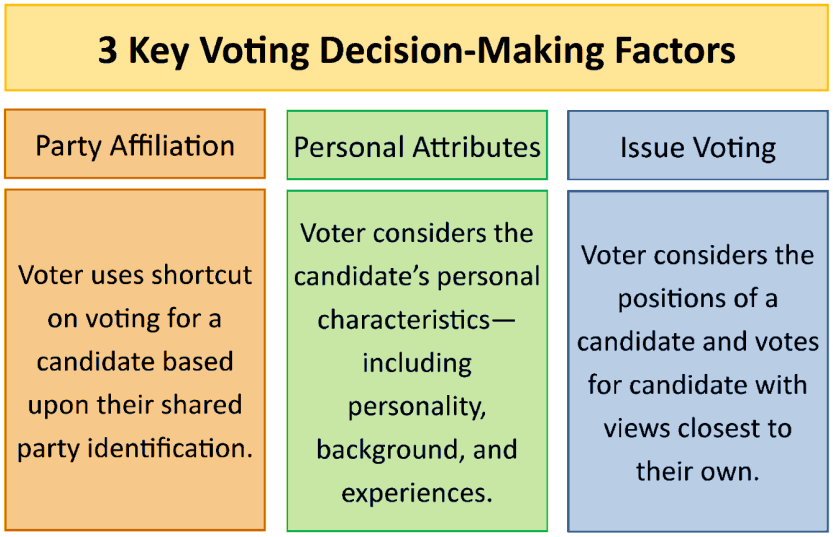


Chart 7.27 Decision-Making Factors Affecting Voting

One popular shortcut is simply to vote using party affiliation, that is, based on the political party of the candidate. Many political scientists consider **party affiliation voting** to be rational behavior because citizens register for parties based upon either position preference or socialization. Similarly, candidates align with parties based upon their issue positions. A Democrat who votes for a Democrat is very likely selecting the candidate closest to his or her personal ideology. While party identification is a voting cue, it also makes for a logical decision.

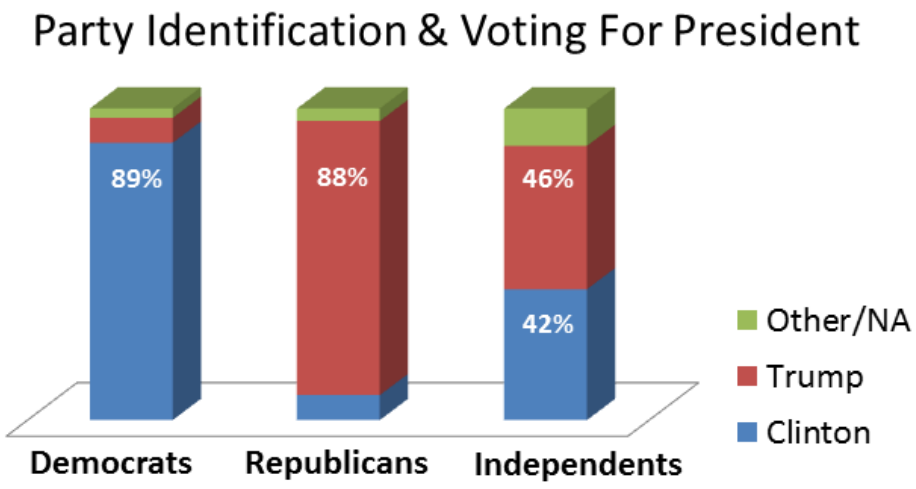


Chart 7.28 Bar Graph Illustrating Party Identification in Voting (Credit: CNN at http://edition.cnn.com/election-polls/national/president)

About half of voters will make their decision based upon party membership, so candidates will focus on winning over independent voters and visiting states where the election is close.[9]

The 2016 election was no exception to this consistent pattern of voters affiliated with either the Republican or

Democratic party to vote for the candidate who was nominated by their respective parties.

Voters are known to review **personal attributes** of a candidate that include consideration of not only physical characteristics such as age, ethnicity, or gender; but, also the candidate's personality, perceived personal qualities, educational background, or past political experiences. Voters make decisions based upon candidates' physical characteristics, such as attractiveness or facial features.[10]

They may also vote based on gender or race, because they assume the elected official will make policy decisions based on a demographic shared with the voters. Candidates are very aware of voters' focus on these non-political traits. In 2008, a sizable portion of the electorate wanted to vote for either Hillary Clinton or Barack Obama because they offered new demographics—either the first woman or the first black president. Demographics hurt John McCain that year, because many people believed that at 71 he was too old to be president.[11]

Hillary Clinton faced this situation again in 2016 as she became the first female nominee from a major party. In essence, personal attributes can make a candidate appear more competent or better suited for the position, which in turn can help him or her ultimately win.[12]

Aside from party identification and demographics, and other personal attributes, voters will also look at issues when deciding how to vote. This is known as **issue voting**. Many voters are likely to seek out a candidate's position on a multitude of issues before deciding. On the other hand, for some single-issue voters, a candidate's stance on one issue alone such as on abortion rights will be a major factor, while other voters may look at the candidates' beliefs on the Second Amendment and gun control. Single-issue voting may not require much more effort by the voter than simply using party identification. Issue Voters use the information they find in several ways.

Retrospective voting occurs when the voter looks at the candidate's past actions or even the past economic climate during the time an elected official has been in office and makes a voting decision using these factors. Retrospective voters hold politicians accountable for past actions or past situations and decide whether they wish to give that official a second chance.

Pocketbook voting occurs when the voter looks at his or her personal finances and circumstances to decide how to vote. Someone having a harder time finding employment or seeing investments suffer during a candidate or party's control of government will vote for a different candidate or party than the incumbent.

Prospective voting occurs when the voter makes a decision by using information gathered from a candidate's campaign promises or from a candidate's past behavior to decide how the candidate will act in the future.

For example, will the candidate's voting record or actions help the economy and better prepare him or her to be president during an economic downturn? The challenge of this voting method is that the voters must use a lot of information, which might be conflicting or unrelated, to make an educated guess about

how the candidate will perform in the future. Voters do appear to rely on prospective and retrospective voting more often than on pocketbook voting.

In some cases, a voter who may support a 3rd party candidate may cast a ballot strategically using party affiliation. In these cases, a person may vote for a second choice candidate, either because his or her preferred candidate cannot win or in the hope of preventing another candidate from winning. This type of voting is likely to happen when there are multiple candidates for one position or multiple parties running for one seat.[13]

In Florida and Oregon, for example, Green Party voters (who tend to be liberal) may choose to vote for a Democrat if the Democrat might otherwise lose to a Republican. Similarly, in Georgia, while a Libertarian may be the preferred candidate, the voter would rather have the Republican candidate win over the Democrat and will vote accordingly.[14]



Since 1960, the **American National Election Studies** has been asking a random sample of voters a battery of questions about how they voted. The data are available at the Inter-university Consortium for Political and Social Research at the University of Michigan.

Straight-Ticket Voting

Citizens also use party identification to make decisions via **straight-ticket voting**—choosing every Republican or Democratic Party member on the ballot. In some states, such as Michigan, selecting one box at the top of the ballot gives a single party all the votes on the ballot. Straight-ticket voting does cause problems in states that include non-partisan positions on the ballot.

In Michigan, for example, the top of the ballot (presidential, gubernatorial, senatorial and representative seats) will be partisan, and a straight-ticket vote will give a vote to all the candidates in the selected party. But the middle or bottom of the ballot includes seats for local offices or judicial seats, which are non-partisan.

These offices would receive no vote, because the straight-ticket votes go only to partisan seats. In 2010, actors from the former political drama *The West Wing* came together to create an advertisement for Mary McCormack's sister Bridget, who was running for a non-partisan seat on the Michigan Supreme Court. The ad reminded straight-ticket voters to cast a ballot for the court seats as well; otherwise, they would miss an important election. McCormack won the seat. **Split-ticket** voting occurs when a voter makes decisions based not upon party affiliation but on issue, demographics, or some other factor. Split-ticket voters split votes between candidates from various parties.

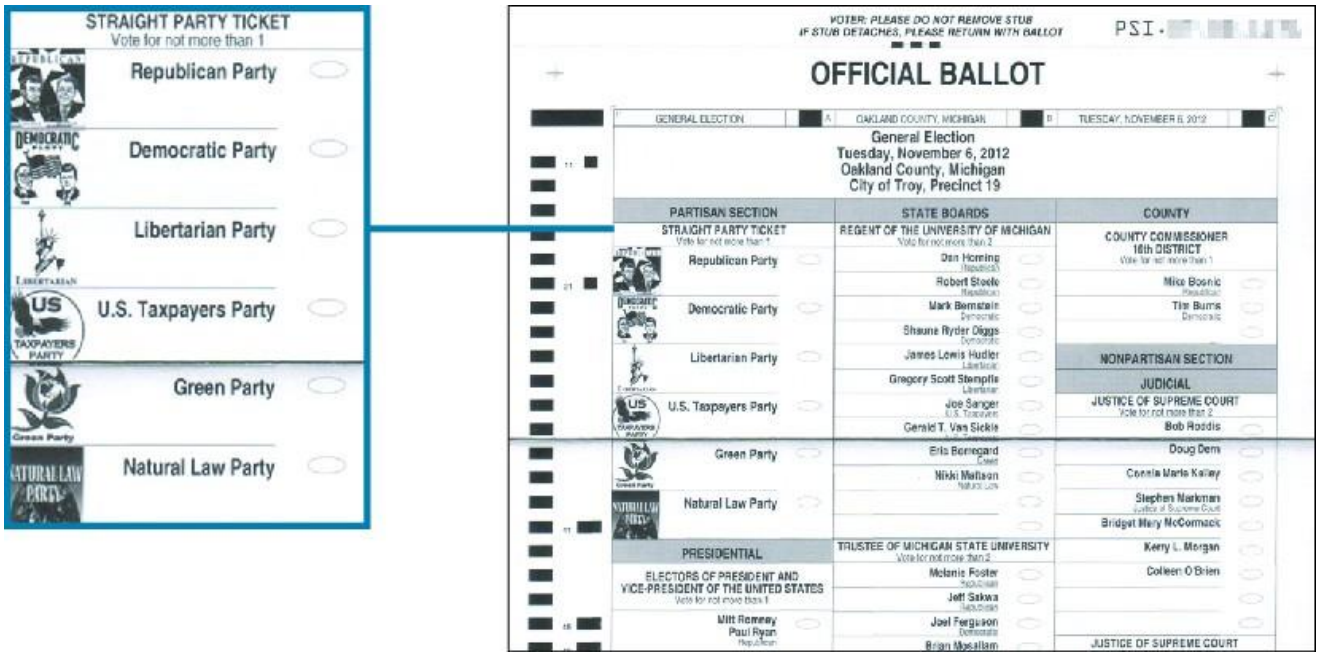


Image 7.23 Photographs of Ballots

Voters in Michigan can use straight-ticket voting. To fill out their ballot, they select one box at the top to give a single party all the votes on the ballot. (Credit: OpenStax included image)

Straight-ticket voting does have the advantage of reducing **ballot fatigue**. Ballot fatigue occurs when someone votes only for the top or important ballot positions, such as president or governor, and stops voting rather than continue to the bottom of a long ballot. In 2012, for example, 70 percent of registered voters in Colorado cast a ballot for the presidential seat, yet only 54 percent voted yes or no on retaining Nathan B. Coats for the state supreme court.[15] Voters make decisions based upon candidates' physical characteristics, such as attractiveness or facial features.[16] **Split-ticket** voters split votes between candidates from various parties. Split-ticket voting occurs when a voter makes decisions based not on party affiliation but on issues, demographics, candidate attributes, or some other factor.

Political Participation: Questions to Consider

1. In what ways is voting your party identification a rational choice?
2. Do physical characteristics or personal attributes matter when voters assess candidates? If so, how?

1. *many political scientists consider party-line voting to be a rational behavior because citizens register for parties based upon either position preference or socialization; most people belong to the party with which they share an ideology, so voting with their party is logical.*
2. *open for debate; clearly to some voters, personal characteristics matter, such as appearance, personality, background, etc.*

Terms to Remember

ballot fatigue–the result when a voter stops voting for offices and initiatives at the bottom of a long ballot

issue voter–voter who decides which candidate to vote for on the basis of what positions they have taken on key issues of concern to the voter

party affiliation–the political party the person identifies with, also known as political identification

personal attributes–include consideration of not only physical characteristics such as age, ethnicity, or gender but candidate personality or perceived personal qualities as well as educational background or past political experiences

pocketbook voting–occurs when the voter looks at his or her personal finances and circumstances to decide how to vote

prospective voting—occurs when the voter makes a decision by using information gathered from a candidate's campaign promises or from a candidate's past behavior to decide how the candidate will act in the future

retrospective voting–voter looks at the candidate's past actions and the past economic climate and makes a decision only using these factors

shadow campaign–a campaign run by political action committees and other organizations without the coordination of the candidate

split-ticket voting–the practice of voting based upon issue or candidate rather than party; voters may split decisions between individuals from a variety of parties

straight-ticket voting–the practice of voting only for candidates from the same party

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7.7 Political Participation:
Direct Democracy in the United States



Image 7.24 Photo of Man Installing Political Campaign Signs

Harney County (Oregon) recall vote signs illustrate an example of direct action by citizens attempting to recall an elected official. (Credit: Scott Rohter at http://lessgovisthebestgov.com)

Learning Objectives

- Identify the different forms of and reasons for direct civic engagement by the people.
- Summarize the steps needed to place initiatives on a ballot.
- Explain why some policies are made by elected representatives and others by voters.

Chart 7.28 Learning Objectives on Civic Engagement

Civic engagement may involve direct action on the part of citizens. Most forms of direct political participation occur at the state level.

To learn more about what type of direct democracy is practiced in your state, visit the University of Southern California's **Initiative & Referendum Institute**. This site also allows you to look up initiatives and measures that have appeared on state ballots.

Statewide methods of engagement, like direct democracy practices, allow citizens to propose and pass laws that affect state constitutions, state budgets, and more.

Most states in the western half of the country allow citizens all forms of direct democracy, while most states on the eastern and southern regions allow few or none of these forms.

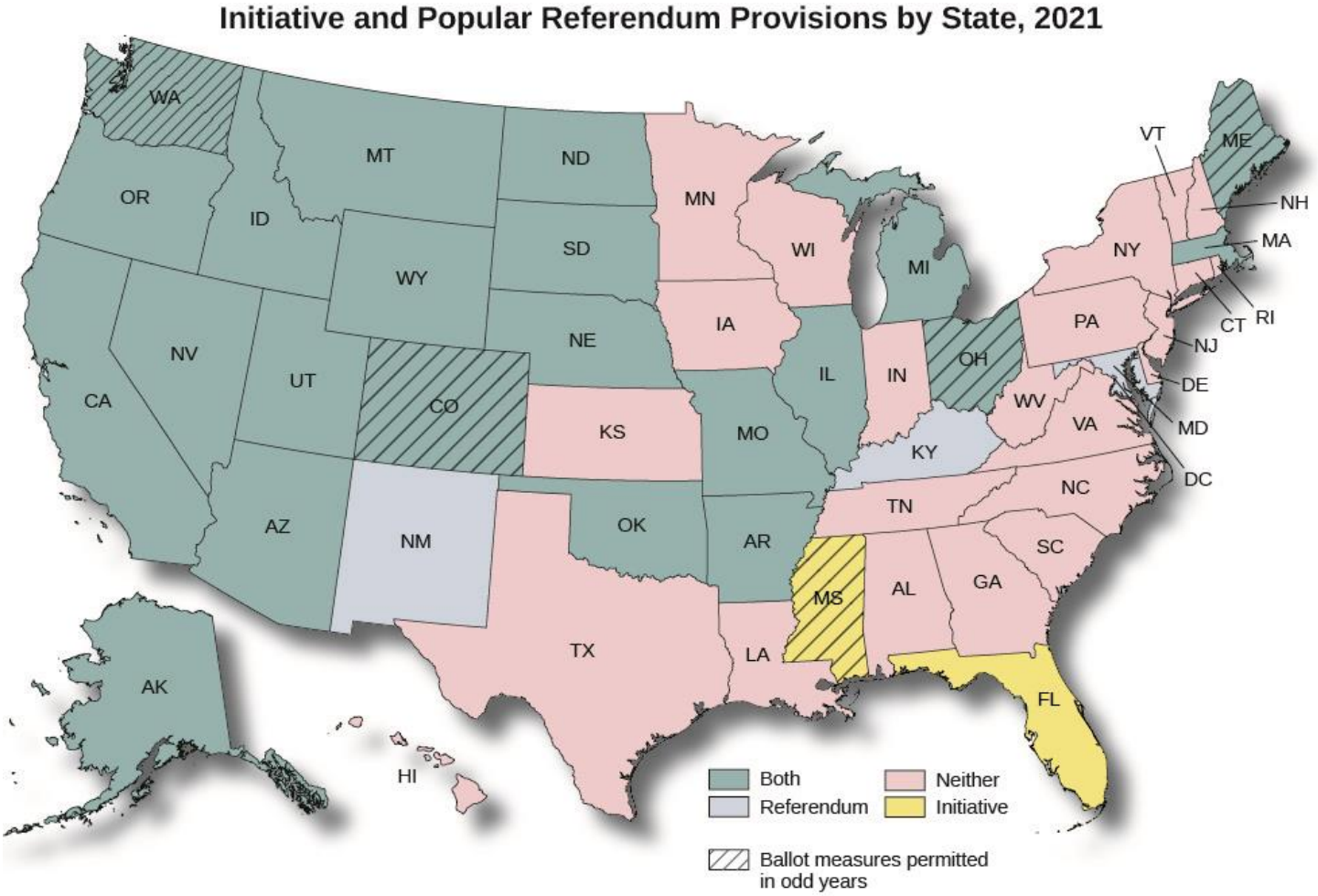


Chart 7.29 Map of Initiative and Referendum by State

This map shows which states allow citizens to place laws and amendments on the ballot for voter approval or repeal. (Credit: OpenStax included image)

A **referendum** asks citizens to confirm or repeal a decision made by the government. A legislative referendum occurs when a legislature passes a law or a series of constitutional amendments and presents them to the voters to ratify with a yes or no vote. Popular referendums occur when citizens petition to place a referendum on a ballot to repeal legislation enacted by their state government. This form of direct democracy gives citizens a limited amount of power, but it does not allow them to overhaul policy or circumvent the government.

Initiative or proposition is normally a law or constitutional amendment proposed and passed by the citizens of a state. Initiatives completely bypass the legislatures and governor, but they are subject to review by the state courts if they are not consistent with the state or national constitution. The process to

pass an initiative is not easy and varies from state to state. Most states require that a petitioner or the organizers supporting an initiative file paperwork with the state and include the proposed text of the initiative. This allows the state or local office to determine whether the measure is legal, as well as estimate the cost of implementing it. This approval may come at the beginning of the process or after organizers have collected signatures.

The initiative may be reviewed by the state attorney general, as in Oregon's procedures, or by another state official or office. In Utah, the lieutenant governor reviews measures to ensure they are constitutional.

Next, organizers gather registered voters' signatures on a petition. The number of signatures required is often a percentage of the number of votes from a past election. In California, for example, the required numbers are 5 percent (law) and 8 percent (amendment) of the votes in the last gubernatorial election. This means through 2022, it will take 623,212 signatures to place a law on the ballot and 997,139 to place a constitutional amendment on the ballot.[1]

Once the petition has enough signatures from registered voters, it is approved by a state agency or the secretary of state for placement on the ballot. Signatures are verified by the state or a county elections office to ensure the signatures are valid. If the petition is approved, the initiative is then placed on the next ballot, and the organization campaigns to voters.

While the process is relatively clear, each step can take a lot of time and effort. First, most states place a time limit on the signature collection period. Organizations may have only 150 days to collect signatures, as in California, or as long as two years, as in Arizona. For larger states, the time limit may pose a dilemma if the organization is trying to collect more than 500,000 signatures from registered voters. Second, the state may limit who may circulate the petition and collect signatures. Some states, like Colorado, restrict what a signature collector may earn, while Oregon bans payments to signature-collecting groups. And the minimum number of signatures required affects the number of ballot measures. California had more than twelve ballot measures on the 2020 general election ballot, because the state requires so few signatures to get an initiative on the ballot. Oklahomans see far fewer ballot measures because the number of required signatures is higher.

Another consideration is that, as we've seen, voters in primaries are more ideological and more likely to research the issues. Measures that are complex or require a lot of research, such as a lend-lease bond or changes in the state's eminent-domain language, may do better on a primary ballot. Measures that deal with social policy, such as laws preventing animal cruelty, may do better on a general election ballot, when more of the general population comes out to vote. Proponents for the amendments or laws will take this into consideration as they plan.

Finally, the **recall** allows voters to decide whether to remove a government official from office. All states have ways to remove officials, but removal by voters is less common. The recall of California Governor Gray Davis in 2003 and his replacement by Arnold Schwarzenegger is perhaps one of the more famous

such recalls. The recent attempt by voters in Wisconsin to recall Governor Scott Walker show how contentious a recall can be. Walker survived recall.[2]

Politicians are often unwilling to wade into highly political waters if they fear it will harm their chances for reelection. When a legislature refuses to act or change current policy, initiatives allow citizens to take part in the policy process and end the impasse.

In Colorado, Amendment 64 allowed the recreational use of marijuana by adults, despite concerns that state law would then conflict with national law. Colorado and Washington's legalization of recreational marijuana use started a trend, leading to more states adopting similar laws.

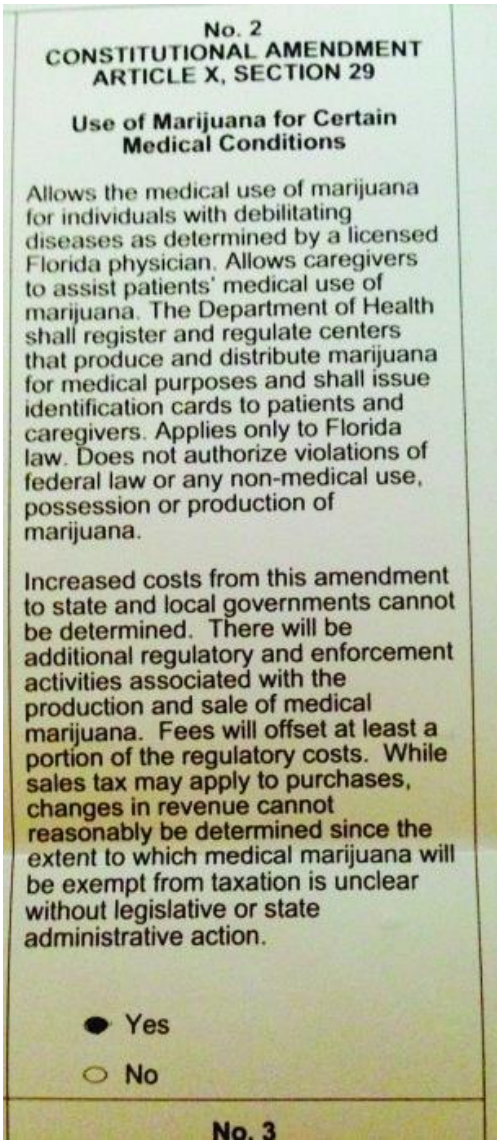


Image 7.25 Photo of Section of Ballot with State Constitutional Amendment for Ballot Initiative

In 2014, Florida voters considered a proposed amendment to the Florida constitution that would allow doctors to recommend the use of marijuana for patient use. The ballot initiative received 58 percent of the vote, just short of the 60 percent required to pass in Florida.
(Credit: OpenStax included image)

CAN THERE BE TOO MUCH DIRECT DEMOCRACY?

How much direct democracy is too much? When citizens want one policy direction and government prefers another, who should prevail?

Consider recent laws and decisions about marijuana. California was the first state to allow the use of medical marijuana, after the passage of Proposition 215 in 1996. Just a few years later, however, in *Gonzales v. Raich* (2005), the Supreme Court ruled that the U.S. government had the authority to criminalize the use of marijuana. In 2009, then-Attorney General Eric Holder said the federal government would not seek to prosecute patients using marijuana medically, citing limited resources and other priorities. Perhaps emboldened by the national government's stance, Colorado voters approved recreational marijuana use in 2012. Since then, other states have followed. Twenty-three states and the District of Columbia now have laws in place that legalize the use of marijuana to varying degrees. In a number of these cases, the decision was made by voters through initiatives and direct democracy.

So where is the problem? First, while citizens of these states believe smoking or consuming marijuana should be legal, the U.S. government does not. The Controlled Substances Act (CSA), passed by Congress in 1970, declares marijuana a dangerous drug and makes its sale a prosecutable act. And despite Holder's statement, a 2013 memo by James Cole, the deputy attorney general, reminded states that marijuana use is still illegal.[3] But the federal government cannot enforce the CSA on its own; it relies on the states' help. And while Congress has decided not to prosecute patients using marijuana for medical reasons, it has not waived the Justice Department's right to prosecute recreational use.[4] The states and

its citizens are in an interesting position. States have a legal obligation to enforce state laws and the state constitution, yet they also must follow the laws of the United States.

Citizens who use marijuana legally in their state are not using it legally in their country. This leads many to question whether initiative, as a form of direct democracy, gives citizens too much power. Any group can create an organization to spearhead an initiative or referendum. And because the cost of collecting signatures can be high in many states, signature collection may be backed by interest groups or wealthy individuals wishing to use the initiative to pass pet projects. Many commentators argue direct civic engagement is not always a process by the people, but rather a process used by interest groups and wealthy individuals. For example, the 2003 recall of California governor Gray Davis faced difficulties during the signature collection phase, but $2 million in donations by Representative Darrell Issa (R-CA) helped the organization seeking the recall to attain nearly one million signatures.[5]

Political Participation: Questions to Consider

1. What is the difference between a representative democracy and a direct democracy?
2. Should states continue to allow ballot initiatives and other forms of direct democracy? Why or why not?

1. In a representative democracy, people elect representatives to make political decisions and pass laws for them. In a direct democracy, people make all political decisions and pass laws themselves.
2. open for debate. Sometimes politicians are often unwilling to wade into highly political waters if they fear it will harm their chances for reelection. When a legislature refuses to act or change current policy, initiatives allow citizens to take part in the policy process and end the impasse. States should continue to allow ballot initiatives and other forms of direct democracy. In this way citizens can propose legislation or constitutional amendments, repeal laws, or recall politicians. Because special interest groups may try to take advantage of voter ignorance, however, people must fully understand the nature of the referendum, initiative, or recall before they vote. Direct democracy requires voters to be well informed. Unfortunately, many are not. People are occasionally misled or mistaken. Laws developed through direct democracy methods such as initiatives ae not subject to deliberation, debate and checks and balances of the normal legislative process.

Terms to Remember

initiative–law or constitutional amendment proposed and passed by the voters and subject to review by the state courts; also called a proposition; initiatives completely bypass the legislatures and governor, but they are subject to review by the state courts

recall–the removal of a politician or government official by the voters

referendum–asks citizens to confirm or repeal a decision made by a state or local government, A legislative referendum occurs when a legislature passes a law or a series of constitutional amendments and presents them to the voters to ratify with a yes or no vote. Popular referendums occur when citizens petition to place a referendum on a ballot to repeal legislation enacted by their state government

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8.1 Media: Purpose and Function



Image 8.1 Medley of Media Outlet Images

Learning Objectives

- Discuss purpose and function of a free press and media with a government based upon consent of the people.
- Describe the main functions of the media in a free society.
- Explain the difference between various terms related to News Media communication.

Chart 8.1 Learning Objectives on the Purpose and Function of Media

Purpose of the Media

Freedom of the press and an independent **media** are important dimensions of a free society. In a nation with a government based upon the people's consent, information about the actions and processes of government and the needs and views of citizens is essential to maintaining the liberty and security of individuals—this is the basic purpose of free and independent media.

More than 80% of U.S. adults believe the news media are critical or particularly important to proper functioning of our system of government, and Joanna Piacenza of *Morning Consult* notes a an "average 16-point drop in trust for nine leading media outlets" from 2016 to 2020.[1]

Today, most people are connected digitally and have a bewildering number of choices of information. Compared to the days of the 1970s, when a person might read the morning newspaper over breakfast and watch the network news in the evening, there are now an extreme number of choices in today's increasingly complex world of information.

The proliferation of competing internet-based information sources including social media has changed the power and ability of some of the more traditional news media to influence the political system relative to the days when formal news media monopolized our attention.

One of the reasons citizens turn to the media is for information and news. Ideally, we might expect the media to cover important political, economic, and social events and information in a concise and neutral manner. However, "journalists" are not neutral, free from political bias, or balanced in news coverage, and a 2020 Gallup/Knight study "found the gap is growing between what Americans expect from the news and what they think they are getting.

Perceptions of bias are increasing too, which further erodes the media's ability to deliver on its promise to our democracy."[2] Media objectivity and honesty is questioned by both partisans as well as reasonably objective analysts. The proliferation of **fake news** stories and suppression of stories poses an additional challenge to media outlets and the public alike.

Consider the Original

Excerpt from Thomas Jefferson to George Washington, 9 September 1792…

[…] [N]o government ought to be without censors: & where the press is free, no one ever will. [I]f virtuous, it need not fear the fair operation of attack & defence: nature has given to man no other means of sifting out the truth either in religion, law, or politics. I think it as honorable to the government neither to know nor notice its sycophants or censors, as it would be undignified & criminal to pamper the former & persecute the latter. (Credit: Monticello, VA, September 9, 1792; National Archives: Founders Online at http://founders.archives.gov/documents/Washington/05-11-02-0049)

Excerpt of Letter from Thomas Jefferson To Adamantios Coray, 31 October 1823…

[…] Freedom of the Press, subject only to liability for personal injuries. this formidable Censor of the public functionaries, by arraigning them at the tribunal of public opinion, produces reform peaceably, which must otherwise be done by revolution. [I]t is also the best instrument for enlightening the mind of men, and improving him as a rational, moral, and social being. (Credit: Monticello, October 31, 1823; National Archives: Founders Online at http://founders.archives.gov/documents/Jefferson/98-01-02-3837)

Chart 8.2 Excerpts from Jefferson on the Press

Functions of the Media

Functions of Media in a Republic	Description of Functions
Report News	⇒ inform and alert citizens with information to help them form opinions about political issues and candidates
Public Forum	⇒ point of open access for the public to discuss political issues (linkage institution)
Agenda Setting	⇒ highlighting or choosing which issues or topics deserve discussion
Accountability	⇒ informing citizens of what government is doing; informing government of citizen opinions helps responsiveness

Chart 8.3 Functions of the Media and Descriptions

We expect the media to report news that informs and alerts us with information to form opinions about the world around us, our government, politicians and policies, etc. The media also serves as a point of access for the public; that is, they function as a **public forum** for discussion of issues. The media exist to fill several functions, all are essential for the functioning of a representative republic.

These functions should help maintain the republic and keep the government **accountable** for its actions, even if a branch of the government is reluctant to open itself to public scrutiny. Because it is difficult for the average citizen to fully monitor all the government is doing, we rely on media to monitor what is happening and sound an alarm when the public needs to pay attention, thus engaging in **agenda setting**.[3]

By not only informing the public about what government is doing but also by encouraging citizens to express their concerns over public issues, the media encourages responsiveness to citizen viewpoints.

Thus, the media perform an essential function of two-way communication between citizens and their representatives. In totalitarian governments, citizens receive only one-way communication, sharing only what the government wishes to tell and say. Sometimes the public seeks opinion and analysis of complicated issues. Providing such opinions and analysis is another important agenda-setting function performed by the media.

Media Basic Terms



Image 8.2 One of the First Women Reporters

Ruth Anderson, one of the first women reporters, 1943.
(Credit: Library of Congress, Ann Rosener, Photographer, United States Office of War Information)

The term **media** defines several different communication formats including television, print magazines and newspapers, radio, and internet. Each form of media has its own complexities and uses. The internet also facilitates the flow of information through social media, allowing for instant communication--sometimes unfiltered or unedited for accuracy. Some forms of media have verbal expression, while others communicate through non-verbal means. While some convey information, ideas, and analysis; other media convey feelings and opinions. Media outlets also differ concerning their role in the political system. In a representative republic, we need media to be independent of government interference to assist accountability and responsiveness to citizens.

Essential Terms for News Media Communication

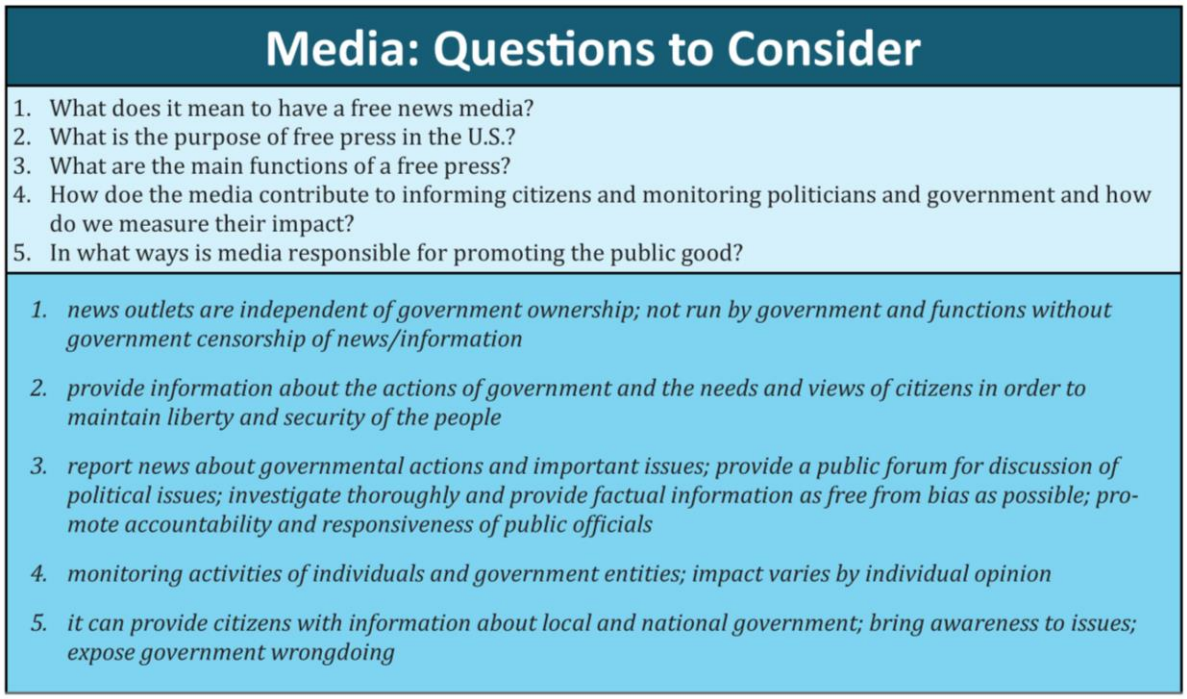
Media	Roles	Expression	Journalism
Communication Outlets Storage and Delivery of Information and Data Print Audio/Visual Photography Cinema Broadcasting Radio Television Advertising Internet	Ideally to be independent of government interference. Partisan press? Ideological advocacy? Prioritizing news? Propaganda tool? Opinion exchange? Two-way communication	Verbal and Nonverbal Conveying thoughts or feelings Conveying information, ideas, and analysis	A person working for a newspaper, magazine, news website, etc. that investigates occurrences and reports facts rather than offering opinions. Providing analysis and opinion. Also known as citizen journalist, reporter, correspondent, columnist, writer, commentator, reviewer, or blogger.

Chart 8.4 Essential Terms for Media Communication

While some outlets strive to act as critical and neutral information filters, others view their role as providing partisan or ideological advocacy. Some internet search and social media platforms openly filter and suppress information. Whether such filtering is in the best interest of citizens is currently debated in Congress. In Senate Judiciary Committee hearings in December 2020, Texas' Senator Ted Cruz commented--in connection to testimony by large tech companies regarding "control of public debate" on the internet--"Silicon Valley believes there is no power on Earth that can constrain them."[4] Cruz is also quoted as saying, "Even if you happen to temporarily like the politics of Big Tech today, I ask my colleagues on the Democratic aisle, do you really want to submit total control of the public debate to a handful of Silicon Valley billionaires, modern day oligarchs? With money and power and no accountability? They are not elected by your voters. They are not elected by my voters. They're not

elected by anyone."[5] While news media communication is often conveyed by persons who are paid professionals and employed by an outlet (known as journalists, reporters, commentators, columnists, pundits, etc.) other news is conveyed by non-paid citizen journalists, who frequently use the internet social media outlets to offer opinions and analysis of the news.

All media formats are subject to **agenda setting,** where individuals or groups with personal, professional, or political agendas use their position to forward agendas. Agenda setting happens in the act of choosing which issues or topics deserve public discussion or should be reported. For example, in the early 1980s, famine in Ethiopia drew worldwide attention, which resulted in increased charitable giving to the country. Yet the famine had been going on for a long time before it was *discovered* by western media. Even after the discovery, it took video footage to gain the attention of the British and U.S. populations and start the aid flowing.[6] In major media outlets, especially in newspapers, radio, cable TV, and broadcast TV, media editors work in the background of the newsroom assigning stories, approving articles, and editing content for direct news stories. This editorial function is sometimes called **gatekeeping**, with editors having considerable influence over what news stories are eventually reported upon and seen by the public and the tone and frame of the story. If owners or editors have an ideological or partisan agenda, it is easy to promote that agenda via the process of producing the news and "reporting the news."



Media: Terms to Remember

agenda setting–the media's ability to choose which issues or topics get attention

fake news–false stories spread mainly via internet, social media and texting

gate-keeping—editorial function performed by individuals in a news room who assign stories to news reporters, approve articles and edit content for accuracy and clarity, exercising considerable influence over what news stories are eventually seen by the public and the tone and frame of the story

mass media–the collection of all media forms that communicate information to the general public

media–different forms of communication from television and radio to newspapers and the internet

print media–newspapers, news magazines, news you may hold in your hand

public forum–a function of the media in which they provide an open point of access for the public for the discussion of issues

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8.2 Media: Evolutionary Change and Development



Image 8.3 Photo of Smart Phone

Media access by phone. Credit: Creative Commons Image

Learning Objectives
• Discuss the history of a free press in the United States. • Discuss a brief history of major news media formats. • Compare important changes in news media types over time. • Explain how citizens learn political information from the news media.

Chart 8.5 Learning Objectives on Free Press and Types of Media

The growth of communications technology allows people today to find more news information more easily than any previous generation. Mass media can be print, radio, television, or internet news. News can be local, national, or international. Outlets can be broad or limited in their focus. The choices are tremendous.

Media Types

Each form of media has its own complexities and communication problems and is consumed differently based upon demographics. For example, age greatly influences the choice of news source (see Pew Survey below). Baby boomers are more likely to get news and information from television, while members of generation X and millennials are more likely to use websites and social media.[1]

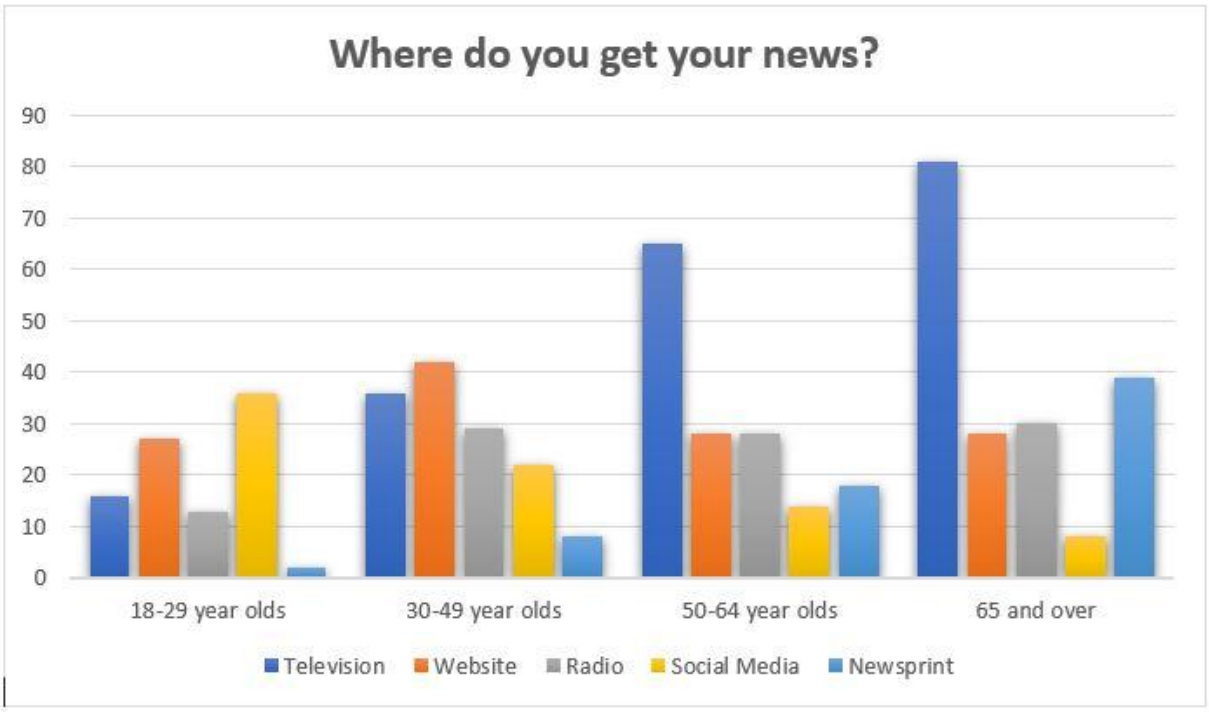


Chart 8.6 Bar Graph on Where People Get Their News

Pew Research Center, "Television Dominates as a News Source for Older Americans," Survey of U.S. Adults conducted July 30-Aug. 12, 2018.

At the very beginnings of the American republic, Samuel Adams, writing under the pseudonym Populus, clearly outlined the purpose of the press (print media) to monitor government and insure freedom and liberty of the populace. Adams wrote, "There is nothing so fretting and vexatious; nothing so justly terrible to tyrants, and their tools and abettors, as a FREE PRESS."[2] He was writing for print media.

Print Media

Until the early 20th century, news was presented to local populations in the United States through the printed press.

The partisan divisions that occurred during the United States' early history moved the nation into the party press era, in which political party loyalty dominated the choice of news coverage and editorial content. Since subscriptions and advertising did not fully cover printing costs, political parties stepped in to support newspapers that supported their policies. Papers began printing party propaganda and messages, even publicly attacking political leaders like George Washington. Despite the antagonism of the press, Washington and several other founders felt that freedom of the press was important for creating an informed electorate. Indeed, freedom of the press was enshrined in the Bill of Rights in the First Amendment during Washington's administration. The interesting thing about this period is that the press was unashamedly partisan and very open about their bias.

Between 1830 and 1860, machines and manufacturing made the production of newspapers even faster and less expensive. Many less directly partisan newspapers developed and expanded their coverage to

include racing, weather, and educational materials. Joseph Pulitzer and the *New York World* provided a tabloid-style paper including editorial pages, cartoons, and pictures, while the front-page news was sensational and scandalous. As the *New York World's* circulation increased, other papers copied Pulitzer's style to sell papers. Competition between newspapers led to increasingly sensationalized covers and crude issues. This style of coverage became known as **yellow journalism**.

The *New York Times* initiated the **informational model**, which was supposed to exhibit impartiality and accuracy in reporting and promote transparency in government and politics. During the twentieth century, the informational model of journalism and news reporting became the idealized norm for newspapers and broadcast media; however, bias and partisanship remained. Agenda setting was hidden behind this informational model rather than being open and transparent.

At the beginning of the twentieth century, the media began a form of **investigative journalism** known as muckraking: the writing and publishing of news coverage that exposed corrupt business and government practices. Investigative work like Upton Sinclair's serialized novel *The Jungle* led to changes in the way industrial workers were treated and local political machines were run. The Pure Food and Drug Act and other laws were passed to protect consumers and employees from unsafe food processing practices. Local and state government officials who participated in bribery and corruption became the centerpieces of exposés.

Investigative journalism still appears today, but the reduction in professional staff journalists at newspapers and other media outlets, creates a lack of time to dig for details in a 24-hour news cycle and makes a profit-oriented news model less willing to commit resources for investigative stories.[3] There are two potential concerns about the decline of investigative journalism in the digital age.

First, one potential shortcoming is that the quality of news content will become uneven in depth and quality, which could lead to a less informed citizenry. Second, if investigative journalism in its systematic form declines, then the cases of wrongdoing that are the objects of such investigations would have a greater chance of going undetected. Investigative journalism has appeared in a different form through the rise of the internet with social media sites dedicated to investigating issues of public concern. The quality of these investigative reports varies with the degree of professionalism of those associated with these social media sites.

In the twenty-first century, newspapers have struggled to stay financially stable. Given the countless alternate forms of news, many of which are free, newspaper subscriptions have fallen. Advertising and especially classified ad revenue dipped. Print media earned $44.9 billion from ads in 2003, but only $16.4 billion from ads in 2014.[4] Many newspapers now maintain both a print and an Internet presence in order to compete for readers, including *The New York Times* and *The Wall Street Journal*. The rise of free news blogs, such as the *Huffington Post*, have made it difficult for newspapers to force readers to purchase online subscriptions to access material they place behind a digital paywall. Some local newspapers, to stay visible and profitable, have turned to social media. Stories can be posted and retweeted, allowing readers to comment and forward material.[5]Yet, overall, newspapers have adapted, becoming leaner—though less thorough and investigative—versions of their earlier selves.

Radio

Radio news made its appearance in the 1920s. The National Broadcasting Company (NBC) and the Columbia Broadcasting System (CBS) began running sponsored news programs. Franklin D. Roosevelt was famous for harnessing the political power of radio. He delivered his first radio speech eight days after assuming the presidency in March of 1933.[6]

Roosevelt would sit down and explain his ideas and actions directly to the people on a regular basis, confident that he could convince voters of their value.[7]His speeches became known as "fireside chats" and formed an important way for him to promote his New Deal agenda through persuasive rhetoric over this relatively new media.[8]



Image 8.4 Americans Listen to Radio and Photo of President Roosevelt Addressing the Nation Via Radio

As radio listenership became widespread in the 1930s (left), President Franklin D. Roosevelt took advantage of this new medium to broadcast his "fireside chats" and bring ordinary Americans into the president's world (right). (Credit Left: modification of work by George W. Ackerman; Credit Right: modification of work by the Library of Congress)

While radio's importance for distributing news waned with the increase in television usage, "news talk" stations emerged on both AM and FM frequencies, restoring radio's importance in politics. By the 1990s, talk shows had gone national, showcasing broadcasters such as Rush Limbaugh.

In 1990, Sirius Satellite Radio began a campaign for FCC approval of satellite radio. Satellite radio has greatly increased programming with many specialized offerings, including channels dedicated to distinct political points of view.

Television

Television combined the best attributes of radio and pictures and changed news media forever. Networks in the 1950s such as ABC, CBS, and NBC began nightly newscasts, and local stations and affiliates followed suit.

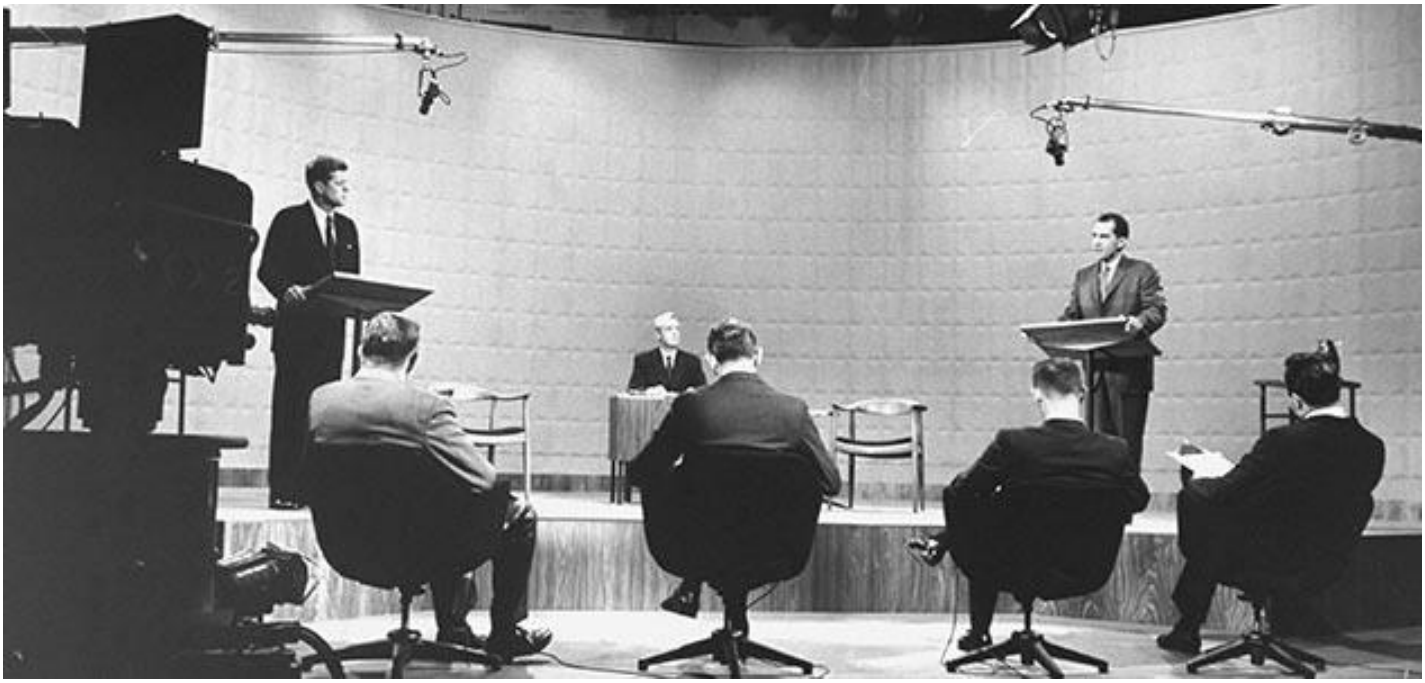


Image 8.5 Candidates Debate for the Nation on Television

Kennedy vs. Nixon, one of the 1960 presidential debates on television. (Credit: Creative Commons)

Even more than radio, television allows politicians to reach out and connect with citizens and voters in deeper ways. Before television, few voters were able to see a president or candidate speak or answer questions in an interview. Now everyone can decode body language and tone to decide themselves whether candidates or politicians are sincere.

Presidents can directly convey their anger, sorrow, or optimism during addresses. The 1960 election featured the first televised presidential debate. By that time most households had a television. Kennedy's careful grooming and practiced body language allowed viewers to focus on his presidential demeanor. His opponent, Richard Nixon, was still recovering from a severe case of the flu. While Nixon's substantive answers and debate skills made a favorable impression on radio listeners, viewers' reaction to his sweaty appearance and obvious discomfort demonstrated that live television has the unique potential to make or break a candidate.[9]

Visit **American Rhetoric** for free access to speeches, video, and audio of famous presidential and political speeches.

Between the 1960s and the 1990s, presidents often used television to reach citizens and gain support for policies.

When they made speeches, the major networks and their local affiliates carried them. With few independent local stations available, a viewer had little alternative but to watch. During this "Golden Age of Presidential Television," presidents had a strong command of the media.[10]

Some of the best examples of this power occurred when presidents used television to inspire and comfort the population during a national emergency. These speeches aided in the "rally 'round the flag" phenomenon, which occurs when a population feels threatened and unites around the president.[11] During these periods, presidents may receive heightened approval ratings, in part due to the media's decision about what to cover.[12]

Even in the current media era, the President can use television very effectively during a national emergency. Following the terrorist attacks in New York and Washington on September 11, 2001, President George W. Bush's bullhorn speech from the rubble of Ground Zero in New York similarly became a rally. Bush spoke to the workers and first responders and encouraged them, but his short speech became a viral clip demonstrating the resilience of New Yorkers and the anger of a nation.[13] He told New Yorkers, the country, and the world that Americans could hear the frustration and anguish of New York, and that the terrorists would soon hear from the United States.

President George W. Bush embraces a firefighter at the site of the World Trade Center Friday, Sept. 14, 2001, during his visit to New York City. (Credit: Paul Morse, Courtesy of the George W. Bush Presidential Library)



Image 8.6 President Bush at World Trade Center

In our current media environment, many local television stations are affiliated with a national network corporation, and they broadcast national network programming to their local viewers, often repeating the same stories with the same exact wording content over multiple stations in many states. Affiliates, by agreement with the networks, give priority to network news and other programming chosen by the affiliate's national media corporation. Local affiliate stations are told when to air programs or commercials, and they diverge only to inform the public about a local or national emergency. Most affiliate stations will show local news before and after network programming to inform local viewers of events and issues. Network news has a national focus on politics, international events, the economy, and more. Local news is likely to focus on matters close to home, such as regional business, crime, sports, and weather.[14]

Cable TV

Cable/satellite programming offers national networks a second method to directly reach local viewers. As the name implies, cable stations transmit programming directly to a local cable company hub, which then sends the signals to homes through coaxial or fiber optic cables. Because cable and satellite do not broadcast programming through the airwaves, cable networks and satellite can operate across the nation directly without local affiliates. Instead, they purchase broadcasting rights for the cable stations they believe their viewers want. For this reason, cable networks often specialize in different types of programming.

The Cable News Network (CNN) was the first news station to take advantage of this specialized format, creating a 24-hour news station with live coverage and interview programs. Other news stations quickly followed, such as FOX News and MSNBC. The Cable-Satellite Public Affairs Network, known as C-SPAN now has three channels covering Congress, the president, the courts, and matters of public interest.

New Media Trends

The invention of cable in the 1980s opened more options for media consumers than ever before. Viewers can watch nearly anything at the click of a button, bypass commercials, and record programs of interest. The resulting saturation, or inundation of information, may lead viewers to abandon the news entirely or become more suspicious and fatigued about politics.[15] This effect, in turn, also changes the president's ability to directly reach out to citizens. For example, viewership of the president's annual State of the Union address has decreased over the years, from sixty-nine million viewers in 1993 to twenty-seven million in 2023.[16]

Citizens who want to watch cable TV programming can easily avoid the direct news programming although there is an abundance of voices, such as those of talk show hosts and political pundits, who now fill the cable channels.

Another shift in the new media is a change in viewers' preferred programming. Younger viewers, especially members of generation X and millennials like their newscasts to be humorous. The popularity of *The Daily Show* and other similar Cable TV programs demonstrate that news, even political news, can win young viewers if delivered well.[17] Such **soft news** presents news in an entertaining and approachable manner, painlessly introducing a variety of topics. While the depth or quality of reporting may be less than ideal, these shows can sound an alarm as needed to raise citizen awareness.[18]

Viewers who watch or listen to programs like John Oliver's *Last Week Tonight* are more likely to be aware and observant of political events and foreign policy crises than they would otherwise be.[19] They may view opposing party candidates more favorably because the low-partisan, friendly interview styles allow politicians to relax and be conversational rather than defensive.[20] Because viewers of political comedy shows watch the news frequently, they ma be more politically knowledgeable than citizens viewing national news. In two studies, researchers interviewed respondents and asked knowledge questions about current events and situations. Viewers of *The Daily Show* scored more correct answers than viewers of news programming and news stations.[21] It is not clear whether the number of viewers is large enough to make a big impact on politics, nor do we know whether the learning is long term or short term.[22]

Internet News and Social Media

The on-demand nature of the Internet has created many opportunities for news outlets. The proliferation of online news has also increased the amount of poorly written and inaccurate material with little editorial oversight, and readers must be cautious when reading internet news sources. While early media providers were those who could pay the high cost of printing or broadcasting, modern media

require just an URL, a web-site address, and ample server space. The ease of online publication has made it possible for many more niche media outlets to form.

In the past, there were virtually no gatekeepers for many internet sites. For example, Buzzfeed allowed members to post articles without editorial review leading to articles of varied quality and accuracy. This has given rise to "fake" news entirely inaccurate and often spread quickly by rumors over the internet. To combat this problem, Twitter and Facebook initiated a gatekeeping function, which has been criticized as a form of politically biased censorship. In July 2021 at the White House daily press briefing, Biden's White House Press Secretary, Jen Psaki, stated that the administration was in contact with Facebook about "[…] flagging problematic posts for Facebook that spread disinformation."[23]

In July of 2023, a U.S. District judge prohibited several federal agencies and officials of the Biden Administration from working with social media companies. An injunction was granted in response to a 2022 lawsuit that alleged that the federal government overstepped in its efforts to convince social media

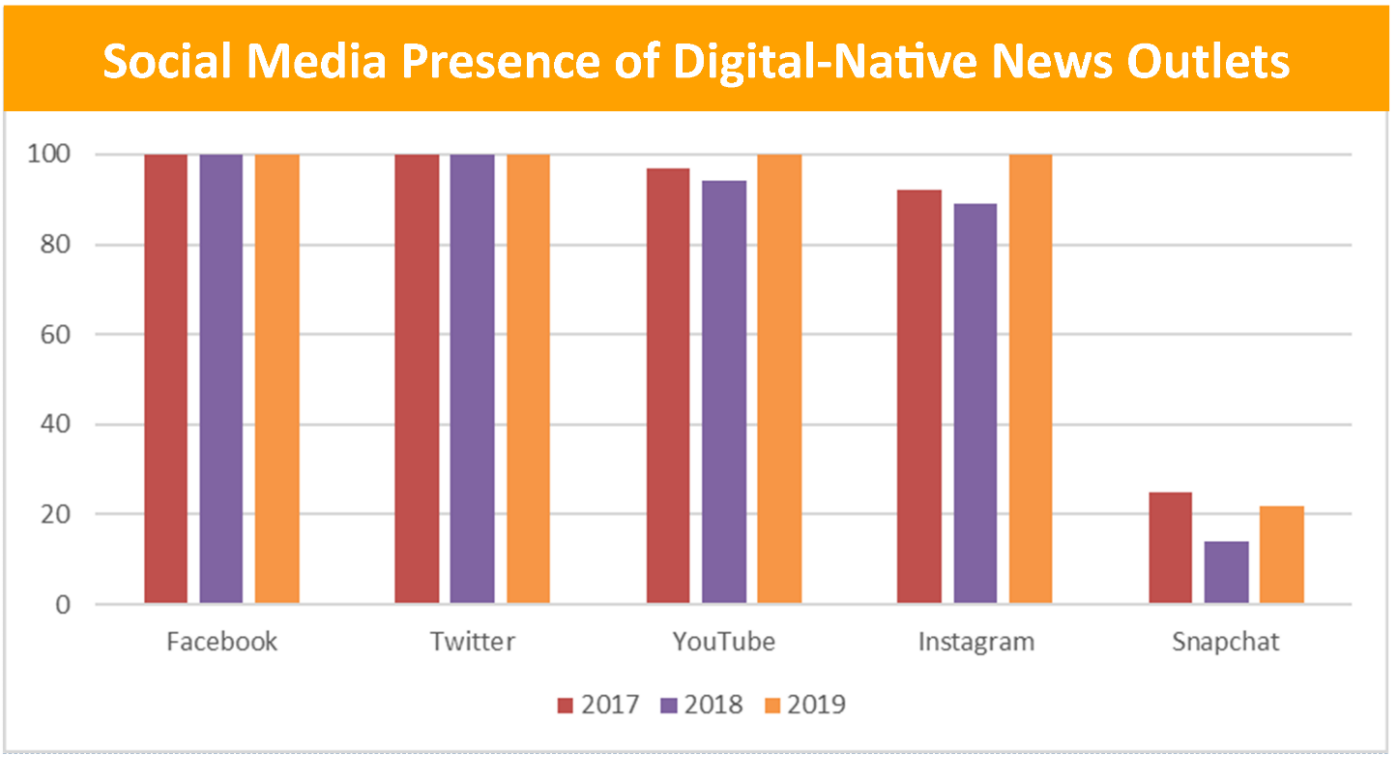


Chart 8.7 Social Media Presence Bar Graph

Pew Research Center, Audit of the 37 digital-native news outlets with the highest traffic, with at least 10 million unique visitors form October-December of the previous year, according to Comscore data, each outlet's primary domain-the outlet's flagship website-was analyzed, 23 July 2019.

companies to address postings that could result in vaccine hesitancy or affect elections. The judge cited "substantial evidence" of a far-reaching censorship campaign, which the Administration denied.[24]

The Pew Research Center identified 37 "digital-narrative" news outlets (that is "born first on the web") with at least 10 milli8on unique visitors using such social media platforms like Facebook, Twitter, YouTube, Instagram and Snapchat.[25]

These new outlets have original reporting including some with paid staff while others rely upon volunteers. In addition, platforms such as Facebook, Twitter, and others allow individuals to voice their opinion on political issues. Social media has placed journalism in the hands of citizens. **Citizen journalism** occurs when citizens, who are not professional journalists from traditional news media use their personal recording devices and cell phones to capture events and post them on the Internet.

When 2008 presidential candidate Barack Obama was recorded by a Huffington Post volunteer saying that some Midwesterners "cling to guns or religion or antipathy to people who aren't like them" due to their frustration with the economy, the statements became nightmares for the campaign.[26] As journalism continues to scale back and hire fewer professional writers in an effort to control costs, citizen journalism has become a new normal.[27]

Before the internet, traditional media determined whether citizen photographs or video footage would become news. In 1991, a private citizen's camcorder footage showed four police officers beating Rodney King. After appearing on local independent television station, KTLA-TV, and then the national news, the event began a national discussion on police brutality and ignited riots in Los Angeles.[28] In the late spring of 2020, much of what was first learned about the death of George Floyd at the hands of police officers came from a citizen provided video.

The agenda-setting power of traditional media is often appropriated by social media and smartphones of citizen journalists. Internet sites allow witnesses to instantly upload images and accounts of events and forward the link to friends. Some uploads go viral and attract the attention of the traditional media.

The internet facilitates the flow of information through social media, which allows users to instantly communicate with one another and share with audiences that can grow exponentially. Social media changes more rapidly than the other media formats. A growing number of sites also allow users to comment about the posted information, sometimes publicly and anonymously. Regardless of where we get our information, the various media avenues available today make it much easier for citizens to be engaged, while also making it easier to spread false or misleading information.[29] It also allows potentially for censorship of individuals and information by such social media platforms as Twitter and Facebook.

Presidents and Use of Social Media

Barack Obama was the first candidate to fully embrace social media, and one of his campaign advisors was Chris Hughes (co-founder of Facebook). By election day in 2008, he had over 2 million Facebook supporters to John McCain's 600,000; and, he had 112,000 followers on Twitter to McCain's 4,600.[30] When Barack Obama's minister, the Reverend Jeremiah Wright, was seen to give inflammatory racial sermons, Obama used YouTube to respond to charges that he shared Wright's beliefs. The video drew more than seven million views.[31] To reach out to supporters and voters, the White House maintained a YouTube channel and a Facebook site. President Donald Trump was a heavy user of Twitter during the 2016 and 2020 campaigns and throughout his presidency. In fact, he started his "Making America Great Again" site at USA.gov at https://www.greatagain.gov several months prior to his inauguration.[32] By

contrast, President Biden has been an infrequent user of social media during the first three years of his presidency.

Media Ownership

The question is: Who controls the media we rely on? Most media are controlled by a limited number of conglomerates. A conglomerate is a corporation made up of several companies, organizations, and media networks. In the 1980s, more than fifty companies owned most of the television and radio stations and networks. Now, only six conglomerates control most of the broadcast media in the United States: CBS Corporation, Comcast, Time Warner, 21st Century Fox (formerly News Corporation), Viacom, and The Walt Disney Company.[33] The Walt Disney Company, for example, owns the ABC Television Network, ESPN, A&E, and Lifetime, in addition to the Disney Channel.

Viacom owns BET, Comedy Central, MTV, Nickelodeon, and Vh2. Time Warner owns Cartoon Network, CNN, HBO, and TNT, among others. While each of these networks has its own programming, in the end, the conglomerate can make a policy that affects all stations and programming under its control.

Conglomerates can create a monopoly on information by controlling a sector of a market. When a media conglomerate has policies or restrictions, they will apply to all stations or outlets under its ownership, potentially limiting the information citizens receive. Conglomerate ownership also creates circumstances in which news media bias and censorship may occur.

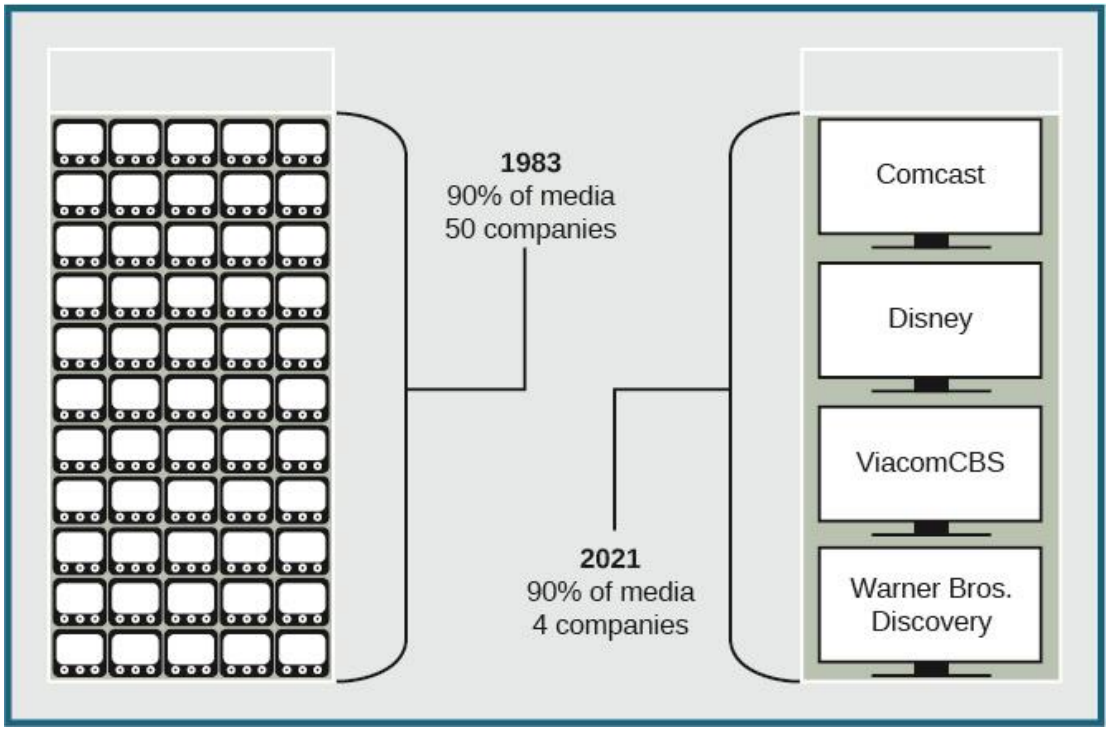


Chart 8.8 Diagram of Media Company Ownership

In 1983, fifty companies owned 90 percent of U.S. media. By 2012, just six conglomerates controlled the same percentage of U.S. media outlets. (Credit: OpenStax included image)

Newspapers too have experienced the pattern of concentrated ownership. Gannett Company, while also owning television media, holds many newspapers and news magazines in its control. Many of these were acquired quietly, without public notice or discussion. Gannett's 2013 acquisition of publishing giant A.H. Belo Corporation caused some concern and news coverage, however. The sale would have allowed Gannett to own both an NBC and a CBS affiliate in St. Louis, Missouri, giving it control over programming and advertising rates for two competing stations. The U.S. Department of Justice required Gannett to sell the station owned by Belo to ensure market competition and multi-ownership in St. Louis.[34]

These changes in the format and ownership of media raise the question whether the media still operate as an independent source of information. Is it possible that corporations and CEOs now control the information flow, making profit more important than the impartial delivery of information? The reality is that media outlets, whether newspaper, television, radio, or Internet, are businesses. They have expenses and must raise revenues.

Media: Questions to Consider

1. How have modern presidents used television to reach out to citizens?
2. Why is soft news good at reaching out and educating viewers?
3. Describe citizen journalists and how they create news report.
4. How can conglomerates impact news information?

1. *news conferences; event coverage; etc.*
2. *open for discussion*
3. *They are news reporters who are not professionally trained journalists who use personal recording devices or cell phones to develop news stories that are posted on the internet social media sites.*
4. *Conglomerates can create a monopoly on information by controlling a sector of a market, potentially limiting or filtering the information citizens receive.*

Terms to Remember

citizen journalism–video and print news posted to internet or social media by citizens rather than professional journalists of news media organizations

informational model–news media that strives for impartiality and accuracy in reporting, promote transparency in government/politics; an idealized norm for reporting

muckraking–investigative news coverage focusing on exposing corrupt business and government practices

soft news–news presented in an entertaining style

yellow journalism–sensationalized coverage of scandals and human interest stories

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8.3 Media: What is their impact?



Image 8.7 Photo of Types of Media

(Credit: WordPress and Dec 5, 2016 // At Fairfield University; "How Are You Involved In The Media?" Brielle Nesto at https://www.theodysseyonline.com/how-are-you-involved-in-the-media)

Learning Objectives
• Identify forms of bias that exist in news coverage and ways the media can present biased coverage. • Explain how the media cover politics and issues. • Evaluate the impact of the media on politics and policy-making.

Chart 8.9 Learning Objectives on Impact of Media

Media in all forms affects both society and government. With a primary purpose to present the public with information and alerts about important events, they often affect what we think and the actions we take. The media can also place pressure on government to act by signaling a need for intervention or showing that citizens want change. For these reasons, the quality of the media's coverage matters.

While a recent Gallup/Knight Foundation discovered Americans believe the media should exercise a very essential role in a representative republic, 43% "say the media supports our democracy very poorly or poorly," even questioning their ability of "providing objective news reports."[1] From 2003 to 2022 the percentage of Americans who said they have a great deal or a fair amount of trust in the media fell form 54% to 34%.[2]

Most major media outlets want the public to believe in their professionalism; however, a variety of types of bias can creep into reporting. The public, based on opinion polling, believes the media may not be doing enough to monitor and address their concerns.

Media Effects and Bias

Concerns about the effects of media on consumers and the existence and extent of media bias go back to the 1920s. Reporter and commentator Walter Lippmann noted that citizens have limited personal experience with government and the world and posited that the media, through their stories, place ideas in citizens' minds.

These ideas become part of the citizens' frame of reference and affect their decisions. Lippmann's statements led to the **hypodermic theory**, which argues that information is "shot" into the receiver's mind by the media and readily accepted.[3]

In reality, information is often transmitted in two steps, with one person reading the news and then sharing the information with others. People often listen to their friends, or someone whom they trust, but not to those with whom they disagree. Thus, while additional research has found Lippman's theory too simplistic, it has been hypothesized under what has become known as the cultivation theory that the media does influence a person's view of the world by presenting a perceived reality.[4]

What we see on a regular basis is our reality. Media can then set norms for readers and viewers by choosing what is covered or discussed. In their 1977 book, *The Emergence of American Political Issues*, McCombs and Shaw argued that the most important effect of the mass media was "its ability to mentally order and organize our world for us" impacting what issues "to think about," that is, public agenda setting.[5]

In the end, the consensus among observers is that media have an effect on public opinion formation, even if the effect is somewhat subtle. This raises the question of how the media, even through general newscasts or news reports, can affect citizens' opinions. One of the ways is through **framing**: the creation of a narrative, or context, for a news story. The news often uses framing to place a story in a context, so the reader understands its importance or relevance. Yet, at the same time, framing affects the way the reader or viewer processes the story. Framing may take the form of a broad thematic focus on an issue or highlighting examples of an issue that has high audience appeal. It may involve photo cropping or video editing, which provide visual impact leading viewers to a point of view.

For a closer look at framing and how it influences voters, read **"How the Media Frames Political Issues"**, a review essay by Scott London.

Framing can also affect the way we see race, socioeconomic status, or other generalizations. For this reason, it is linked to **priming**: when media coverage predisposes the viewer or reader to a perspective on a subject or issue. If a newspaper article focuses on unemployment, struggling industries, and jobs moving overseas, the reader will have a negative opinion about the economy. If then asked whether he or

she approves of the president's job performance, the reader is primed to say no. Readers and viewers can fight priming effects if they are aware of them or have prior information about the subject.

Network news similarly misrepresents the victims of poverty by using more images of blacks than whites in its segments. Viewers in a study were left believing African Americans were the majority of the unemployed and poor, rather than seeing the problem as one faced by many races.[6] The misrepresentation of race is not limited to news coverage, however. A study of images printed in national magazines, like *Time* and *Newsweek*, found they also misrepresented race and poverty. The magazines were more likely to show images of young African Americans when discussing poverty and excluded the elderly and the young, as well as whites and Latinos, which is the true picture of poverty.[7]



The **Center for American Women in Politics** researches the treatment women receive from both government and the media, and they share the data with the public.

Media coverage of women has been similarly biased, leading to uneven coverage of women candidates for public office. Early coverage was sparse. The stories that did appear often discussed the candidate's viability, or ability to win, rather than her stand on the issues. Clearly, the coverage of the 2016 Hillary Clinton candidacy reflects a change.[8] Word choice may also have a priming effect. News organizations like the *Los Angeles Times* and the Associated Press no longer use the phrase "illegal immigrant" to describe individuals entering the country without benefit of documentation or legal processes.

This may be due to the desire to create a "sympathetic" frame for the immigration situation rather than a "threat" frame.[9] Likewise, word choice has been used to prime readers on the issue of abortion, such as "pro-life" and "pro-choice."

Readers and viewers can fight the **priming effect** if they are aware of the meaning and use of labels. A key question for students of politics is whether media framing of a news story leads to priming that evidences a political bias. On the other hand, some argue media framing is the natural consequence of the structure of the current media environment with its emphasis on reporting news with audience appeal focusing on conflict, sensationalism, and personality.

The topic of priming by the news media and political bias are obviously closely related. Media news stories presented as fact can contain covert and overt politically slanted material. Covert content is political information provided under the pretense that it is neutral. A television broadcast might run a story on climate change by interviewing representatives of only one side of the policy debate and downplaying the opposing views, all without acknowledging the one-sided nature of its coverage. In contrast, when the writer of a publication makes clear to the reader only one side of the political debate, the political message is overt content. Cable political commentators such as Sean Hannity or Rachel Maddow openly state their ideological viewpoints. While such overt political content may be offensive or annoying to a reader, listener, or viewer, all are offered the choice whether to be exposed to the material.

A Gallup Poll, "Trust in Mass Media Returns to All-Time Low," found that perceived political bias in the media led to a drop in confidence in the media to report "the news fully, accurately and fairly."[10] As has been the case historically, Americans more often feel the news media is "too liberal" (44%) than "too

conservative" (19%).[11] Conservatives perceive liberal bias in the media, while liberals think news coverage is "just about right."[12] The perception of balance by liberals is significantly higher than the number who self-identify as independents.[13]

To avoid covert and overt political bias or priming, news readers, listeners, and viewers frequently self-select what media to watch. A study by University of Texas Communication faculty member, Natalie Jomini Stroud, found that media viewing habits are subject to **partisan selective exposure**, where the partisan or ideological orientation of viewers, listeners, or readers determines the choices made on news information sources.[14] That is, conservative Republicans will likely avoid MSNBC or any outlet perceived as having either covert or overt political bias, while liberal Democrats will likely avoid FOX News. Instead, partisan selective exposure leads to individuals listening primarily to news sources that match (or affirm), and therefore reinforce, their existing political beliefs.[15]

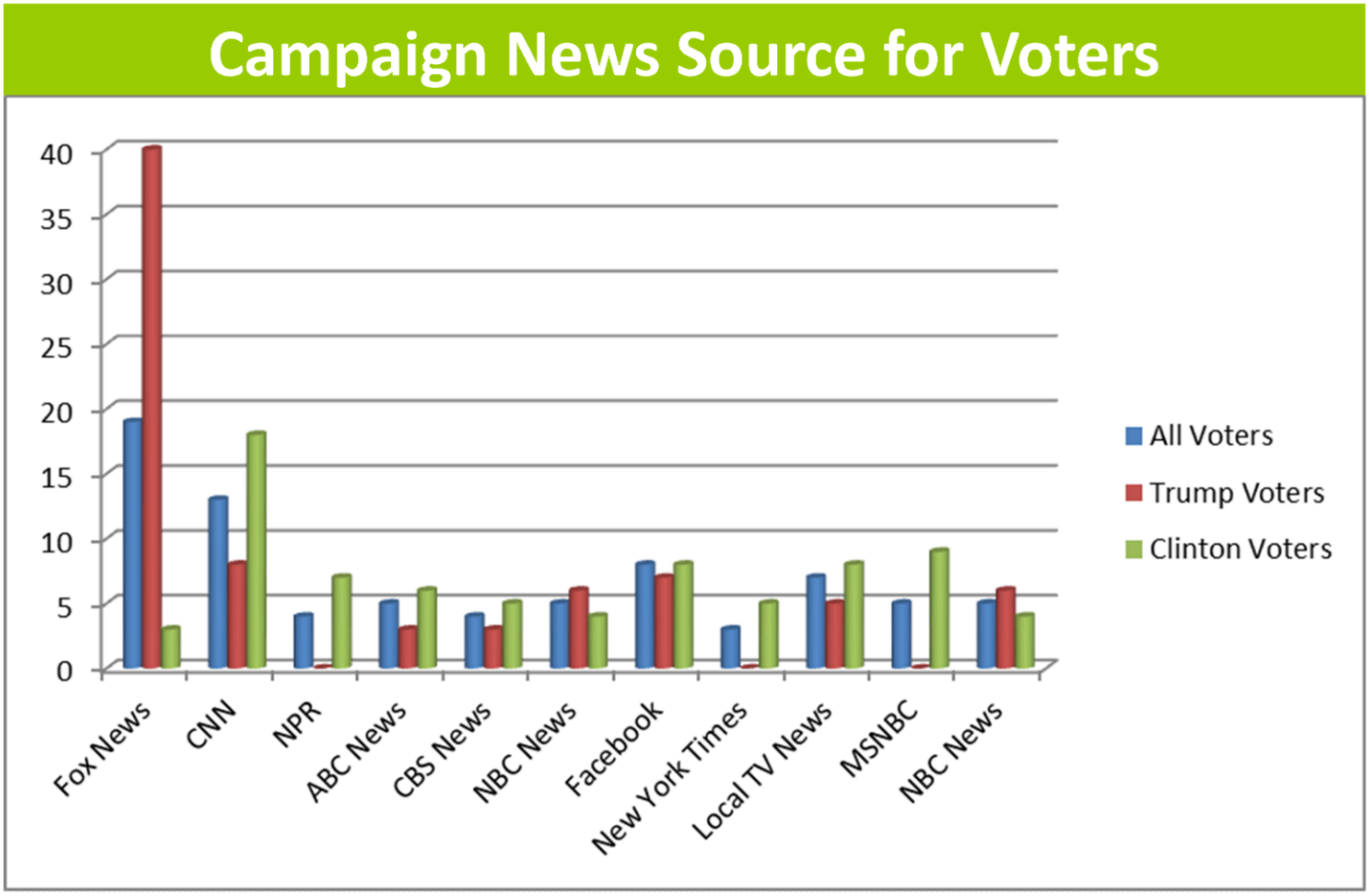


Chart 8.10 Bar Graph on News Sources for Campaign Coverage

Pew Research Center, Survey conducted Nov. 29-Dec. 12, 2016, "Trump, Clinton Voters Divided in Their Main Source for Election News"

Coverage Effects on Governance and Campaigns

The media's coverage of campaigns and government does affect the way government operates and the success of candidates. In 1972, for instance, the McGovern-Fraser reforms created a voter-controlled

primary system, so party leaders no longer pick the presidential candidates. Now the media are kingmakers and play a strong role in influencing who will become the Democratic and Republican nominees in presidential elections. They can discuss the candidates' messages, vet their credentials, carry sound bites of their speeches, and conduct interviews. The candidates with the most media coverage build momentum and do well in the first few primaries and caucuses. This, in turn, leads to more media coverage, more momentum, and eventually a winning candidate. Thus, candidates need the media.

In the 1980s, campaigns learned that tight control on candidate information created more favorable media coverage. Candidates began using an issue-of-the-day strategy, providing quotes and material on only one topic each day. This strategy limited what journalists could cover because they had only limited quotes and sound bites to use in their reports. Somewhat tired of the information games being played by politicians, journalists sought ways to take back control of the news cycles.[16]

Campaign coverage now focuses on the spectacle of the season, the campaign horse race, rather than providing information about candidate views. Colorful personalities, strange comments, lapses of memory, and embarrassing revelations are more likely to get airtime than the candidates' issue positions. Supporting the argument that news coverage is driven by audience appeal, were those who said citizens wanted to see updates on the race and electoral drama rather than issue positions or substantive reporting.[17] This type of coverage has been dubbed, **horse race journalism**, and is also the result of some who argued that newspapers and news programs were limiting the space they allot to discussion of the campaigns, which is of high viewer and reader interest.[18] All these factors have led to the shallow press coverage we see today especially with the focus on personality and conflict rather than substantive issues. There can be no doubt that horse race journalism is the dominant approach to media coverage of current presidential campaigns. Television news discusses the strategies and blunders of the election with colorful examples, and newspapers often focus on the polls.

Due in part to the lack of substantive media coverage, campaigns increasingly use social media to relay their message. Candidates can create their own sites and pages and try to spread news through supporters to the undecided. Yet, on social media, candidates still need to combat negativity, from both the opposition and supporters.

In an analysis of the 2012 election, Pew Research found that more than half of the stories and coverage focused on campaign strategy, less than ten percent on domestic issues positions and public records about candidates, with almost no coverage of foreign policy positions. With the focus on campaign strategy, the press coverage we see today has been sometimes dubbed pack journalism because journalists follow one another rather than digging for their own stories or confirming facts.

The media's discussion of campaigns has also grown negative. Although biased campaign coverage dates back to the period of the partisan press, the increase in the number of cable news stations has made the problem more visible.

During the 2012 campaign, seventy-one of the seventy-four MSNBC stories about Mitt Romney were highly negative, while FOXNews' coverage of Obama had forty-six of fifty-two stories with negative

information. ABC, CBS, and NBC were somewhat more balanced, yet the overall coverage of both candidates tended to be negative.[19]

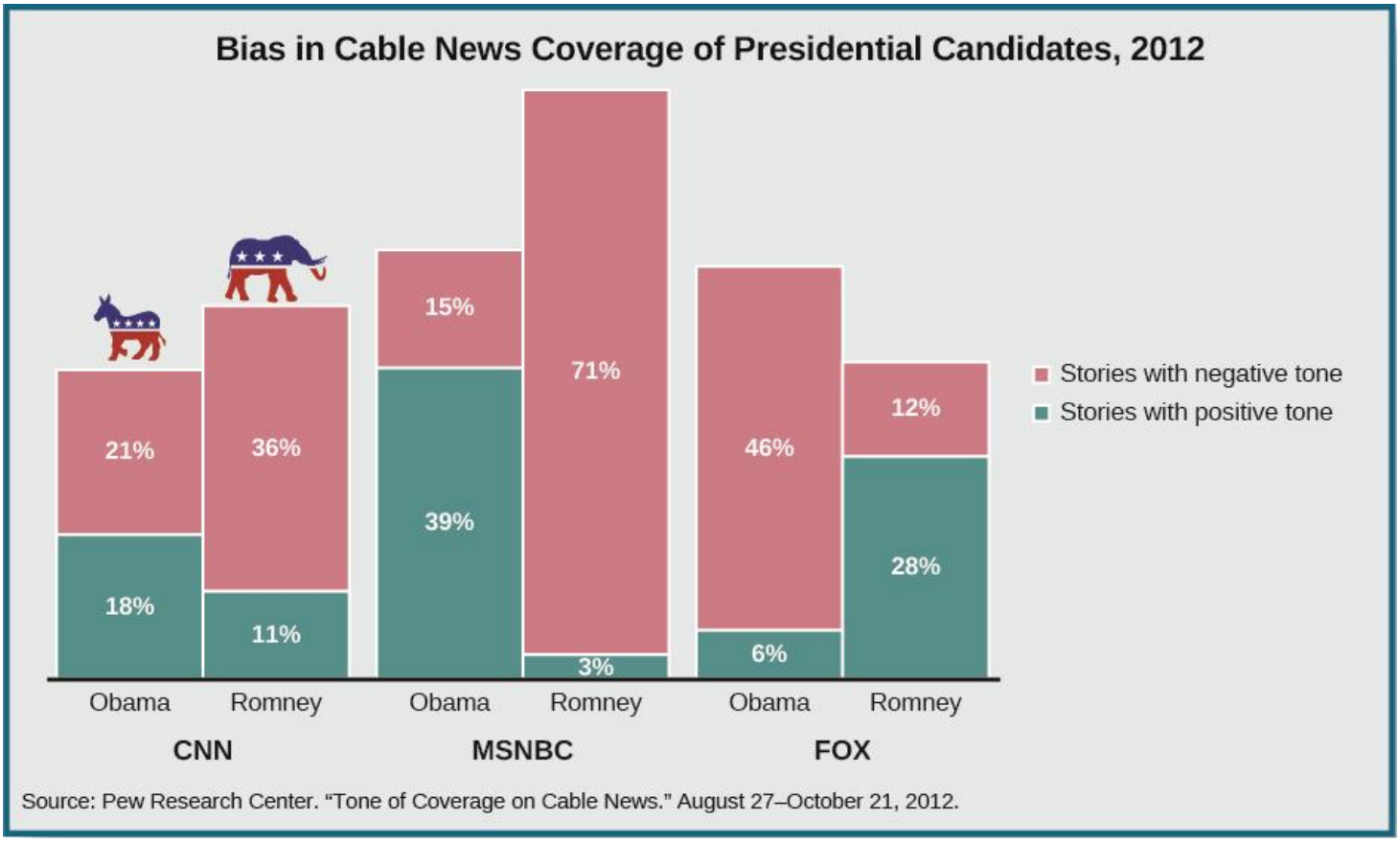


Chart 8.11 Graph on Bias in Cable News

Due in part to the lack of substantive issue-oriented media coverage, campaigns increasingly use social media to rely their message.

As the chart below indicates, all voters relied on news websites and social media second only to television. Candidates can also create their own sites and pages and try to spread news through supporters to the undecided. Yet, on social media, candidates still need to combat negativity from opposition supporters. In the 2016 election cycle, both party nominees heavily used social media. Donald Trump's scores of tweets became very prominent as he tweeted during Clinton's convention acceptance speech and sometimes at all hours of the night. Clinton also used Twitter, but less so than Trump.

The Presidency and the Media

Once candidates are in office, the chore of governing begins, with the added weight of media attention.

Historically, if presidents were unhappy with their press coverage, they used personal and professional means to change its tone. Cabinet secretaries and other appointees also talk with the press, sometimes making for conflicting messages. The creation of the position of press secretary and the White House

Office of Communications both stemmed from the need to send a cohesive message from the executive branch. Currently, the White House controls the information coming from the executive branch through the Office of Communications and decides who will meet with the press and what information will be given.

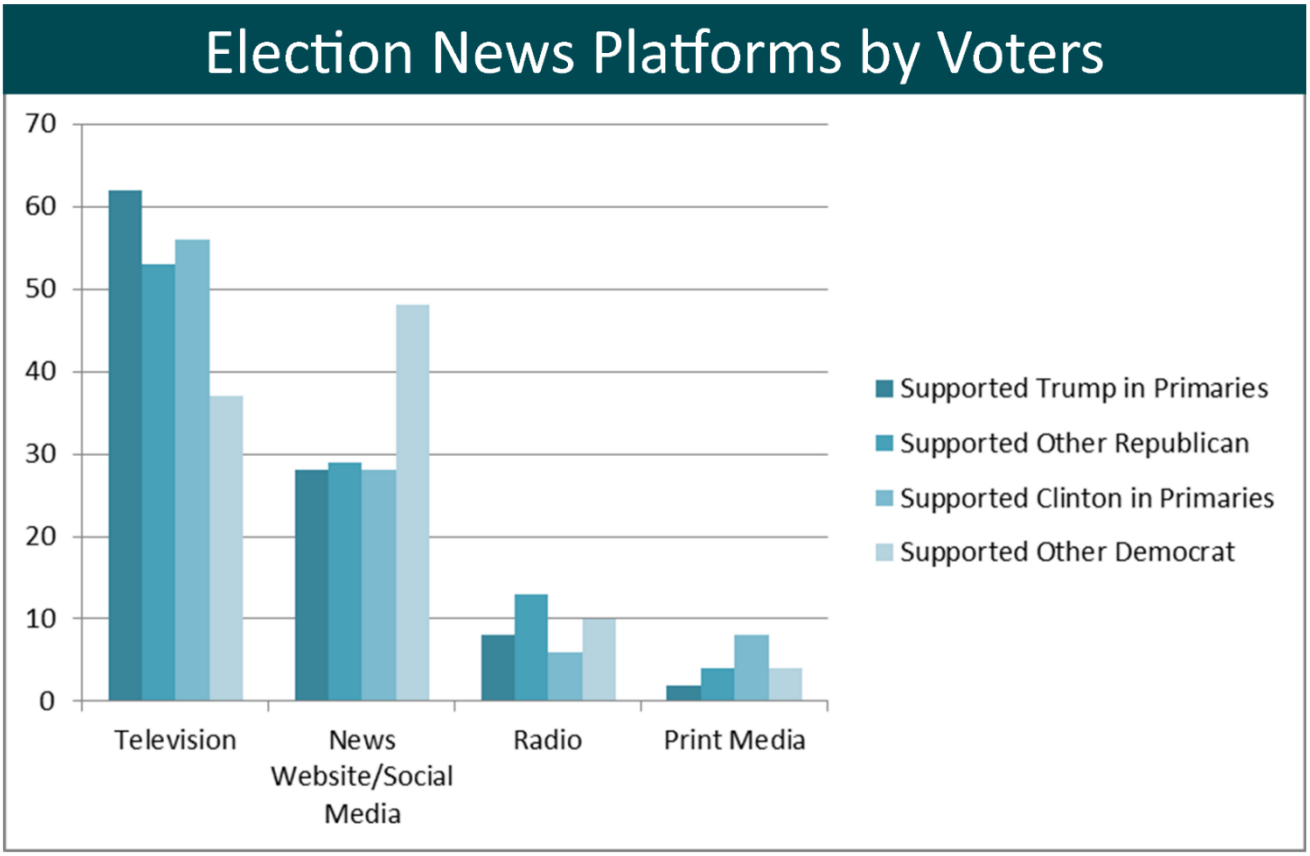


Chart 8.12 Bar Graph on Election News Platforms by Voters (Credit: Pew Research Center, Primary support was asked April 5-May 2, 2016; survey conducted Nov. 29-Dec. 12, 2016, "Trump, Clinton Voters Divided in Their Main Source for Election News"

In the past, the presidential press secretary ran the daily press briefing and provided access to a limited number of news media members to ask direct questions about administration policy. Daily press briefings under the Trump Administration have had sporadic cycles of regular daily briefings to periods of no briefings.

At times it appeared President Trump preferred to use social media, particularly Twitter, for messaging purposes. He did not work to cultivate relationships with media but rather criticized media as untrustworthy, which led to critical coverage of the president across all but a few press outlets.

The Biden Administration reinstated regular daily briefings with Jen Psaki as press secretary, and this continues with Karine Jean-Pierre.

While many hundred reporters hold White House credentials, the briefing room holds about 49 seats.[20] The seats are occupied overwhelmingly by traditional or mainstream media toward the front, internet based media behind, and all arrangements typically set by the press secretary.[21] Stories about the president often examine personality, or the president's ability to lead the country, deal with Congress, or respond to national and international events.



Image 8.8 Photo of White House Press Secretary

Photo of White House Press Secretary, Karine Jean-Pierre
(Credit: Wikimedia Commons: Cameron Smith Credit: White House)

They are less likely to cover the president's policies or agendas without a lot of effort on the president's behalf.[22]

When Obama first entered office in 2009, journalists focused on his battles with Congress, critiquing his leadership style and inability to work with Representative Nancy Pelosi, then Speaker of the House. To gain attention for his policies, specifically the American Recovery and Reinvestment Act (ARRA), Obama began traveling the United States to draw the media away from Congress and encourage discussion of his economic stimulus package. Once the ARRA had been passed, Obama began travelling again, speaking locally about why the country needed the Affordable Care Act and guiding media coverage to promote support for the act.[23] This campaign style promotion of the presidential agenda has also been adopted by President Trump.

Congress and the Media

Individual congressional representatives have a harder time attracting media attention for their policies.

House and Senate members who use the media well, either to help their party or to show expertise in an area, may increase their power within Congress, which helps them bargain for fellow legislators' votes. Senators and high-ranking House members, frequently key committee chairs, may also be invited to appear on cable news programs as guests, where they may gain some media support for their policies. Yet, overall, because there are so many members of Congress, and therefore so many agendas, it is harder for individual representatives to draw media coverage.[24]

Considerable media attention is focused on the party leaders, such as the Speaker of the House, the Senate Majority Leader, and minority leaders of the House and Senate. However, centering on these individuals can lead the public to a misunderstanding of the role of the entire body to develop policy and on development of legislation through the decentralized committee system. Congressional Party leaders are not the sole policy makers for the legislature although they receive major media focus in conflicts between the President and Congress.

It is less clear, however, whether media coverage of an issue leads Congress to make policy, or whether congressional policymaking leads the media to cover policy.

Later studies of the media's effect on both the president and Congress report that the media has a stronger agenda-setting effect on the president than on Congress. What the media choose to cover affects what the president thinks is important to voters, and these issues were often of national importance. The media's effect on Congress was limited, however, and mostly extended to local issues like education or child and elder abuse.[25] If the media are discussing a topic, chances are a member of Congress has already submitted a relevant bill, and it is waiting in committee.

QUESTIONS TO CONSIDER

1. How might framing affect the way a reader or viewer thinks about an issue?

   Show Answer
   Creates a context about an issue which increases the perceived importance or relevance; may involve cropping of photos or editing of video

2. How might priming affect the way a reader or viewer thinks about an issue?

   Show Answer
   Predisposes the individual to adopt a particular point of view, biasing the opinion through visual or emotional appeal; language used, editing, etc.

3. What do we mean by partisan selective exposure of the media?

   Show Answer
   Where the partisan or ideological orientation of viewers, listeners, or readers determines the choices made on news information sources

4. Have changes in media formats created a more accurate, less biased media?

   Show Answer
   open for debate

TERMS TO REMEMBER

Cultivation theory—the idea that media affect a citizen's worldview through the information presented influencing public opinion formation

framing–giving a news story a specific context or background (sometimes with word choice, photo cropping, or video editing processes) so the reader understands its importance or relevance

horse race journalism–news reporting on the race and electoral drama rather than issue positions or substantive reporting

hypodermic theory—idea that information is placed in a citizen's brain by the media and accepted

pack journalism–journalists follow one another rather than digging for their own stories

partisan selective exposure—where the partisan or ideological orientation of viewers, listeners, or readers determines the choices made on news information sources

priming–the process of predisposing readers or viewers to think a particular way

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8.4 Media: How are they regulated?



Image 8.9 Seal of the Federal Communications Commission

(Credit: Federal Communications Commission at https://transition.fcc.gov/files/logos/fcc-seal_rgb-on-white-large.jpg)

Learning Objectives

- Identify circumstances in which the freedom of the press is not absolute.
- Compare the ways in which the government oversees and influences media programming.

Chart 8.13 Learning Objectives on Freedom of the Press

Media and the First Amendment

The U.S. *Constitution* was written in secrecy. Journalists were neither invited to watch the drafting, nor did the framers talk to the press about their disagreements and decisions. Once it was finished, however, the *Constitution* was released to the public and almost all newspapers printed it. Newspaper editors also published commentary and opinion about the new document and the form of government it proposed. The eventual printing of *The Federalist Papers*, and the lesser-known *Anti-Federalist Papers*, fueled the argument that the press was vital to American democracy. It was also clear the press had the ability to affect public opinion and therefore public policy.[1]

Consider the Original: First Amendment

The approval of the First Amendment, as a part of the Bill of Rights, demonstrated the framers' belief that a free and vital press was important enough to protect. It said:

"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."

Figure 2 Chart 8.14 Text of First Amendment

This amendment serves as the basis for the political freedoms of the United States, and freedom of the press plays a strong role in keeping our governmental system healthy. Without it, the press would not be free to alert citizens to government abuses and corruption.



In defending John Peter Zenger against charges of libel against colonial governor William Cosby, Andrew Hamilton argued that a statement is not libelous if it can be proved. (Credit: modification of work by the Library of Congress)

Image 8.14 Drawing of Court Scene Involving Libel Against Government

The media act as informants and messengers, providing the means for citizens to become informed and serving as a venue for citizens to announce plans to assemble and protest actions by their government. Like the other First Amendment liberties, freedom of the press is not absolute. The media have limitations on their freedom to publish and broadcast.

Defamation of Character: Private Citizens Versus Public Figures

Freedom of speech and press by the media can conflict with a citizen's right not to be subject to false statements in the media that would defame a person's character. That is, the media do not have a general right under the principle of protected free press or speech to commit **slander** (to speak false information with an intent to harm a person) or **libel** (the printing of false information with intent to harm a person or entity).[2] Yet, on a weekly basis, media outlets publish stories that are negative and harmful of public figures. They do this and yet they are not often sued.

The key reason for a lack of litigation is that the average citizen must be treated differently by the media than individuals who are public figures or government officials. The government has different standards depending on whether the individual is a private or public figure.[3]

Libel and **slander** occur only in cases where false information is presented as fact. When editors or columnists write opinions, they are protected from many of the libel and slander provisions because they are not claiming their statements are facts. Second, it is up to the defamed individual or company to bring a lawsuit against the media outlet, and the courts have different standards depending on whether the claimant is a private or public figure. A public figure must show that the publisher or broadcaster acted with a "reckless disregard" when submitting information as truth or that the author's intent was malicious. This test goes back to the *New York Times v. Sullivan* (1964) case, in which a police commissioner in Alabama sued over inaccurate statements in a newspaper advertisement.[4] Because the commissioner was a public figure, the U.S. Supreme Court applied a stringent test of malice to determine whether the advertisement was libel; the court deemed it was not. A private individual must make one of the above arguments or argue that the author was negligent in not making sure the information was accurate before publishing it. For this reason, newspapers and magazines are less likely to stray from hard facts when covering private individuals, yet they can be willing to stretch the facts when writing about politicians, celebrities, or public figures. But even stretching the truth can be costly for a publisher.

Classified Material

The media have only a limited right to publish material the government says is classified. If a newspaper or media outlet obtains classified material, or if a journalist is witness to information that is classified, the government may request certain material be redacted or removed from the article.

The line between the people's right to know and national security is not always clear. In 1971, the Supreme Court heard the Pentagon Papers case, in which the U.S. government sued the *New York Times* and the *Washington Post* to stop the release of information from a classified study of the Vietnam War. The Supreme Court ruled that while the government can impose **prior restraint** on the media, meaning the government can prevent the publication of information, that right is very limited. The court gave the newspapers the right to publish much of the study, but revelation of troop movements and the names of undercover operatives are some of the few approved reasons for which the government can stop publication or reporting. According to CNN's Chris Plante, in an article titled "Military Kicks Geraldo Out of Iraq" (31 March 2003), Plante describes an incident during the second Persian Gulf War, when FOXNEWS reporter Geraldo Rivera convinced the military to embed him with a U.S. Army unit in Iraq, to provide live coverage of its day-to-day activities. During one of the reports, Rivera had his camera operator record him drawing a map in the sand, showing where his combat unit was, using Baghdad as a reference point. Rivera then discussed where the unit would go next. Rivera was immediately removed from the unit and escorted from Iraq. The military exercised its right to maintain secrecy over troop movements, stating that Rivera's reporting had given away troop locations and compromised the safety of the unit. Rivera's future transmissions and reporting were censored until he was away from the unit.

Media and FCC Regulations

The liberties enjoyed by newspapers are overseen by the U.S. court system, while television and radio broadcasters are monitored by both the courts and a government regulatory commission.

The Communications Act of 1934 created a powerful entity to monitor the airwaves—a seven-member Federal Communications Commission (FCC) to oversee both radio and telephone communication. The FCC, which now has only five members, requires radio stations to apply for licenses, granted only if stations follow rules about political advertising, providing a public forum for discussion, and serving local and minority communities. With the advent of television, the FCC was given the same authority to license and monitor television stations. The FCC now also enforces ownership limits to avoid monopolies, and it censors materials deemed inappropriate. It has no jurisdiction over print media, mainly because print media are purchased and not broadcast.



Concerned about something you heard or viewed? Would you like to file a complaint about an obscene radio program or place your phone number on the Do Not Call list? The **FCC** oversees each of these.

To maintain a license, stations are required to meet several criteria. The **equal-time rule**, for instance, states that registered candidates running for office must be given equal opportunities for airtime and advertisements at non-cable television and radio stations beginning forty-five days before a primary election and sixty days before a general election. Should WBNS in Columbus, Ohio, agree to sell Senator Marco Rubio thirty seconds of airtime for a presidential campaign commercial, the station must also sell all other candidates in that race thirty seconds of airtime at the same price. This rate cannot be more than the station charges favored commercial advertisers that run ads of the same class and during the same time period.[5]

More importantly, should Fox5 in Atlanta give Bernie Sanders five minutes of free airtime for an infomercial, the station must honor requests from all other candidates in the race for five minutes of free equal air time or a complaint may be filed with the FCC.[6] In 2015, Donald Trump, when he was a candidate running for the presidential Republican nomination, appeared on *Saturday Night Live*. Other Republican candidates made equal time requests, and NBC agreed to give each candidate twelve minutes and five seconds of air time on a Friday and Saturday night, as well as during a later episode of *Saturday Night Live*.[7]

The FCC does waive the **equal-time rule** if the coverage is purely news. If a newscaster is covering a political rally and can secure a short interview with a candidate, equal time does not apply. Likewise, if a news programs creates a short documentary on the problem of immigration reform and chooses to include clips from only one or two candidates, the rule does not apply.[8]

But the rule may include shows that are not news. For this reason, some stations will not show a movie or television program if a candidate appears in it. In 2003, Arnold Schwarzenegger and Gary Coleman, both actors, became candidates in California's gubernatorial recall election. Television stations did not run Coleman's sitcom *Diff'rent Strokes* or Schwarzenegger's movies, because they would have been subject to the equal time provision. With 135 candidates on the official ballot, stations would have been hard-pressed to offer thirty-minute and two-hour time slots to all.[9]

Even the broadcasting of the president's State of the Union speech can trigger the equal-time provisions. Opposing parties in Congress now use their time immediately following the State of the Union to offer an official rebuttal to the president's proposals.[10]

The now abandoned **fairness doctrine** was instituted in 1949 and required licensed stations to cover controversial issues in a balanced manner by providing listeners with information about all perspectives on any controversial issue. If one candidate, cause, or supporter was given an opportunity to reach the viewers or listeners, the other side was to be given a chance to present its side as well. The fairness doctrine ended in the 1980s, after a succession of court cases led to its repeal by the FCC in 1987, with stations and critics arguing the doctrine limited debate of controversial topics and placed the government in the role of editor.[11]

The FCC also maintains indecency regulations over television, radio, and other broadcasters, which limit indecent material and keep the public airwaves free of obscene material.[12]

The Supreme Court determined that the presence of children in the audience trumped the right of broadcasters to air obscene and profane programming. However, broadcasters can show indecent programming or air profane language between the hours of 10 p.m. and 6 a.m.[13] The FCC mainly relies on citizens and consumers to file complaints about violations of equal time and indecency rules.

What constitutes a violation is not always clear for citizens wishing to complain, nor is it clear what will lead to a fine or license revocation. In October 2014, parent advocacy groups and consumers filed complaints and called for the FCC to fine ABC for running a sexually charged opening scene in the drama *Scandal* immediately after *It's the Great Pumpkin, Charlie Brown*—without an ad or the cartoon's credits to act as a buffer between the very different types of programming.[14] The FCC did not fine ABC.

The Telecommunications Act of 1996 brought significant changes to the radio and television industries. It dropped the limit on the number of radio stations (forty) and television stations (twelve) a single company could own. It also allowed networks to purchase large numbers of cable stations. It reduced competition and increased the number of conglomerates. Some critics, such as Common Cause, argue that the act also raised cable prices and made it easier for companies to neglect their public interest obligations.[15] The act also changed the role of the FCC from regulator to monitor. The Commission oversees the purchase of stations to avoid media monopolies and adjudicates consumer complaints against radio, television, and telephone companies.

Media and Transparency

The press has had some assistance in performing its muckraking duty. Laws that mandate federal and many state government proceedings and meeting documents be made available to the public are called **sunshine laws**. Proponents believe that open disagreements allow democracy to flourish and darkness allows corruption to occur. Opponents argue that some documents and policies are sensitive, and that the sunshine laws can inhibit policymaking.

While some documents may be classified due to national or state security, governments are encouraged to limit the over-classification of documents. The primary legal example for sunshine laws is the **Freedom of Information Act (FOIA)**, passed in 1966 and signed by President Lyndon B. Johnson. The act requires the executive branch of the U.S. government to provide information requested by citizens and was intended to increase openness in the executive branch, which had been criticized for hiding information. Citizens wishing to obtain information may request documents from the appropriate agencies, and agencies may charge fees if the collection and copying of the requested documentation requires time and labor.[16]

FOIA also identifies data that does not need to be disclosed, such as human resource and medical records, national defense records, and material provided by confidential sources, to name a few.[17] Not all presidents have embraced this openness, however. President Ronald Reagan, in 1981, exempted the CIA and FBI from FOIA requests.[18]

Information requests have increased significantly in recent years, with U.S. agencies receiving over 700,000 requests in 2014, many directed to the Departments of State and Defense, thus creating a backlog.[19]

Want to request a government document but unsure where to start? If the agency is a part of the U.S. government, the **Freedom of Information Act** portal will help you out.

Few people file requests for information because most assume the media will find and report on important problems. And many people, including the press, assume the government, including the White House, sufficiently answers questions and provide information about government actions and policies. This expectation is not new.

The line between journalists' expectation of openness and the government's willingness to be open has continued to be a point of contention. Some administrations use the media to increase public support during times of war, as Woodrow Wilson did in World War I. Other presidents limit the media in order to limit dissent. In 1990, during the first Persian Gulf War, journalists received all publication material from the military in a prepackaged and staged manner. Access to Dover, the air force base that receives coffins of U.S. soldiers who die overseas, was closed. Journalists accused George H. W. Bush's administration of limiting access and forcing them to produce bad pieces. The White House believed it controlled the message.[20] The ban was later lifted.

In his 2008 presidential run, Barack Obama promised to run a transparent White House.[21] Yet once in office, he found that transparency makes it difficult to get work done, and so he limited access and questions. In his first year in office, George W. Bush, who was criticized by Obama as having a closed government, gave 147 question-and-answer sessions with journalists, while Obama gave only 46. Even Helen Thomas, a long-time liberal White House press correspondent, said the Obama administration tried to control both information and journalists.[22]

Because White House limitations on the press are not unusual, many journalists rely on confidential sources. In 1972, under the cloak of anonymity, the associate director of the Federal Bureau of Investigation, Mark Felt, became a news source for Bob Woodward and Carl Bernstein, political reporters at the *Washington Post*. Felt provided information about several potential stories and was Woodward's main source for information about President Richard Nixon's involvement in a series of illegal activities, including the break-in at Democratic Party headquarters in Washington's Watergate office complex. The information eventually led to Nixon's resignation and the indictment of sixty-nine people in his administration. Felt was nicknamed "Deep Throat," and the journalists kept his identity secret until 2005.[23]

The practice of granting anonymity to sources is sometimes referred to as reporter's privilege. Fueled by the First Amendment's protection of the press, journalists have long offered to keep sources confidential to protect them from government prosecution. Reporter's privilege has increased the number of instances in which whistleblowers and government employees have given journalists tips or documents to prompt investigation into questionable government practices.

Edward Snowden's 2013 leak to the press regarding the U.S. government's massive internal surveillance and tapping program was one such case. In 1972, however, the Supreme Court determined that journalists are not exempt from subpoenas and that courts could force testimony to name a confidential source.

Journalists who conceal a source and thereby protect him or her from being properly tried for a crime may spend time in jail for contempt of court. In the case of *Branzburg v. Hayes* (1972), three journalists were placed in contempt of court for refusing to divulge sources.[24] The journalists appealed to the Supreme Court. In a 5–4 decision, the justices determined that freedom of the press did not extend to the confidentiality of sources. A concurring opinion did state that the case should be seen as a limited ruling, however. If the government needed to know a source due to a criminal trial, it could pursue the name of that source.[25]

More recently, the Supreme Court refused to hear an appeal from *New York Times* journalist James Risen, who was subpoenaed and ordered to name a confidential source that had provided details about a U.S. government mission designed to harm Iran's nuclear arms program. Risen was finally released from the subpoena, but the battle took seven years.[26] Overall, the transparency of the government is affected more by the executive currently holding office than by the First Amendment.

QUESTIONS TO CONSIDER

1. Why is it a potential problem that the equal-time rule does not apply to candidates' supporters?

   Show Answer
   open for debate

2. Under what circumstances might a journalist be compelled to give up a source?

   Show Answer
   open for debate

3. What regulations limit what media can do?

   Show Answer
   The Federal Communications Commission establishes some licensing regulation for broadcast media and some content standards, although this regulation does not impact newspapers or cable television or the internet.

TERMS TO REMEMBER

equal-time rule–an FCC policy that all candidates running for office must be given the same radio and television airtime opportunities

fairness doctrine–a 1949 Federal Communications Commission (FCC) policy, now defunct, that required holders of broadcast licenses to cover controversial issues in a balanced manner

Freedom of Information Act (FOIA)–a federal statute that requires public agencies to provide certain types of information requested by citizens

indecency regulations–laws that limit indecent and obscene material on public airwaves

libel–printed information about a person or organization that is not true and harms the reputation of the person or organization

prior restraint–a government action that stops someone from doing something before they are able to do it (e.g., forbidding someone to publish a book he or she plans to release)

reporter's privilege–the right of a journalist to keep a source confidential

slander–spoken information about a person or organization that is not true and harms the reputation of the person or organization

sunshine laws–laws that require government documents and proceedings to be made public

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9.1 Congress: Making Laws Under the Contract



Image 9.1 View of Capitol and Surrounding Area

While the Capitol is the natural focus point of Capitol Hill and the workings of Congress, the Capitol complex includes over a dozen buildings, including the House of Representatives office buildings (left), the Senate office buildings (far right), the Library of Congress buildings (lower left), and the Supreme Court (lower right). (Credit: modification of work by the Library of Congress)

Learning Objectives

- Describe the role of Congress in the U.S. constitutional system.
- Define bicameralism.
- Explain the apportionment of seats in the House of Representatives.
- Discuss the three kinds of powers granted to Congress.
- Explain the division of labor in the House and in the Senate.
- Describe the way congressional committees develop and advance legislation.

Chart 9.1 Learning Objectives on Congress

The framers of the *Constitution* intended that Congress would be the cornerstone of the new republic. After years of tyranny under a king, they had little interest in creating another system with an overly powerful single individual at the top. While recognizing the need for centralization through a stronger national government with an elected executive wielding its own authority, they wanted a strong representative national assembly that would use careful consideration, deliberate action, and constituent representation to carefully draft legislation. Article I of the *Constitution* grants several key powers to Congress–overseeing the budget and financial matters, introducing legislation, confirming or rejecting judicial and executive nominations, and even declaring war.

Today, Congress is the most criticized and possibly the most misunderstood institution.

How is the legislative branch structured?

The origins of the U.S. *Constitution* and the convention that brought it into existence are rooted in failure—the failure of the *Articles of Confederation*. After only a handful of years, the states of the union decided that the *Articles* were unworkable, and that the national government needed to be strengthened. To save the young republic, a convention was called, and delegates were sent to assemble and revise the *Articles*. The Congress we recognize today emerged from the controversies and compromises in this convention.

The Great Compromise on Representation

Under the *Articles of Confederation,* the national legislature with limited powers had been made up of a single chamber composed of an equal number of delegates from each of the states. Virginia and other large states felt it would be unfair to continue with this equal distribution of power if significant powers were to be added to the legislature to make laws in new areas. Virginia's delegates proposed a plan for **bicameralism**, or the division of legislators into two separate assemblies. In this proposed two-chamber Congress, states with larger populations would have more representatives in each chamber, since representation would be based on population.

Moreover, under the proposed bicameral, two-chambered system, each chamber would act as a check on the other. Predictably, smaller states like New Jersey disagreed. They issued their own plan calling for retention of a single-chamber Congress with equal representation by state, more state authority, and a relatively weak national government.

A third proposal eventually calmed this storm of debate over allocation of power between large and small states. The Connecticut Compromise, also called the **Great Compromise**, proposed a **bicameral** congress with members apportioned differently in each house.

The upper house, the Senate, would have two representatives from each state. In the lower house, the House of Representatives, representation would be proportional to the population in each state. In the final draft of the U.S. *Constitution*, the bicameral Congress received several additional powers and limitations.

These are outlined in **Article I** (Appendix B). It describes the minimum age of congresspersons (Section 2), requires that Congress meet at least once a year (Section 4), guarantees members' pay (Section 6), and gives Congress the power to levy taxes, borrow money, and regulate commerce (Section 8).

The bicameral structure requires the two chambers to pass identical **bills**, or proposed legislation. After all the amending and modifying has occurred, the two houses ultimately must agree on the legislation

they send to the president for approval. Passing the same bill in both houses is intentionally difficult. The framers designed a complex and difficult process for legislation to become law.

This challenge serves several important and related functions. First, the difficulty of passing legislation through both houses makes it less likely, though hardly impossible, that Congress will act on emotion or without the necessary deliberation.

Second, the bicameral system ensures that large-scale dramatic reform is exceptionally difficult to pass and that the status quo is more likely to hold. Third, the bicameral system makes it difficult for a single faction or interest group to enact laws and restrictions unfairly favoring it.

The **website of the U.S. Congress Visitor Center** contains a number of interesting online exhibits and informational facts about the U.S. government's "first branch" (so called because it is described in Article I of the Constitution).

Senate Representation and House Apportionment

The Constitution specifies that every state will have two senators who each serve a six-year term. Therefore, with fifty states in the Union, there are currently one hundred seats in the U.S. Senate. Senators were originally appointed by state legislatures, but in 1913 the Seventeenth Amendment allowed senators to be elected by popular vote in each state.

Seats in the House of Representatives are distributed among the states based on population and each member is elected by voters in a specific congressional district. Each state is guaranteed at least one seat in the House.

The Current Congress—Basic Requirements for Office		
	US House of Representatives	US Senate
Total # Members	435	100
Members Per State	1 or more; population based	2 for each; equality based
Term of Office	2 years for a single term	6 years for a single term
Minimum Age	25 years old	30 years old

Chart 9.2 Illustration of Congressional Requirements for Office

Redistricting (redrawing boundaries) occurs every ten years, after the U.S. Census has established how many persons live in the United States and where. The boundaries of legislative districts are redrawn as needed to balance the number of voters in each while still maintaining a total of 435 districts.

Because local areas can see population growth or decline over time, these boundary adjustments are typically needed every ten years. Based on the 2020 census there are six states with only one representative (Alaska, Delaware, North Dakota, South Dakota, Vermont, and Wyoming), whereas the most populous state, California, has fifty-two congressional districts.

Congressional apportionment today is achieved through the *equal proportions method*, which uses a mathematical formula to allocate seats based on U. S. **Census** Bureau population data (counting citizens in each state) gathered every ten years as required by the *Constitution*.

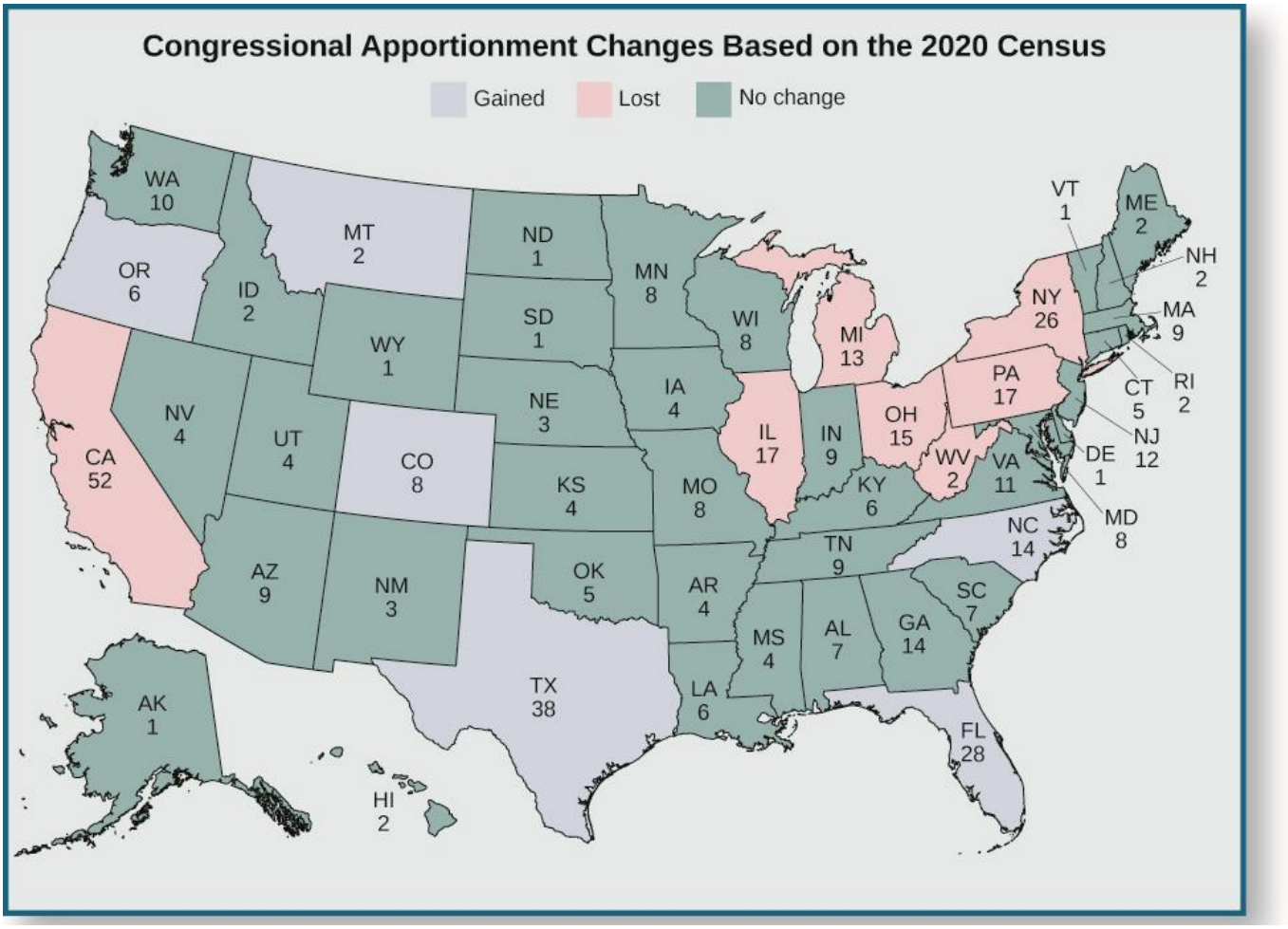


Chart 9.3 Map of Congressional Apportionment From 2020 Census

Although the total number of seats in the House of Representatives has been capped at 435, the apportionment of seats by state may change each decade following the official census. In this map, we see the changes in seat reapportionment that followed the 2020 Census. (Credit: OpenStax included image)

At the close of the first U.S. Congress in 1791, there were sixty-five representatives, each representing approximately thirty thousand citizens. As the territory of the United States expanded the population

requirement for each new district increased as well. Adjustments (**reapportionment**) occurred, but the House of Representatives roster continued to grow until it reached 435 members after the 1910 census. Ten years later with the 1920 census and urbanization changing populations across the country, Congress failed to reapportion membership. An agreement was reached in 1929 to permanently cap the number of seats in the House at 435. Two remaining problems in the House are the size of each representative's **constituency**—the body of voters who elect him or her—and the status of Washington, DC. George Washington advocated for 30,000 people per elected member to retain effective representation in the House. However, today the average number of citizens in a congressional district now tops 700,000. This is arguably too many for House members to remain in touch with the people. Further, the approximately 675,000 residents of the federal district of Washington (District of Columbia) do not have voting represent. Like those living in the U.S. territories, they merely have a non-voting delegate.[1] Demographically speaking, Congress as a whole is still imbalanced and remains largely white, male, and wealthy. For example, more than half the U.S. population is female while only 26 percent of Congress is. Congress is also overwhelmingly Christian.

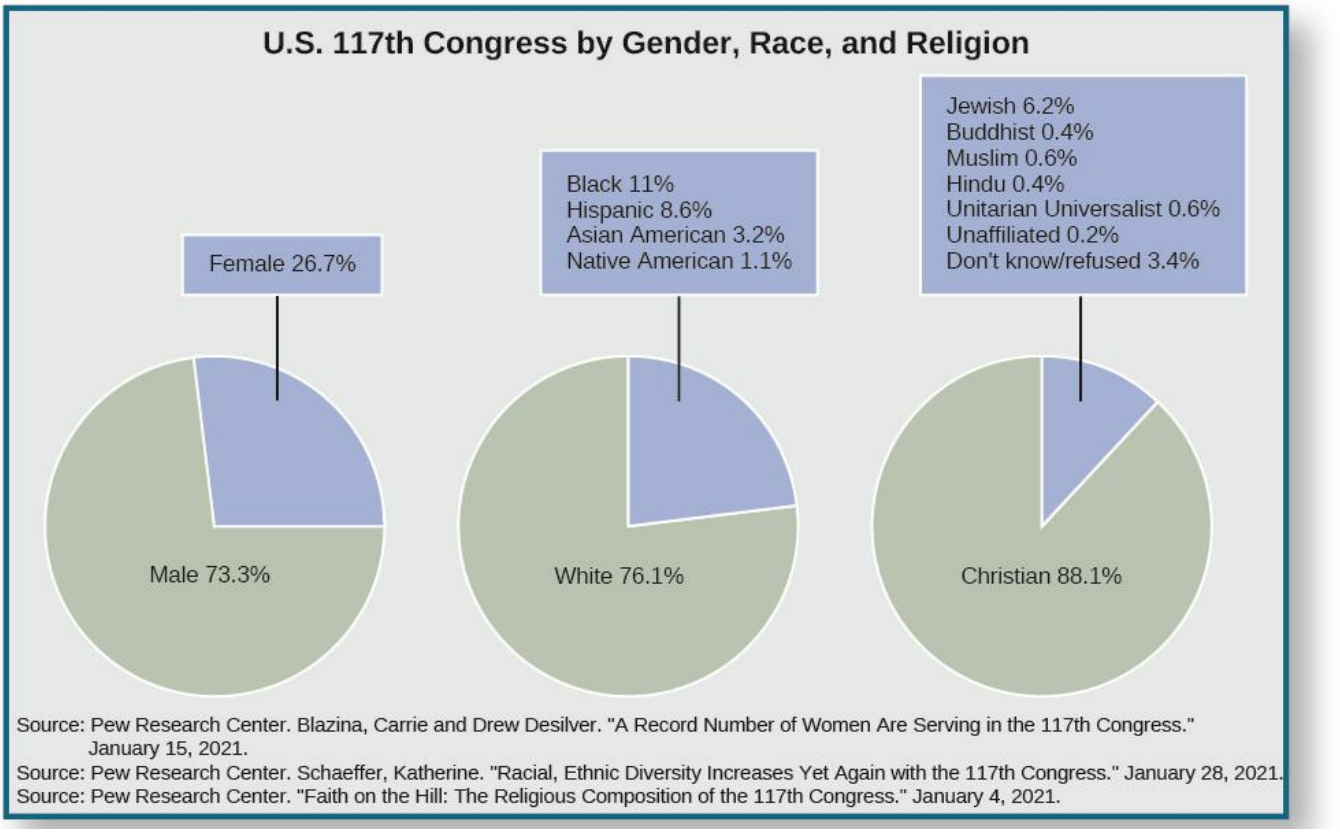
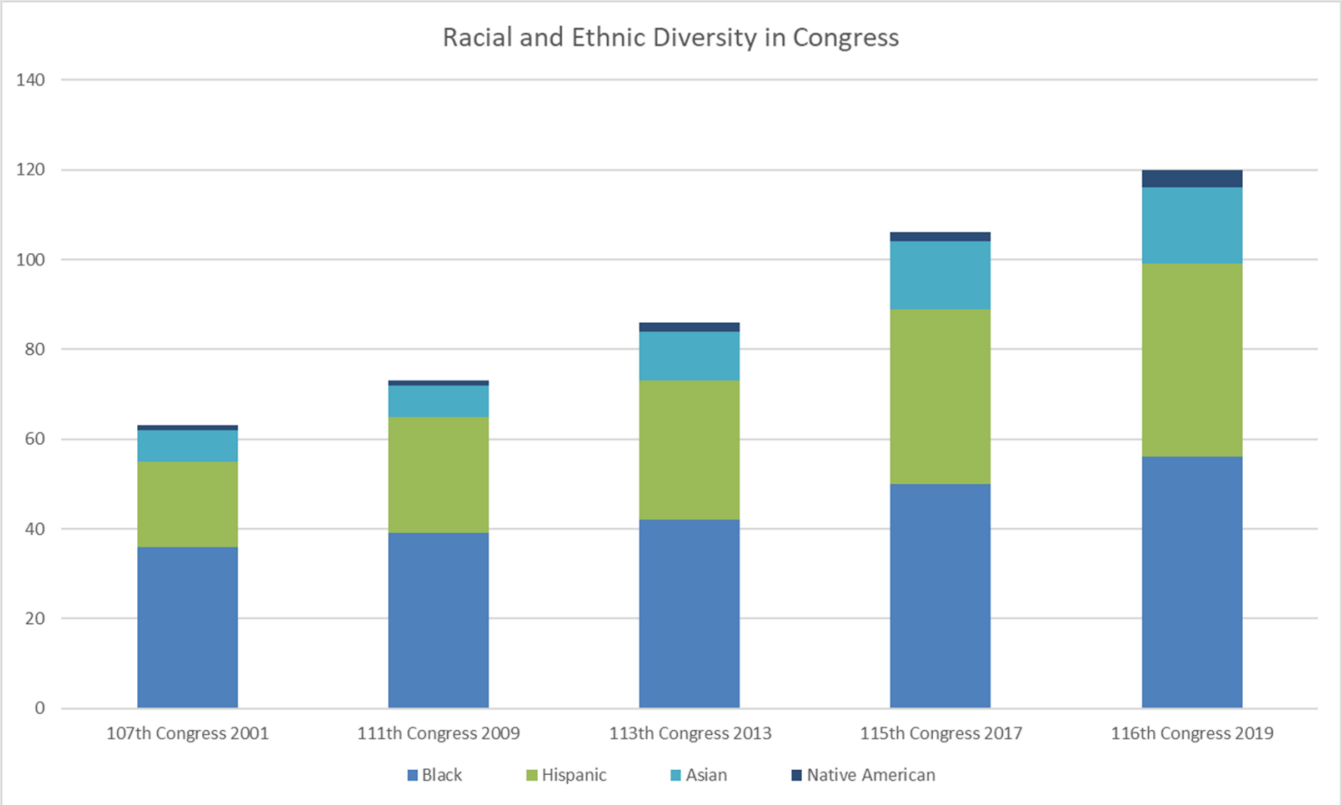


Chart 9.4 Pie Charts Illustrating Congressional Demographics



Credit: Pew Research Center, at pewresearch.org; "Growing racial and ethnic diversity in Congress," 7 February 2019

Chart 9.5 Bar Graph Illustrating Racial and Ethnic Diversity in Congress

What powers does Congress possess?

Congressional powers can be divided into three types: **enumerated**, **implied**, and **inherent**. An **enumerated power** is a power explicitly stated (written) in the Constitution. An **implied power** is one not specifically detailed in the Constitution but inferred as necessary to achieve the objectives of the national government. An **inherent power**, while not enumerated or implied, must be assumed to exist as a direct result of the country's existence.

Article I, Section 8, of the U.S. *Constitution* details the enumerated powers of the legislature. These include the power to levy and collect taxes, declare war, raise an army and navy, coin money, borrow money, regulate commerce among the states and with foreign nations, establish federal courts and bankruptcy rules, establish rules for immigration and naturalization, and issue patents and copyrights. The

Constitution includes other powers such as the ability of Congress to override a presidential veto with a two-thirds vote of both houses (Article II, Section 7, in the case of the veto override).

The first enumerated power, to levy taxes, is quite possibly the most important power Congress possesses. Without it, enumerated, implied or inherent powers would be largely theoretical. Along with the appropriations (money) power, taxation gives Congress what is known as "the power of the purse."

Some enumerated powers invested in the Congress specifically serve as checks on the other branches of government. These include Congress's sole power to introduce legislation, the Senate's final say on many presidential nominations and treaties signed by the president, and the House's ability to impeach or formally accuse the president or other federal officials of wrongdoing (the first step in removing the person from office; the second step, trial and removal, takes place in the U.S. Senate).

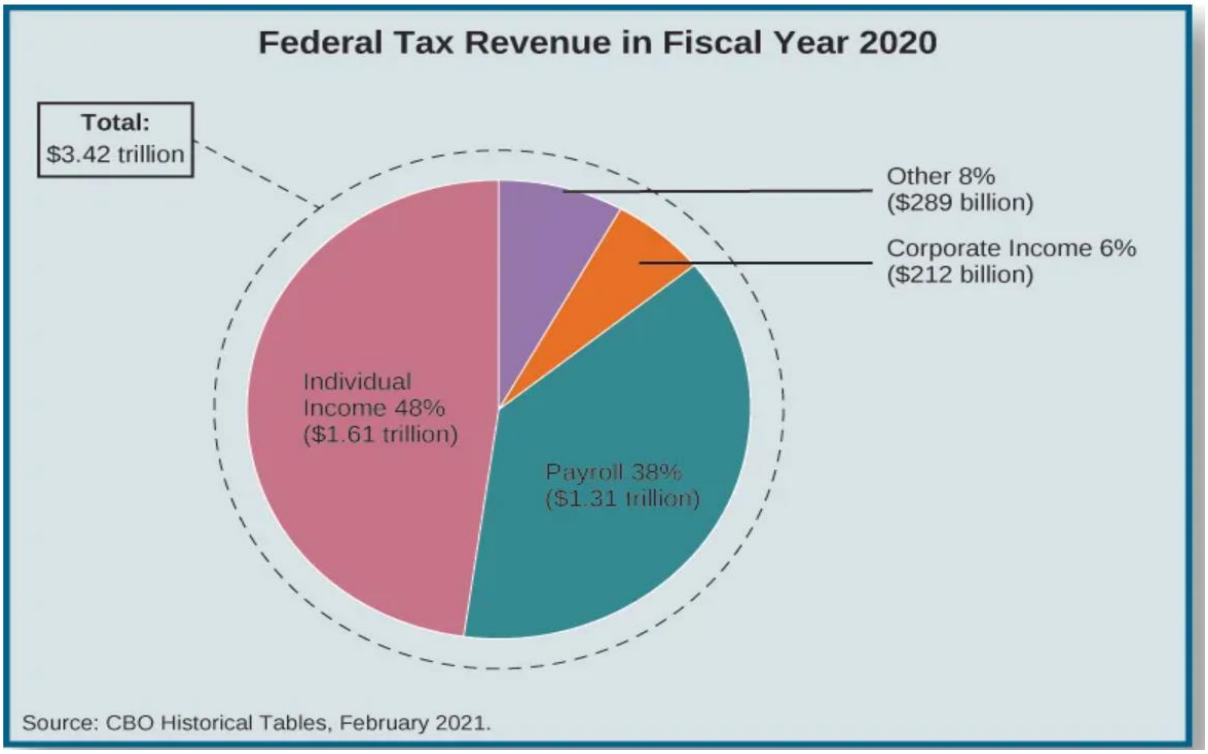


Chart 9.6 Pie Chart Illustrating Federal Tax Revenue for 2020

Credit: Congressional Budget Office: Nonpartisan Analysis for the U.S. Congress, "Revenues in 2020." Revenues received by the federal government in 2020 totaled $3.42 trillion, of which $1.6 trillion was receipts from individual income taxes.

Each of these powers also grants Congress **oversight** of the actions of the president and his or her administration—that is, the right to review and monitor other bodies such as the executive branch.

Even though the *Constitution* outlines specific enumerated powers, most of the actions Congress takes on a day-to-day basis are not actually included in this list. The *Constitution* not only gives Congress the power to make laws but also gives it some general direction as to what those laws should accomplish. The "**necessary and proper clause**" directs Congress "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Laws that regulate banks, establish a minimum wage, and allow for the construction and maintenance of interstate highways are all examples.

Today, the overwhelming portion of Congress's work involves **implied powers** granted by the necessary and proper clause.

Finally, Congress's **inherent powers** are unlike either the enumerated or the implied powers. Inherent powers are not only *not* mentioned in the Constitution, but they do not even have a convenient clause in the Constitution to provide for them. Instead, they are powers Congress has determined it must assume if

the government is going to work at all. These powers are deemed so essential to any functioning government that the Framers saw no need to spell them out. Such powers include the power to control borders of the state, the power to expand the territory of the state, and the power to defend itself from internal revolution or coups. These powers are not granted to the Congress, or to any other branch of the government for that matter, but they exist because the country exists.

In the twentieth century, the power struggle between the Congress and the president really began.

As the country grew larger and more complex the assumption that government needed to assert regulatory power grew. Further, the president's powers expanded as commander-in-chief in the realm of foreign policy.

The twin disasters of the Great Depression in the 1930s and World War II, which lasted until the mid-1940s, provided President Franklin D. Roosevelt with a powerful platform to expand presidential power. His popularity and resultant ability to be elected four times allowed him to greatly overshadow Congress. Congress attempted to restrain the power of the presidency through the Twenty-Second Amendment to the Constitution which limits a president to only two full terms in office.[2] Although this limitation is significant it has not held back the tendency for the presidency to assume increased power.

How is Congress structured or organized?

Not all the business of Congress involves bickering, political infighting, government shutdowns, and Machiavellian maneuvering. Congress does get real work done. Traditionally, it does this work in a very methodical way.

Party Leadership



Image 9.2 Senate Majority Leader Schumer and Speaker Kevin McCarthy of the U.S. House (Credit: senate.gov and house.gov)

The party leadership in Congress controls the actions of Congress. Leaders are elected by the two-party conferences in each chamber–the House Democratic Conference and House Republican Conference.

House conferences meet regularly and separately not only to elect their leaders but also to discuss important issues and strategies for moving policy forward.

The most recent election for speaker was held January 3-7, 2023, at the start of the 118th Congress, two months after the 2022 House elections in which the Republicans won a slim four seat majority. Due to a division within the House Republican Conference no one received a majority of the votes on the first ballot, necessitating an additional round of balloting for the first time since 1923. After offering multiple concessions to the group of Republicans opposing

him, Kevin McCarthy was elected Speaker after 15 rounds of voting.[3] McCarthy then became the **Speaker of the House** (the only House officer currently mentioned in the *Constitution*).

The *Constitution* does not require the Speaker to be a member of the House.

The Speaker is the presiding officer, the administrative head of the House, the partisan leader of the majority party in the House, and an elected representative of a single congressional district. Since 1947, the holder of this position has been second in line (after the vice president) to succeed the president in an emergency. The Speaker serves until his or her party loses a majority of seats or until he or she is voted out of the position or chooses to step down.

The Speaker wields significant power, such as the ability to assign bills to committees and decide when a bill will be presented to the floor for a vote. The Speaker also rules on House procedures, often delegating authority for certain duties to other members.

He/she appoints members and chairs to committees, creates **select committees** to fulfill a specific purpose and then disband, and can even select a member to be speaker *pro tempore*, who acts in the Speaker's absence. Finally, when the Senate joins the House in a joint session the Speaker presides over these sessions because they are usually held in the House of Representatives.

Speaker McCarthy conceded some of the power of the speaker to obtain his leadership position. For example, he named to the Rules Committee, which controls the debate on the floor of the House, members who are not particularly loyal to him.

Overall, many analysts believe that the change in legislative procedures to which McCarthy agreed made him a less powerful Speaker than previous speakers.[4]

Below the Speaker, the majority and minority conferences each elect two leadership positions arranged in hierarchical order. At the top of the hierarchy are the floor leaders of each party. These are generally referred to as the majority and minority leaders.

The **minority leader** has a visible if not always a powerful position. As the official leader of the opposition, he or she technically holds the rank closest to that of the Speaker, makes strategy decisions, and attempts to keep order among the minority party's members.

The **majority leader** also has considerable power and historically is in the best position to assume the speakership when the current Speaker steps down.

Below these leaders are the two party's respective **whips**. A whip's job, as the name suggests, is to whip up votes and otherwise enforce party discipline. Whips make the rounds in Congress, telling members the position of the leadership and the collective voting strategy, and sometimes wave various carrots and sticks in front of recalcitrant members to bring them in line. The remainder of the leadership positions includes a handful of chairs and assistantships.

U. S. Senate Leadership

The Senate also has majority and minority leaders and whips, each with duties very similar to their counterparts in the House. However, the Senate does not have a Speaker. The duties and powers held by the Speaker in the House fall to the **majority leader** in the Senate.

The Senate's president is the elected vice president of the United States, although he/she may vote only in case of a tie. Apart from this and very few other exceptions, the president of the Senate does not actually operate in the Senate. Instead, the *Constitution* allows for the Senate to choose a **president *pro tempore***—usually the most senior senator of the majority party—to preside over the Senate. Despite the title, the job is largely powerless.

The real power in the Senate is in the hands of the majority leader and the minority leader. The majority leader is the chief spokesperson for the majority party, but unlike in the House he/she does not run the floor alone.

Because of the traditions of unlimited debate and the **filibuster**, the majority and minority leaders often occupy the floor together to keep things moving along. At times, their interactions are intense and partisan, but for the Senate to get things done, they must cooperate to get the sixty votes needed to run this super-majority legislative institution.

The Committee System

With 535 members in Congress and a seemingly infinite number of domestic, international, economic, agricultural, regulatory, criminal, and military issues to deal with at any given moment, the two chambers must divide their work based on specialization.

Congress does this through the committee system. Specialized committees (or subcommittees) in both the House and the Senate are where bills originate and most of the work that sets the congressional agenda takes place. Committees are roughly approximate to a bureaucratic department in the executive branch. There are well over two hundred committees, subcommittees, select committees, and joint committees in the Congress.

The core committees are called **standing committees,** set up by subject area. There are twenty standing committees in the House and sixteen in the Senate.

Standing & Permanent Select Committees	Standing & Permanent Select Committees
House of Representatives	**Senate**
Agriculture	Agriculture, Nutrition, and Forestry
Appropriations	Appropriations
Armed Services	Armed Services
Budget	Budget
Education and Workforce	Health, Education, Labor and Pensions
Energy and Commerce	Commerce, Science, and Transportation
Ethics	Ethics (select)
Natural Resources	Energy and Natural Resources
Financial Services	Finance
Foreign Affairs	Foreign Relations
Homeland Security	Homeland Security and Governmental Affairs
Intelligence (select)	Intelligence (select)
Judiciary	Judiciary
Rules	Rules and Administration
Small Business	Small Business and Entrepreneurship
Veterans' Affairs	Veterans' Affairs
Transportation and Infrastructure	Environment and Public Works
Ways and Means	Banking, Housing, and Urban Affairs
Oversight and Government Reform	Indian Affairs (select)
Science, Space, and Technology	
Small Business	

Chart 9.7 Lists of House and Senate Committees

Members of both parties compete for positions on various committees. They are typically filled by majority and minority members to roughly approximate the ratio of majority to minority members in the respective chambers, although committees are chaired by the majority party. Committees and their chairs have a lot of power in the legislative process, including the ability to stop a bill from going to the floor (the full chamber) for a vote. Indeed, most bills die in committee. But when a committee is eager to develop legislation, it takes several methodical steps. It will reach out to relevant agencies for comment on resolutions to the problem at hand and even hold hearings with experts to collect information. In the Senate, committee hearings are also held to confirm presidential appointments. Next the committee meets to discuss amendments and legislative language.

Finally, the committee will send the bill to the full chamber with a committee report. The report provides the majority opinion supporting the bill, a minority view to the contrary, and estimates of the proposed law's cost and impact.

Four types of committees exist in the House and the Senate. The first is the **standing**, or permanent, committee. This committee is the first call for proposed bills, fewer than 10 percent of which are reported out of committee to the floor. The second type is the **joint committee**. Joint committee members are appointed from both the House and Senate to explore key issues such as the economy and taxation. However, joint committees have no bill-referral authority whatsoever—they are informational only. A **conference committee** reconciles different bills passed in both the House and Senate. The conference committees are appointed on an ad hoc (temporary) basis when a bill passes the House and Senate in different forms. **Ad hoc**, **special**, or **select** committees are temporary committees set up to address specific topics. These types of committees often conduct special investigations.

Members of Congress bring to their roles different backgrounds, interests, and levels of expertise, and try to match these to committee positions. For example, House members from states with large agricultural interests will seek positions on the Agriculture Committee. Senate members with a background in banking or finance may seek positions on the Senate Finance Committee. Members can request these positions from their chambers' respective leadership, and the leadership also selects the committee chairs.

Committee chairs are very powerful. They control the committee's budget and agenda, choosing when the committee will meet, when it will hold hearings, and whether it will consider a bill at all. A chair can convene a meeting when members of the minority are absent or adjourn a meeting when things are not progressing as the majority leadership wishes. Chairs can hear a bill even when the rest of the committee objects.

They do not hold these powerful positions indefinitely, however. In the House, rules prevent committee chairs from serving more than six consecutive years and from serving as the chair of a subcommittee at the same time. A senator may serve only six years as chair of a committee but may, in some instances, also serve as a chair or ranking member of another committee.

Because the Senate is much smaller than the House, senators hold more committee assignments than House members. There are sixteen standing committees in the Senate, and each position must be filled. In contrast, in the House, with 435 members and only twenty standing committees, committee members have time to pursue a more in-depth review of a policy. House members historically defer to the decisions of committees, while senators tend to view committee decisions as recommendations, often seeking additional discussion that could lead to changes.



Take a look at the **scores of committees** in the **House** and Senate. The late House Speaker Tip O'Neill once quipped that if you didn't know a new House member's name, you could just call him Mr. Chairperson.

QUESTIONS TO CONSIDER

1. Briefly explain the benefits of a bicameral system.

   Show Answer
   Two chambers in the legislature may make the process slower, but it may also make it more deliberative, careful, and cautious about the people's best interests.

2. How does a conference committee differ from a joint committee?

   Show Answer
   conference reconciles bills passed by both houses to make them match; joint committees have members of both chambers to consider bills, which may streamline the process a bit

3. What is the difference between implied and enumerated powers of Congress?

   Show Answer
   enumerated is specifically written, and implied is hinted at by the language of the Constitution but not specific allowing for a bit of elasticity in the power that Congress may use

TERMS TO REMEMBER

apportionment–the process by which seats in the House of Representatives are distributed among the fifty states

bicameralism–the political process that results from dividing a legislature into two separate assemblies

bill–proposed legislation under consideration by a legislature

conference committee–a special type of joint committee that reconciles different bills passed in the House and Senate so a single bill results

constituency–the body of voters, or constituents, represented by a particular politician

enumerated powers–the powers given explicitly to the federal government by the *Constitution* to regulate interstate and foreign commerce, raise and support armies, declare war, coin money, and conduct foreign affairs

implied powers–the powers not specifically detailed in the U.S. *Constitution* but inferred as "necessary and proper" to achieve the objectives of the national government

inherent powers–the powers neither enumerated nor implied but assumed to exist as a direct result of the country's existence

joint committee–a legislative committee consisting of members from both chambers that investigates certain topics but lacks bill referral authority

majority leader–in the House, the majority leader serves under the Speaker of the House, in the Senate, the majority leader is the functional leader and chief spokesperson for the majority party

minority leader–the party member who directs the activities of the minority party on the floor of either the House or the Senate

oversight–the right to review and monitor other bodies such as the executive branch

president *pro tempore*–the senator who acts in the absence of the actual president of the Senate, who is also the vice president of the United States; the president *pro tempore* is usually the most senior senator of the majority party

select committee–a small legislative committee created to fulfill a specific purpose and then disbanded; also called an ad hoc, or special, committee

Speaker of the House–the presiding officer of the House of Representatives and the leader of the majority party; the Speaker is second in the presidential line of succession, after the vice president

standing committee–a permanent legislative committee that meets regularly set up by subject area

whip–in the House and in the Senate, a high leadership position whose primary duty is to enforce voting discipline in the chambers and conferences

1. There are six non-voting delegations representing American Samoa, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. While these delegates are not able to vote on legislation, they may introduce it and are able to vote in congressional committees and on procedural matters.
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3. Debusmann, Bernd and Matt Murphy (7 January 2023) "Kevin McCarthy elected US House Speaker after 15 round of voting;" BBC News.
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9.2 Congress: What does legislative procedure look like?



Image 9.3 Congressional Hearing

Congressional hearing where service chiefs testify on risks of sequestration. (Credit: Amaani Lyle, American Forces Press Service / Published November 07, 2013; http://www.af.mil/News/Article-Display/Article/467469/service-chiefs-testify-on-risks-of-sequestration/)

Learning Objectives
• Explain the steps in the classic bill-becomes-law diagram. • Describe the modern legislative processes that alter the classic process in some way. • Explain the three theories of representation that members of Congress consider when voting on issues.

Chart 9.8 Learning Objectives on Legislative Process

A dry description of the function of congressional leadership and the many committees and subcommittees in Congress may suggest that the drafting and amending of legislation is a finely tuned process refined over time.

However, committees are more likely to kill legislation than to pass it. The last few decades have seen a dramatic transformation in the way Congress does business. Creative interpretations of rules and statues have turned small loopholes into the large gateways through which much congressional work now gets done.

The Classic Legislative Process

The traditional process by which a bill becomes a law is called the classic legislative process. First, legislation must be drafted, or written language developed to accomplish the intent of a proposed law.

Theoretically, anyone can do this. Successful legislation is often drafted by entities outside of Congress, such as think tank or advocacy groups, or the president. However, Congress is not obligated to read or introduce this draft of legislation, and only when a draft of legislation is officially sponsored by a member of Congress (**bill introduction**) can it hope to become law. Even the president must rely on legislators to introduce his or her legislative agenda.

Technically, bills that raise revenue, like tax bills, must begin in the House. This exception is encoded within the Constitution in Article I, Section 7, which states, "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills." Yet, despite the seemingly clear language of the Constitution, Congress has found ways to bypass this rule.

Once legislation has been proposed the majority leadership consults with the parliamentarian about which committee to send it to. Each chamber has a parliamentarian (adviser, typically a trained lawyer), an expert on the complex chamber rules. While Congress typically follows their advice it is not obligated, and the parliamentarian has no power to enforce their rules interpretation. Once a committee has been selected, the committee chair is empowered to move the bill through the committee process as they see fit. The chair can refer the bill to one of the committee's subcommittees.

Whether at the full committee level or in one of the subcommittees, the next step is to hold a **legislative hearing** on the bill. If the chair declines a hearing, this is amounts to killing the bill in committee. The hearing provides an opportunity for the committee to hear and evaluate expert opinions on the bill. Experts may include officials from the agency that would be responsible for executing the bill, the bill's sponsors from Congress, and industry lobbyists, interest groups, and academic or business experts. Typically, the committee will also accept written statements from the public concerning the bill in question. For many bills, the hearing process can be very routine and straightforward; however, for some bills the hearing process can be quite contentious.



Check out this video which shows Sen. Ted Cruz in a vigorous debate about climate change with Sierra Club President, Aaron Mair. This testimony occurred on October 7, 2015 and can be found at https://www.cruz.senate.gov/?p=press_release&id=2469. See the video **Senate hearing on climate change**.

Next the bill enters the **markup stage**. This is an amending and voting process. In the end, with or without amendments, the committee or subcommittee will vote. If the committee decides not to advance the bill at that time it is tabled. **Tabling a bill** typically means the bill is dead, but with an option to bring it back up for a vote again. If the committee decides to advance the bill it is printed and goes to the chamber, either the House or the Senate. For example, assume that a bill goes first to the House (although the reverse could be true, and, in fact, bills can move simultaneously through both chambers). Before it reaches the House floor, it must first go through the House Committee on Rules.

This committee establishes the rules of debate, such as time limits and limits on the number and type of amendments. After these rules have been established, the bill moves through the floor, where it is debated, and amendments can be added.

Once the limits of debate and amendments have been reached, the House holds a vote. If a simple majority, 50 percent plus 1, votes to advance the bill, it moves out of the House and into the Senate.

This flexibility for speaking in the Senate gave rise to a unique tactic, the **filibuster**. The word "filibuster" comes from the Dutch word *vrijbuiter*, which means pirate. The name is appropriate, since a senator who launches a filibuster virtually hijacks the floor of the chamber by speaking for long periods of time, preventing the Senate from closing debate and acting on a bill. After the Civil War, the use of the filibuster became much more common. Eventually, in 1917, the Senate passed Rule 22, which allowed the chamber to hold a **cloture** vote to end debate. To invoke cloture, the Senate required a two-thirds majority.

This rule change, however, did not stop the use of filibuster by those seeking to preserve racial segregation and prevent the expansion of civil rights for African Americans. Groups of dedicated southern Democrat senators used the filibuster to prevent the passage of anti-lynching legislation on multiple occasions during the first half of the twentieth century. Later, when faced with the 1964 Civil Rights Act, southern Democrat senators staged a fifty-seven-day filibuster to try and kill it. The momentum of the nation was against them. The bill passed over their obstructionism because of bipartisan support of both Republicans and Democrats.

In 1975, the Senate further weakened the **filibuster** by reducing the number needed for cloture from two-thirds to three-fifths, or sixty votes, where it remains today (except for Presidential Cabinet and sub-cabinet appointees and judicial nominations for which only fifty-one votes are needed to invoke cloture). Moreover, filibusters are not permitted on the annual **budget reconciliation act**. It was the Budget Reconciliation Act of 2010 which was used to achieve passage of healthcare legislation known as "Obamacare" when supporters of the legislation could not invoke cloture requiring 60 votes.

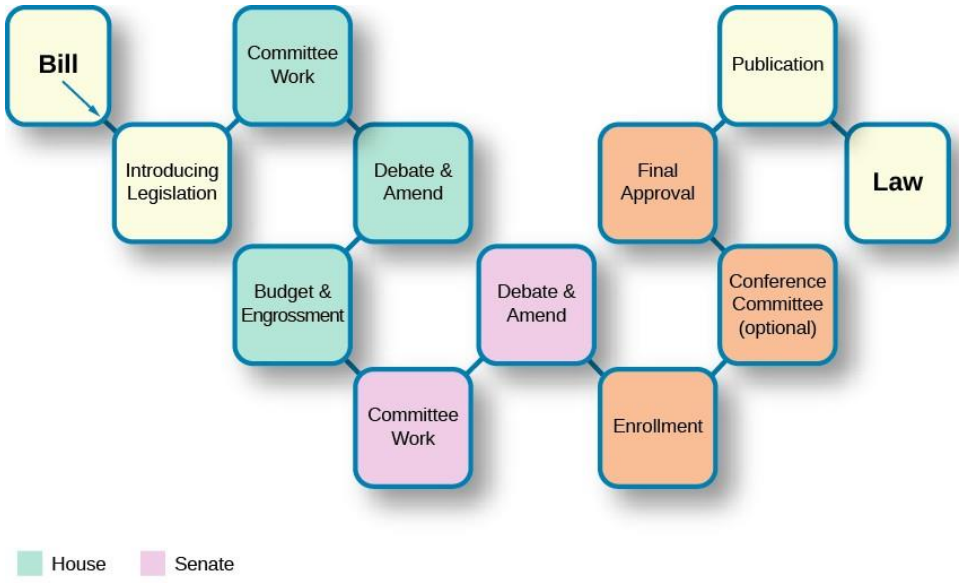


Chart 9.9 How a Bill Becomes a Law

Because both the House and the Senate can and often do amend bills, the bills that pass out of each chamber frequently differ. This presents a problem since the Constitution requires that both chambers pass identical bills. One simple solution is for the first chamber to simply accept the bill that ultimately makes it out of the second chamber. Another solution is for the first chamber to further amend the second chamber's bill and send it back to the second chamber. Congress typically takes one of these two options, but about one in every eight bills cannot be resolved in this way. These bills must be sent to a conference committee that negotiates a compromise both chambers can accept without amendment. Only then can the bill progress to the president's desk for signature or veto. If the president does veto the bill, both chambers must gather a two-thirds vote to override the veto and force the president to sign it. If the two-thirds threshold in each chamber cannot be reached, the bill dies.

The legislative process by which a bill becomes law is long and complicated, but it is designed to ensure that in the end all parties are satisfied with the bill's provisions.



For one look at the classic legislative process, visit **YouTube** to view "I'm Just a Bill" from the ABC *Schoolhouse Rock!* series.

Current Legislative Procedure: The Rise of Unconventional Processes

For much of the nation's history, the **classic legislative process** described above was the standard method by which a bill became a law. Over the course of the last three and a half decades, however, changes in rules and procedure have enabled alternate routes. Collectively, these different routes constitute what some political scientists have described as a new and unorthodox legislative process. According to political scientist Barbara Sinclair, the primary trigger for the shift away from the classic legislative route was the budget reforms of the 1970s. The 1974 Budget and Impoundment Control Act gave Congress a mechanism for making large and all-encompassing budget decisions. In the years that followed, the budget process gradually became the vehicle for creating comprehensive policy changes. One large step in this transformation occurred in 1981 when President Ronald Reagan's administration suggested using the budget to push through his economic reforms. This process, for example, was used to pass the Patient Protection and Affordable Care Act (Obamacare) supported by President Barak Obama and tax rate cuts legislation supported by President George W. Bush and President Donald Trump

By attaching the reforms to the budget resolution Congress could force an up or down (yea or nay) vote on the whole package. Such a packaged bill is called an *omnibus bill*.[1] Creating and voting for an **omnibus bill** allows Congress to quickly accomplish policy changes that would have required many votes and political capital over much time. This and successive similar uses of the budget process appealed to many in Congress. During the contentious and ideologically divided 1990s, the budget process became the common problem-solving mechanism in the legislature, thus laying the groundwork for the way legislation works today.

In an era of concern over budget deficits, the use of the omnibus bill legislation has frequently become an annual occurrence to accomplish the passage of the Federal Budget.[2] Rather than passage of thirteen separate appropriation bills through the classic legislative process involving development through committees—these annual budget bills are "bundled" and passed as a single bill.

An important characteristic feature of modern legislating is the greatly expanded power and influence of the party leadership over the control of bills, especially for the large, bundled omnibus bills. One reason for this change was the heightened partisanship that stretches back to the 1980s and is still with us today. With such high political stakes, the party leadership is reluctant to simply allow the committees to work things out on their own. Moreover, the problem of overlapping committee jurisdictions for some categories of complex legislation, such as healthcare has led to increased use of omnibus legislation controlled by the leadership of either the House or the Senate.[3]

In the House, the leadership uses special rules to guide bills through the legislative process and toward a particular outcome. Uncommon just a few decades ago, these now widely used rules restrict debate and options, and are designed to focus the attention of members to party priorities and agendas.

The practice of **multiple referrals**, with which entire bills or portions of those bills are referred to more than one committee, greatly weakened the different specialization monopolies committees held primarily in the House but also to an extent in the Senate. With less control over the bills, committees naturally reached out to the leadership for assistance. As a testament to its increasing control, the leadership may sometimes avoid committees altogether, preferring to work things out on the floor. And even when bills move through the committees, the leadership often seeks to adjust the legislation before it reaches the floor.

The Two-Track Procedure and the Virtual Filibuster

Another feature of the modern legislative process, exclusively in the Senate, is the application of the modern filibuster. Unlike the traditional filibuster, in which a senator took the floor and held it for as long as possible, the modern filibuster rule adopted in 1970 is a perversion of the cloture rules adopted to control the filibuster. The new procedure allows senators to request cloture (file a cloture motion) before any bill can get a vote or is even debated on the floor, rather than requiring a cloture motion only to stop a Senator or group of senators from monopolizing the time of the Senate and stopping all other legislation from being considered.

Under the **"two-track" provision** of the rule, once a cloture motion is filed concerning some bill, the majority leader can adjust the Senate agenda to allow the "filibustered" bill to remain pending, while other legislative matters are handled. The notable side effect of this change was that by no longer bringing Senate business to a complete halt, or requiring senators to actually talk continuously on the Senate floor, this new form of filibuster (known as the **virtual filibuster** or **silent filibuster**) became politically easer on important pieces of legislation and this their numbers increased rapidly.

The virtual filibuster and the two-track system have had the effect of increasing the number of votes needed for an important bill to advance from a simple majority of fifty-one to a super majority of sixty. The effect is to give the Senate minority great power to obstruct if it is inclined to do so, such as when partisanship is high as it has been frequently.

As a result, the contemporary Senate has morphed into a 60-vote requirement institution rather than a majority rule body with regards to important legislation.

Guiding Principles for Representatives	
Approach	**Description of Approach**
Delegate Approach	mirror opinion of your district you are the voter's agent
Trustee Approach	use your best judgement follow your conscience exercise trust
Party Delegate Approach	implement your party's views assume votes were for your party

Chart 9.10 Various Approaches to the Job of Legislator

Representation Theory: How should a member of Congress vote?

Congress represents the people of the United States. Members serve their constituents, the people who live in the district from which they are elected. Ultimately, members of Congress must please their constituents if they want to stay in office and be re-elected. There are three theories of representation that our elected representatives might consider as they determine how they should undertake their responsibilities. These three theories are: 1) delegate representation, 2) trustee representation, and 3) party delegate representation.[2]

Under the **delegate theory of representation**, the elected member of Congress views themselves as an agent of their constituents and believes they should precisely mirror public opinion in the district regardless of personal viewpoint. According to this theory, a representative is to always follow the majority viewpoint of those who elected them and vote accordingly.

At the 1787 Constitutional Convention, there was some discussion of the benefits of giving instructions to elected representatives.

Members of Congress who follow the **trustee theory of representation** have an entirely different view of their role. They interpret that responsibility as an exercise of trust that the constituents have placed in them. They are to use their best judgement and follow their own conscience on the correct policy when they are asked to vote. Under trustee theory, the elected representative is not obligated to follow the views of the district since those who elected them have given them their trust to make the best judgments, subject to eventual voter approval or disapproval at the ballot box.

Under the **party delegate theory of representation**, a member of Congress would view their role as implementing the political views of the party when they vote. As a party delegate, a representative should vote according to the ideological viewpoints of the party, notwithstanding what the exact public opinion is within the district or what personal conscience might suggest. Party delegates often justify their

position as being responsive to the majority of the voters who choose their party and its views; and, generally, voters should know what to expect in terms of policy from the party.

Very few representatives follow a single view. For example, a pure delegate perspective is not really possible since voters do not have clear views on all issues. On some issues and corresponding votes, a member of Congress will need to use different guiding principles. However, on issues where there is strongly held local view consistency, it is more likely and probably very appropriate that a member of Congress will follow the delegate approach. That is, they will pay attention to the issues that constituents really care about.

Why follow the trustee approach? Since there are many issues on which constituents have unclear positions, it is logical to assume that voters have put their trust in the representative to exercise best judgement. Moreover, even if constituents have clear views, it would seem to be very appropriate to follow conscience and show leadership on issues if the representative is willing to be subject to voter reaction at the next election.

Consider the Original

British politician Edmund Burke, in his 1774 *Speech to the Electors at Bristol* articulated the principles of trustee representation against the theory that elected officials should be delegates who exactly mirror the opinions of the electorate.

"It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion, high respect [...b]ut his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living [...] They are a trust from Providence [...] Your representative owes you, not his industry only, but his judgment; and he betrays you, instead of serving you, if he sacrifices it to your opinion."

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Chart 9.11 Excerpt from Edmund Burke

As an elected representative, who is also a member of a political party, it might be common and expected that the basic principles and ideology of the party will guide voting, thus acting as a party delegate. Since representatives are not experts on most issues, following party leaders who advance the party position is appropriate. By accepting the nomination of the party, representatives indicate a strong level of commitment to the party platform and viewpoint. Voters know what to expect from a Democrat or a

Republican; and, therefore, the elected representative should generally have little trouble following the party's beliefs.

Overall, a blend of the three theories is a very common practice of representatives who have received the consent of the majority and are trying to respond to that majority. The blended approach places an emphasis on representatives deliberating and not merely following[3] public opinion polls. It is also practical since not all voters are issue oriented.

Representing Constituents

Congress members' most important function as lawmakers is writing, supporting, and passing bills. And as representatives of their constituents, they are charged with addressing those constituents' interests.

Historically, this job included what some have affectionately called "bringing home the bacon" but what many (usually those with competing interests) call **pork-barrel politics**. In more formal language, *allocation*, or the influencing of the national budget to help the district or state, can mean securing funds for a specific district's project like an airport, or getting tax breaks for certain types of agriculture or manufacturing.

In ranching, an **earmark** is a small cut on the ear of a cow or other animal to denote ownership. In Congress, an earmark is a mark in a bill that directs some of the bill's funds to be spent on specific projects or for specific tax exemptions. Many a road, hospital, and airport can trace its origins back to a few skillfully drafted earmarks.

This type of representation by a member of Congress, of course, is closely aligned with the delegate theory of representation discussed above.

Relatively few people outside Congress had ever heard of the term before the 2008 presidential election, when Republican nominee Senator John McCain touted his career-long refusal to use earmarks as a testament to his commitment to reform spending habits in Washington.[4] McCain's criticism of the earmark as a form of corruption cast a shadow over a common legislative practice. As the country sank into recession and Congress tried to use spending bills to stimulate the economy, the public grew more acutely aware of earmarking.

Congresspersons became eager to distance themselves from the practice. But with deadlocks and stalemates becoming more common, some have begun asking for their return. They argue that Congress works because representatives can satisfy their responsibilities to their constituents by making deals. The earmarks are those deals. By taking them away Congress has hampered its own ability to "bring home the bacon."

QUESTIONS TO CONSIDER

1. What is an omnibus bill or omnibus legislation?

   Show Answer
   a bill that contains multiple different policy objectives; a packaged bill

2. What theory of representation should a member of Congress follow when voting on issues?

   Show Answer
   open to debate, but a blend is common practice

TERMS TO REMEMBER

bill introduction—official sponsorship by a member of Congress of draft legislation which begins the legislative consideration of a proposed bill

budget reconciliation—legislative process that expedites the passage of certain legislation in the United States Senate related to spending, revenue and the federal debt limit; reconciliation provides a process to prevent the use of the filibuster and thereby allows the passage of such bills with simple majority support in the Senate

classic legislative process—traditional or conventional process by which a legislative bill flows through Congress, which generally involves a significant role for legislative standing committees

cloture–a parliamentary process to end a debate in the Senate, as a measure against the filibuster; invoked when three-fifths of senators vote for the motion

constituents–people who geographically live and vote in a House Congressional district or, in the case of the Senate, in the state from which a member of Congress is elected

delegate theory of representation–under this theory a legislator acts as an agent of those who elected the legislator and has primary responsibility to represent the majority view, regardless of their own views

filibuster–a parliamentary maneuver used in the Senate to extend debate on a piece of legislation if possible, or to stop consideration of a bill, typically with the intended purpose of obstructing or killing it

legislative hearing—conducted by either a standing committee or one of its subcommittees in which witnesses are called and information gathered to rewrite, amend, and edit a bill

mark-up stage--the amending and voting process in a congressional committee or subcommittee

multiple referrals—practice with which entire bills or portions of those bills are referred to more than one committee, greatly weakening the power of specialized committees and their chairs

omnibus bill–a packaged bill, usually quite large covering several topics which often does not go through the classic or conventional legislative process

party delegate theory of representation–under this theory a legislator is expected to vote according to the principles and viewpoints of the political party that nominated the legislator

pork barrel politics—"bringing home the bacon" or bringing tax dollars/contracts/etc. to the home district of a member of Congress

tabling a bill—legislative procedural motion taken by a legislative body as a whole or in committee when it decides not to further consider a bill; typically means the bill is dead but with an option to bring it back up for a vote again

trustee theory of representation–under this theory a legislator exercises a trust and uses best judgment and conscience in voting and is not obligated to follow the views of the constituents

two-track provision—U.S. Senate rule, also know as double-tracking, which sets aside consideration of a bill against which one or more senators are filibustering or threatening a filibuster so that other legislation can be considered and voted upon

virtual filibuster/silent filibuster—allows senators to threaten filibuster which results in the bill being set aside and effectively killed unless the bill has the support of 60 votes; sometimes known as a "no-talk" filibuster since senators are no longer required to speak continuously on the floor to obstruct passage of legislation

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1. Glen S. Krutz. 2001. *Hitching a Ride: Omnibus Legislating in the U.S. Congress*. Columbus, OH: Ohio State University Press.
2. Ibid.
3. Ibid.
4. "Statement by John McCain on Banning Earmarks," 13 March 2008, http://www.presidency.ucsb.edu/ws/?pid=90739 (May 15, 2016); "Press Release - John McCain's Economic Plan," 15 April 2008, http://www.presidency.ucsb.edu/ws/?pid=94082 (May 15, 2016).

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10.1 The President: Upholding, Implementing, and Enforcing the Law



Image 10.1 Photo of President Biden and Senator Sanders Meeting with Young Workers at the White House

Learning Objectives
• Explain the reasoning for the design of the Presidency and its relationship to the legislature. • Analyze the way presidents have expanded presidential power. • Describe presidential authority to fill positions in the executive branch as well as limitations. • Identify the power presidents have to effect policy change without congressional approval. • Explain how presidents persuade others in the political system to support their initiatives. • Explain why presidents tend to lead more in foreign policy than in domestic policy. • Describe the concept of shared power in the U.S. foreign policy-making process and key actors.

Chart 10.1 Learning Objectives on the Role of the President

The presidency is the most visible position in the U.S. government. During the Constitutional Convention of 1787, delegates accepted the need to empower a relatively strong and vigorous chief executive–bound by checks from the other branches as well as the *Constitution*. Presidents must work with the other branches to function effectively as they uphold, implement, and enforce the laws.

The President: How does the president function as the chief executive?

Since its invention at the Constitutional Convention of 1787, the presidential office has gradually become more powerful, giving the president more leadership options at home and abroad. The chief executive's role has evolved as presidents have confronted challenges in domestic and foreign policy in war and peace, and with the overall rise of the federal government's power.

Deliberations of the 1787 Constitutional Convention

The *Articles of Confederation* did not provide for an executive branch.[1] The idea of a presidency was proposed early in the Constitutional Convention in Philadelphia, as part of James Madison's proposal for a federal government, which became known as the Virginia Plan.

In his initial draft of the Virginia Plan, Madison offered a rather sketchy outline of the executive branch, leaving unspecified whether what he termed the "national executive" would be an individual or a set of people.

He proposed that Congress select the executive, whose powers and authority and even service term length were left largely undefined. He also proposed a "council of revision" consisting of the national executive and members of the national judiciary, which would review laws passed by the legislature and have the power of veto.[2] Madison admitted that thinking about the executive branch was not fully developed and subject to change by the convention.[3]

In fact, the Madison Virginia Plan was modified through early deliberations of the convention, which agreed that the executive would be a single person, elected for a single term of seven years by the legislature, empowered to veto legislation, and subject to impeachment and removal by the legislature.

The dependence and independence of the executive from the legislature would be a subject of debate for most of the 1787 Convention.[4]

William Paterson proposed an alternate model, typically referred to as the small-state or New Jersey Plan. This plan called for merely amending the *Articles of Confederation* to create an executive branch comprised of a committee elected by a unicameral Congress for a single term.

This executive committee would be particularly weak because it could be removed from power at any point if a majority of state governors desired.



Image 10.2 Portraits of Alexander Hamilton and George Washington (Credit: Library of Congress)

Alternatively, Alexander Hamilton's suggestion presented, in a five-hour speech, that an executive position with very broad powers should be entrusted to a single individual who would serve for life–an elected monarch, this suggestion was ignored and therefore rejected by the convention.

Consider the Original

Alexander Hamilton, Federalist No. 70 Excerpt

"Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws, to the protection of property [...] to justice; [and] to the security of liberty [...]."

"A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice a bad government [...]."

"In the conduct of war, [...] the energy of the Executive is the bulwark of the national security [...]."

Chart 10.2 Excerpt from Federalist Paper No. 70

Debate and discussion continued throughout the summer. Delegates eventually settled upon a single executive, but they remained at a loss for how to select that person. Pennsylvania's James Wilson, who had triumphed on the issue of a single executive, at first proposed the direct election of the president. When delegates rejected that idea, he responded with the suggestion that electors, chosen throughout the nation, should select the executive. Over time, Wilson's idea gained ground with delegates who were uneasy at the idea of an election by the legislature, which presented the opportunity for intrigue and corruption. The idea of shorter term of service combined with eligibility for reelection also became more attractive to delegates.

The framers of the Constitution struggled to find the proper balance between giving the president the power to perform the job on one had and opening the way for a president to abuse power and act like a monarch on the other.

Eventually the idea of using electors selected directly or indirectly by the people emerged as the way to select a president, rather than having the selection made by a legislative body. Writing Federalist No. 68, Hamilton praised the decision of the convention to not make selection of the president dependent on any "preestablished body… who might be tampered with […]."[5]

Although not mentioned in the *Constitution*, we have come to call these **electors**, the **Electoral College**, although they never gather together in one place to vote. In fact, the Constitution's framers intentionally did not want them to gather together and constitute a single body.[6] While this process of electors casting "electoral votes" is discussed more fully in the chapter on participation and elections, today, the electoral system consists of 538 people called electors, who formally cast votes for the election of the president and vice president on a state-by-state basis. The number of electors, granted to each state by the *Constitution*, equals the total number of representatives and senators that state has in the U.S. Congress or, in the case of Washington, DC, as many electors as it would have if it were a state. The number of representatives; and, therefore electoral votes, may fluctuate based on state population, which

is determined every ten years by the U.S. Census. Despite provisions for the election of a vice president (to serve in case of the president's death, resignation, or removal through impeachment), and apart from the suggestion that the vice president should be responsible for presiding over the Senate, the framers left the vice president's role undeveloped. As a result, the influence of the vice presidency has varied dramatically depending on the role the vice president is given by the president.

The delegates also outlined who was eligible for election and how Congress might remove the president. Article II of the *Constitution* delineates the requirements—the chief executive must be at least thirty-five years old and a "natural born" citizen of the United States (or a citizen at the time of the Constitution's adoption) who has been an inhabitant of the United States for at least fourteen years.[3] While Article II also states that the term of office is four years and does not expressly limit the number of times a person might be elected president, after Franklin D. Roosevelt was elected four times (from 1932 to 1944), the new Twenty-Second Amendment limited the presidency to two four-year terms.

Impeachment of the President

An important means of ensuring that no president could become tyrannical and abuse their power was built into the *Constitution* a clear process for removing the chief executive—**impeachment**. Impeachment is the act of charging a government official with serious wrongdoing; the *Constitution* calls this wrongdoing high crimes and misdemeanors.

The method the framers designed required two steps and both chambers of the Congress. First, the House of Representatives could impeach the president by a simple majority vote. In the second step, the Senate could remove him or her from office by a two-thirds majority, with the chief justice of the Supreme Court presiding over the trial. Upon conviction and removal of the president, if that occurred, the vice president would become president.

Four presidents have faced impeachment proceedings in the House; none has been both impeached by the House and removed by the Senate. In the wake of the Civil War, President Andrew Johnson faced congressional contempt for decisions made during Reconstruction. President Richard Nixon faced a likely impeachment in the House for his cover-up of key information relating to the 1972 break-in at the Democratic Party's campaign headquarters at the Watergate hotel and apartment complex. Nixon may have also been "convicted" and removed by the Senate, since there was strong bipartisan consensus for his impeachment and removal. Instead, he resigned before the House and Senate could exercise their constitutional prerogatives.

In the 1990s President Bill Clinton, was charged with perjury and obstruction of justice for false testimony as a defendant in a sexual harassment lawsuit. Clinton was impeached for lying under oath about an extramarital affair and sexual harassment of a White House intern. The most recent impeachments were of President Donald Trump, who was impeached twice by the House, but not convicted by the Senate. The second impeachment charge of incitement of insurrection related to a protest at the Capitol had some bipartisan support. Impeachment remains a rare event and removal of a president has never occurred. The fact that a president *can* be impeached and removed is a reminder of

the executive role in the broader system of shared powers. However, the fact that legislative impeachment and removal from office can only occur for violations considered "high crimes and misdemeanors" means that the legislature does not simply remove a president for purely political reasons.[7]

Consider the Original



Letter From George Washington to Major General Robert Howe

17 August 1779

"Few men have virtue to withstand the highest bidder."

Washington / painted by T. Hicks N.A. ; engraved by H. Wright Smith.
Summary: Print showing George Washington, full-length portrait, standing, facing slightly left, with Mount Vernon in the left background. (Credit: T. Hicks and H. Wright Smith; Library of Congress)

To Major General Robert Howe; National Archives, Founders.archives.gov/documents/Washington/03-22-02-0139.

Washington / painted by T. Hicks N.A. ; engraved by H. Wright Smith. Summary: Print showing George Washington, full-length portrait, standing, facing slightly left, with Mount Vernon in the left background. Contributor Names: Smith, Henry Wright, 1828-, engraver; Hicks, Thomas, 1823-1890, artist; "Creating the United States," the Library of Congress, Washington, D.C., 2011-2012; http://hdl.loc.gov/loc.pnp/pp.print; Digital Id; pga 03318; //hdl.loc.gov/loc.pnp/pga.03318 pga 03319; //hdl.loc.gov/loc.pnp/pga.03319; Rights Advisory: No known restrictions on publication.

Chart 10.3 Excerpt from A Letter Between Washington and Howe

The President: Formal and Informal Powers

A president's powers can be divided into two categories: direct actions through the **formal** institutional powers of the office (explicitly stated in the Constitution, delegated by Congress, or implied as an extension of the executive powers clause) and **informal** powers (persuasion and negotiation) essential to working with the legislative branch. When a president governs alone through direct action, especially when based upon implied or inherent powers, it may break a policy deadlock or establish new grounds for action, but it may also spark opposition that might have been handled differently through negotiation and discussion.

In 1960, political scientist Richard Neustadt put forward the thesis that presidential power is the power to persuade, a process that takes many forms and is expressed in various ways including behind the scenes discussions and attempts to use presidential popularity to influence public policy decision making.[8]

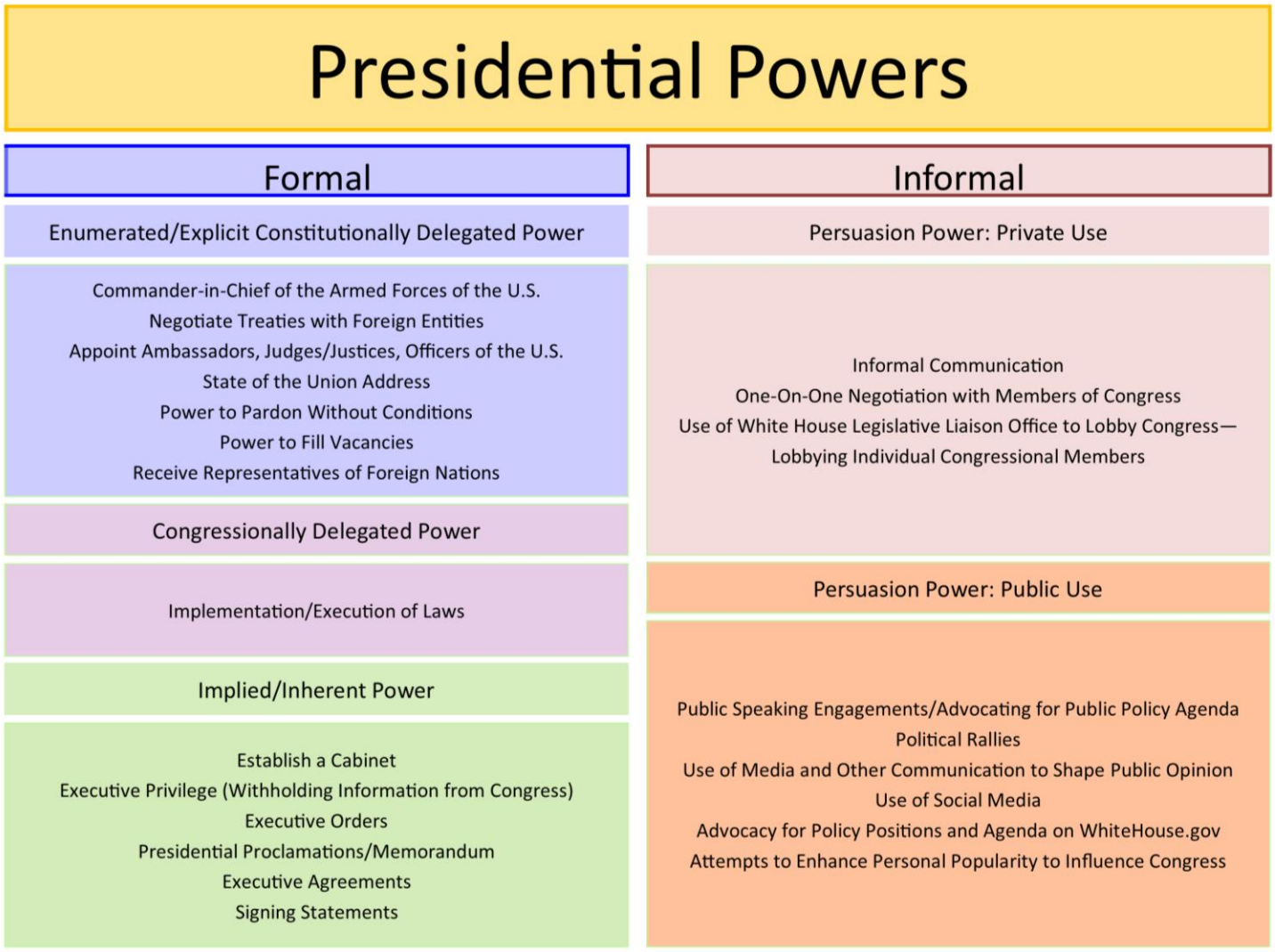


Chart 11.4 Illustration of Formal and Informal Powers of the President

Formal Explicit Power Enumerated in the *Constitution*

The *Constitution* that emerged from the deliberations in Philadelphia treated the powers of the presidency concisely. The president is commander-in-chief of the armed forces of the United States, negotiate treaties with the advice and consent of the Senate, and receive representatives of foreign nations.

Charged to "take care that the laws be faithfully executed," the president was given broad power to pardon those convicted of federal offenses, except for officials removed through the impeachment process.[8]

Consider the Original

Excerpts from *The Constitution of the United States of America, Article II*

Section 1: The executive Power shall be vested in a president…

Section 2: The President shall be Commander in Chief… with the Advice and Consent of the Senate, to make Treaties… appoint Ambassadors… Judges of the supreme Court, and all other Officers of the United States…

Section 3: He… [the president] shall take care that the Laws be faithfully executed… he shall receive ambassadors and other public ministers… He shall from time to time give Congress Information of the State of the Union, and recommend to their Consideration such Measures… [laws] he shall judge necessary…

https://www.archives.gov/founding-docs/constitution-transcript

Chart 10.5 Excerpt for Article II of the US Constitution

The opening sentence of Article II of the Constitution states that the President is head of the Executive branch and has specific constitutional powers sometimes executed completely independently, while other powers require Congressional approval.

The president is commander-in-chief of the armed forces of the United States, negotiates treaties with other nations, appoints ambassadors with the advice and consent of the Senate, and receives representatives of foreign nations. These four **explicit** or **enumerated** powers related to the presidential role in foreign policy and international relations.

The president also nominates federal judges, including Supreme Court justices, as well as other federal officials, and makes appointments to fill military leadership positions. There are many judicial appointments and nominations of other federal officials. In recent decades two-term presidents have nominated well over three hundred federal judges while in office.[10] New presidents nominate close to five hundred top officials to their Executive Office of the President, key agencies (such as the Department of Justice), and regulatory commissions (such as the Federal Reserve Board), whose appointments require Senate majority approval.[11]



Image 10.3 Photo of President Ford Pardoning President Nixon

he is speaking before the House Judiciary Subcommittee on Criminal Justice meeting explaining his reasons. While the pardon was unpopular with many and may have cost Ford the election two years later, his constitutional power to issue it is indisputable. (Credit: modification of work by the Library of Congress.

The president may not be able to appoint key members of his or her administration without Senate confirmation, but he or she can demand the resignation or removal of cabinet officers, high-ranking appointees (such as ambassadors), and members of the presidential staff. During Reconstruction, Congress tried to curtail the

president's removal power with the Tenure of Office Act (1867), which required Senate concurrence to remove presidential nominees who took office upon Senate confirmation. Andrew Johnson's violation of that legislation led to his 1868 impeachment. Subsequent presidents secured legislative modifications before the Supreme Court ruled in 1926 that the Senate had no right to impair the president's removal power.[12] In the case of Senate failure to approve presidential nominations, the president is empowered to issue recess appointments (made while the Senate is in recess) that continue in force until the end of the next session of the Senate (unless the Senate confirms the nominee).

The president also exercises the **power of pardon** without conditions. Once used sparingly—apart from Andrew Johnson's wholesale pardons of former Confederates during the Reconstruction period—the pardon power has become more visible in recent decades.

President Gerald Ford has the unenviable reputation of being the only president to pardon another president (his predecessor Richard Nixon, who resigned after the Watergate scandal). President Jimmy Carter also issued a great number of pardons, including several for draft dodging during the Vietnam War. President Reagan was reluctant to use the pardon, as was President George H. W. Bush. President Clinton pardoned few people for much of his presidency but did make several last-minute controversial pardons. Barack Obama made extensive use of commutations with a focus on reducing punishments for those convicted of certain drug crimes. In fact, Obama's commutations were the most of any President in U.S. history.[13] [14]

The President was given broad power to pardon those convicted of federal offenses, except for official removed through the impeachment process.

Under constitutional provisions, the chief executive presents to Congress information about the **state of the union**; may **veto** legislation (although a two-thirds super-majority in both houses of Congress can override that veto); and makes recommendations for legislation and policy and calls on the department heads to provide reports and offer opinions.

Charged to "take care that the laws be faithfully executed," the president receives considerable power by the authority delegated by the Constitution to implement laws passed by Congress, known as delegated power.[15] While some of this authority may have been requested by the President as part of a presidential legislative agenda, obviously **delegated power** has been accumulated over many years because Congress has passed laws giving the President power.

From George Washington on, presidents began acting to expand upon both formal, constitutionally explicit/specified powers or to expand the interpretation of congressionally **delegated** powers. For example, Washington established a **cabinet** or group of advisers to help him administer his duties. This cabinet consisted of the most senior appointed officers of the executive branch, despite the fact that the *Constitution* does not mention the concept of a cabinet. In the *Constitution*, the President is authorized to "require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices."[16] The *Constitution* does not provide for an **explicit** forum where the principal officers' opinions can be obtained less formally–without writing–

such as a formal Cabinet; but, Washington believed that the cited constitutional provision **implied** a grant of authority to create such an entity.[17]

Likewise, as the United States sought to take a stand in the evolving European conflicts, in 1793 President Washington issued a neutrality proclamation extending his rights as diplomat-in-chief far more broadly than had at first been conceived. These are examples of what has been called **inherent power** or **implied power**, which are claimed extensions of either enumerated constitutional powers or delegated congressional powers.[18]

Actions of the Executive

Presidents further developed the concept of implied or inherent powers with the concept of **executive privilege** as the right to withhold information from Congress, the judiciary, or the public. This right, not enumerated in the *Constitution*, was first asserted by George Washington to curtail inquiry into executive branch actions.[19] The more general defense of its use by White House officials and attorneys ensures that the president can secure candid advice from his advisers and staff members.

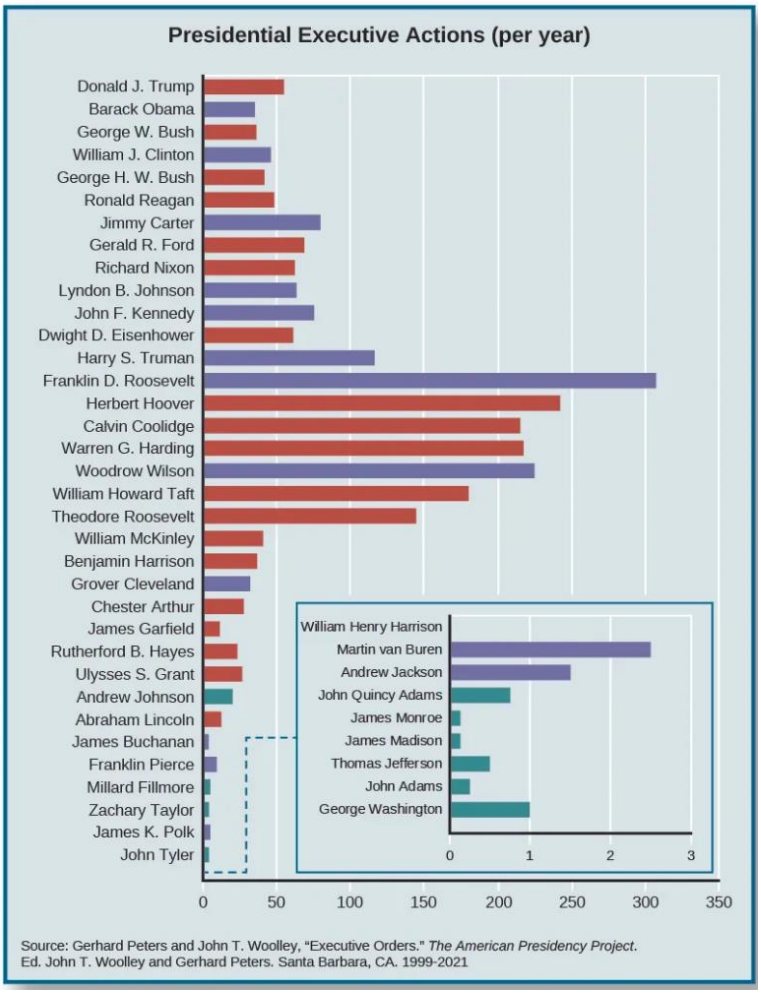


Chart 10.6 Presidential Executive Actions Graph

Over time presidents have increased use of implied or inherent powers, especially using **executive orders**. Constitutionally, a president issues executive orders 1) to carry out a constitutionally authorized enumerated power as commander-in-chief; 2) in order to implement laws with power specifically delegated by Congress; and 3) in order to carry on the internal business of the executive branch. Executive orders establishing rules binding on states and/or the people can be constitutional challenged in U.S. Federal Court for exceeding the authority given the president by Congress. Since only Congress has the authority to make laws under the constitutionally assigned separation of powers, the president's role is to implement or enforce the laws not to make the laws.

Executive actions were unusual until the late nineteenth century. They became common in the first half of the twentieth century but have been growing less popular for the last few decades because they often get overturned in court if the Congress has not given the president prior delegated authority. (Credit: OpenStax included image)

If through an executive order, a president has interpreted the authority given them by Congress by some law too broadly and in a

manner not intended by Congress, the executive order could be declared unconstitutional. For example, in 2023, the Supreme Court over turned President Biden's attempt to cancel student loan debt by executive order.[20]

Chief Justice John G. Roberts, Jr., in the majority opinion, wrote that Congress could not possibly have meant to allow implementation to "rewrite the statue from the ground up" to forgive loans. "However broad the meaning of 'waive or modify,' that language cannot authorize the kind of exhaustive rewriting of the statute that has taken place here, " Roberts wrote.[21]

A president usurping congressional authority for law-making is a potential tyrant or dictator. Now, presidents offer their own interpretation of legislation via **signing statements** (discussed later in this chapter) directed to the bureaucratic entity charged with implementation. For foreign policy, Congress permitted the widespread use of **executive agreements** to formalize international relations, so long as important matters still came through the Senate in the form of treaties.[22] Again, to be constitutionally binding on the American people, agreements with foreign entities require the status of a treaty, subject to congressional checks on executive power.

While many important decisions were once made at the state and local levels, the increasing complexity and size of the domestic economy have led people in the United States to look to the federal government more often for solutions. Concurrently, the rising profile of the United States on the international stage elevates the president as the leader of the nation, as diplomat-in-chief, and as commander-in-chief.

Finally, with the rise of electronic mass media, a president who once depended on newspapers and official documents to distribute information beyond an immediate audience can now bring that message directly to the people via radio, television, and social media. President Donald Trump's use of Twitter™ is an example of expanding presidential communications. President Biden, however, has not been a significant user of Twitter™.

Informal Power of Persuasion

The framers of the *Constitution*, concerned about the excesses of British monarchial power, made sure to design the presidency within a network of checks and balances controlled by the other branches of the federal government. Such checks and balances encourage consultation, cooperation, and compromise in policymaking. This is most evident at home, where the *Constitution* makes it difficult for either Congress or the chief executive to prevail unilaterally, at least when it comes to constructing policy. Although much is made of political stalemate and obstructionism in national political deliberations today, the framers did not want to make it too easy to get things done without a great deal of support for such initiatives.

It is left to the president to employ a strategy of negotiation, persuasion, and compromise in order to secure policy achievements in cooperation with Congress. In 1960, political scientist Richard Neustadt put forward the thesis that presidential power is the power to persuade, a process that takes many forms and is expressed in various ways.[23] Yet the successful employment of this technique can lead to significant and durable successes.

For example, legislative achievements tend to be of greater duration because they are more difficult to overturn or replace, as the case of health care reform under President Barack Obama suggests. Obamacare has faced court cases and repeated (if largely symbolic) attempts at change from within the Congress. Overturning it will take a new president who opposes it, together with a Congress that can pass the dissolving legislation.

In some cases, cooperation is essential, as when the president nominates and the Senate confirms persons to fill vacancies on the Supreme Court, an increasingly contentious area of friction between branches.

While Congress cannot populate the Court on its own, it can frustrate the president's efforts to do so. Presidents who seek to prevail through persuasion, according to Neustadt, target Congress, members of their own party, the public, the bureaucracy, and, when appropriate, the international community and foreign leaders. Of these audiences, perhaps the most obvious and challenging is Congress.



Read "Power Lessons for Obama" at this **website** to learn more about applying Richard Neustadt's framework to the leaders of today.

Much depends on the balance of power within Congress: Should the opposition party hold control of both houses, it will be difficult indeed for the president to realize his or her objectives, especially if the opposition is intent on frustrating all initiatives. However, even control of both houses by the president's own party is no guarantee of success or even of productive policymaking. For example, neither Bill Clinton nor Barack Obama achieved all they desired despite having favorable conditions for the first two years of their presidencies. In times of divided government (when one party controls the presidency and the other controls one or both chambers of Congress), it is up to the president to cut deals and make compromises that will attract support from at least some members of the opposition party without excessively alienating members of his or her own party. Both Ronald Reagan and Bill Clinton proved effective in dealing with divided government—indeed, Clinton scored more successes with Republicans in control of Congress than he did with Democrats in charge.

It is more difficult to persuade members of the president's own party or the public to support a president's policy without risking the dangers inherent in going public. There is precious little opportunity for private persuasion while also going public in such instances, at least directly. The way the president and his or her staff handle media coverage of the administration may afford some opportunities for indirect persuasion of these groups. It is not easy to persuade the federal bureaucracy to do the president's bidding unless the chief executive has made careful appointments. When it comes to diplomacy, the president must relay some messages privately while offering incentives, both positive and negative, in order to elicit desired responses, although at times, people heed only the threat of force and coercion.

While presidents may choose to go public to put pressure on other groups to cooperate, most of the time they "stay private" as they attempt to make deals and reach agreements out of the public eye. The tools of negotiation have changed over time. Once chief executives played patronage politics, rewarding friends while attacking and punishing critics as they built coalitions of support. But the advent of civil service

reform in the 1880s systematically deprived presidents of that option and reduced its scope and effectiveness. Although the president may call upon various agencies for assistance in lobbying for proposals, such as the Office of Legislative Liaison with Congress, it is often left to the chief executive to offer incentives and rewards. Some of these are symbolic, like private meetings in the White House or an appearance on the campaign trail.

The president must also find common ground and make compromises acceptable to all parties, thus enabling everyone to claim they secured something they wanted.

Complicating Neustadt's model of successful exercise of power of persuasion, is that many of the ways he claimed presidents could shape favorable outcomes require "going public," in an attempt to influence public opinion or use presidential popularity to influence congressional action.

However, this can produce mixed results. For example, there may be less opportunity for, or attention on, private persuasion in Washington with member of Congress if a president also goes public making speeches across the nation.

Political scientist Fred Greenstein touted the advantages of a "hidden hand presidency," in which the chief executive did most of the work behind the scenes, wielding both the carrot and the stick.[24] Greenstein singled out President Dwight Eisenhower as particularly skillful in such endeavors.

Informal Power of Opportunity and Legacy

What often shapes a president's performance, reputation, and ultimately legacy depends on circumstances that are largely out of his or her control. Did the president prevail in a landslide or was it a closely contested election? How much support does the president's party enjoy, and is that support reflected in the composition of both houses of Congress, just one, or neither? Will the president face a Congress ready to embrace proposals or poised to oppose them? Whatever a president's ambitions, it will be hard to realize them in the face of a hostile or divided Congress, and the options to exercise independent leadership are greater in times of crisis and war than when looking at domestic concerns alone.

Then there is what political scientist Stephen Skowronek calls "political time."[25] Some presidents take office at times of great stability with few concerns. Unless there are radical or unexpected changes, a president's options are limited, especially if voters hoped for a simple continuation of what had come before. Other presidents take office at a time of crisis or when the electorate is looking for significant changes. Then there is both pressure and opportunity for responding to those challenges. Some presidents, notably Theodore Roosevelt, openly bemoaned the lack of any such crisis, which Roosevelt deemed essential for him to achieve greatness as a president.

People in the United States claim they want a strong president. What does that mean? At times, scholars point to presidential independence, even defiance, as evidence of strong leadership. Thus, vigorous use of the veto power in key situations can cause observers to judge a president as strong and independent,

although far from effective in shaping constructive policies. Nor is such defiance and confrontation always evidence of presidential leadership skill or greatness. When is effectiveness a sign of strength, and when are we confusing being headstrong with being strong? Sometimes, historians and political scientists see cooperation with Congress as evidence of weakness, as in the case of Ulysses S. Grant, who was far more effective in garnering support for administration initiatives than scholars have given him credit for.

These questions overlap with those concerning political time and circumstance. While domestic policymaking requires far more give-and-take and a fair share of cajoling and collaboration, national emergencies and war offer presidents far more opportunity to act vigorously and at times independently. This phenomenon often produces the rally around the flag effect, in which presidential popularity spikes during international crises. A president must always be aware that politics, according to Otto von Bismarck, is the art of the possible, even as it is his or her duty to increase what might be possible by persuading both members of Congress and the general public of what needs to be done.

Basic Functions of the Executive Branch

Domestic Policy

As previously noted, the function of the executive branch is implementation and enforcement of laws made by Congress per constitutionally assigned powers. However, at times, the lines of authority leading to action on policies can be somewhat blurred.[26]Presidents take action to advance policy objectives addressing national issues and problems. They may choose to issue executive orders, proclamations, or memoranda to achieve policy goals. Proclamations typically deal with largely ceremonial concerns, while a memorandum typically attracts less attention than more direct orders.

Executive orders direct government agencies to pursue action as an extension of authority granted by congressional action. Likewise, signing statements can be viewed as a claimed extension of power of the president's executive authority–agreeing to a specified course of action when implementing and enforcing legislation.

National Security, Foreign Policy, and War

Presidents often justify the use of executive orders in cases of national security or as part of their war powers. In addition to mandating emancipation and the internment of Japanese Americans, presidents have issued orders to protect the homeland from internal threats. Most notably, Lincoln ordered the suspension of the privilege of the writ of habeas corpus in 1861 and 1862 before seeking congressional legislation to undertake such an act. Presidents hire and fire military commanders; they also use their power as commander-in-chief to aggressively deploy U.S. military force. Congress rarely has taken the lead over the course of history, with the War of 1812 being the lone exception. Pearl Harbor was a salient case where Congress did make a clear and formal declaration when asked by FDR. However, since World



Image 10.4 Photo of President Bush on Aircraft Carrier

War II, it has been the president and not Congress who has taken the lead in engaging the United States in military action outside the nation's boundaries, most notably in Korea, Vietnam, and the Persian Gulf.

By landing on an aircraft carrier and wearing a flight suit to announce the end of major combat operations in Iraq in 2003, President George W. Bush was carefully emphasizing his presidential power as commander-in-chief. (Credit: OpenStax; Tyler J. Clements)

Executive agreements are formal agreements negotiated between two countries but not ratified by a legislature as a treaty must be. As such, they are not treaties under U.S. law, which require two-thirds of the Senate for ratification. Treaties, presidents have found, are particularly difficult to get ratified.

And with the fast pace and complex demands of modern foreign policy, concluding treaties with countries can be a tiresome and burdensome chore.

That said, some executive agreements do require some legislative approval, such as those that commit the United States to make payments and thus are restrained by the congressional power of the purse.

The **American Presidency Project** has gathered data outlining presidential activity, including measures for executive orders and signing statements.

The Role of the President in Foreign Policy

When the media cover a domestic controversy, such as social unrest or police brutality, reporters consult officials at different levels and in branches of government, as well as think tanks and advocacy groups. In contrast, when an international event occurs, such as a terrorist bombing in Paris or Brussels, the media flock predominately to one actor—the president of the United States—to get the official U.S. position.

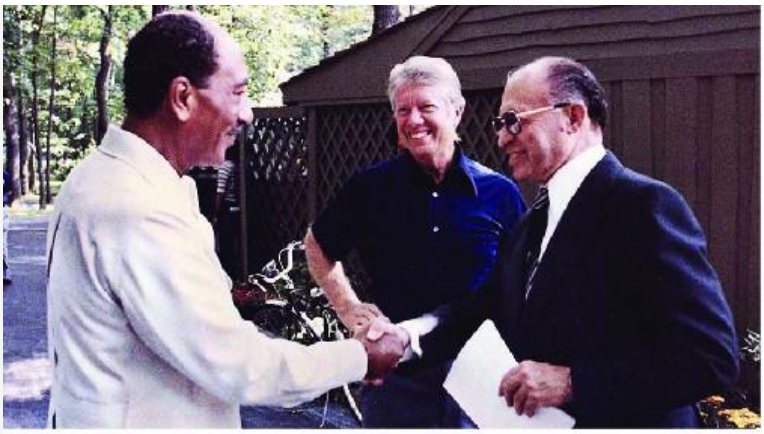
In the realm of foreign policy and international relations, the president occupies a leadership spot that is much clearer than in the realm of domestic policy. This dual domestic and international role has been described by the **two presidencies thesis**. This theory originated with University of California–Berkeley professor Aaron Wildavsky and suggests that there are two distinct presidencies, one for foreign policy and one for domestic policy, and that presidents are more successful in foreign than domestic policy. Let's look at the reasoning behind this thesis.

The Constitution names the president as the commander-in-chief of the military, the nominating authority for executive officials and ambassadors, and the initial negotiator of foreign agreements and treaties. From the president's constitutional authority to officially receive ambassadors, a lead role in diplomacy is derived, that is to conduct meetings with world leaders and convening international summits.

The president is the agenda-setter for foreign policy and may move unilaterally in some instances. Beyond the Constitution, presidents were also gradually given more authority to enter into international agreements without Senate consent by using the executive agreement. The passage of the War Powers Resolution in 1973, though intended as a statute to rein in executive power and reassert Congress as a check on the president, effectively gave presidents two months to wage war however they wish. Given all these powers, we have good reason to expect presidents to have more influence and be more successful in foreign than in domestic policy.

A second reason for the stronger foreign policy presidency has to do with the informal aspects of power. In some eras, Congress will be more willing to allow the president to be a clear leader and speak for the country. For instance, the Cold War between the Eastern bloc countries (led by the Soviet Union) and the West (led by the United States and Western European allies) prompted many to want a single actor to speak for the United States. A willing Congress allowed the president to take the lead because of urgent circumstances. Much of the Cold War also took place when the parties in Congress included more moderates on both sides of the aisle and the environment was less partisan than today.

A phrase often heard at that time was, "Partisanship stops at the water's edge." This means that foreign policy matters should not be subject to the bitter disagreements seen in party politics.



(a)



(b)

Image 10.5 Photos of President Carter and Bush Conducting Foreign Affair Events

President Jimmy Carter meets with Egypt's Anwar El Sadat (left) and Israel's Menachem Begin (right) at Camp David in 1978 (a). President George H. W. Bush (right) dines with Mikhail Gorbachev (left) at the Malta Summit in 1989 (b). (Credit b: modification of work by the National Archives and Records Administration)

The Many Actors in Foreign Policy

A variety of actors carry out the various and complex activities of U.S. foreign policy: White House staff, executive branch staff, and congressional leaders.

The White House staff members engaged in foreign policy are likely to have very regular contact with the president about their work. The national security adviser heads the president's **National Security Council**, a group of senior-level staff from multiple foreign policy agencies and is generally the president's top foreign policy adviser. Also reporting to the president in the White House is the director

of the Central Intelligence Agency (CIA). Even more important on intelligence than the CIA director is the director of national intelligence, a position created in the government reorganizations after 9/11, who oversees the entire intelligence community in the U.S. government. The Joint Chiefs of Staff consist of six members, one each from the Army, Navy, Air Force, and Marines, plus a chair and vice chair. The chair of the Joint Chiefs of Staff is the president's top uniformed military officer. In contrast, the secretary of defense is head of the entire Department of Defense but is a nonmilitary civilian. The U.S. trade representative develops and directs the country's international trade agenda. Finally, within the Executive Office of the President, another important foreign policy official is the director of the president's Office of Management and Budget (OMB). The OMB director develops the president's yearly budget proposal, including funding for the foreign policy agencies and foreign aid.

In addition to those who work directly in the White House or Executive Office of the President, several important officials work in the broader executive branch and report to the president in the area of foreign policy. Chief among these is the secretary of state. The secretary of state is the nation's chief diplomat, serves in the president's cabinet, and oversees the Foreign Service. The secretary of defense, who is the civilian (nonmilitary) head of the armed services housed in the Department of Defense, is also a key cabinet member for foreign policy (as mentioned above).

A third cabinet secretary, the secretary of homeland security, is critically important in foreign policy, overseeing the massive Department of Homeland Security.

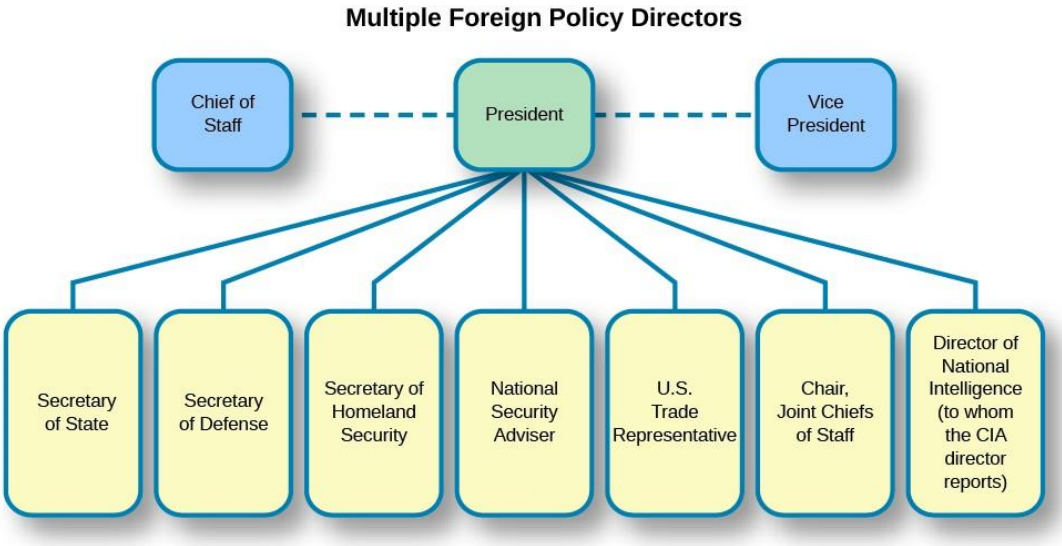


Chart 10.7 Organizational Chart for Foreign Policy Directors

The final group of official key actors in foreign policy is in the U.S. Congress. The Speaker of the House, the House minority leader, and the Senate majority and minority leaders are often given updates on foreign policy matters by the president or the president's staff. They are also consulted when the president needs foreign policy support or funding. However, the experts in Congress who are most often called on for their views are the committee chairs and the highest-ranking minority members of the relevant House and Senate committees. In the House, that means the Foreign Affairs Committee and the

Committee on Armed Services. In the Senate, the relevant committees are the Committee on Foreign Relations and the Armed Services Committee. These committees hold regular hearings on key foreign policy topics, consider budget authorizations, and debate the future of U.S. foreign policy. While presidents are more empowered by the Constitution in foreign rather than domestic policy, they nonetheless must seek approval from Congress on a variety of matters; chief among these is the basic budgetary authority needed to run foreign policy programs.

Appointments

Most foreign policy–related appointments, such as secretary of state and the various undersecretaries and assistant secretaries, as well as all ambassadors, must be confirmed by a majority vote of the Senate. Presidents seek to nominate people who know the area to which they're being appointed and who will be loyal to the president rather than to the bureaucracy in which they might work. They also want their nominees to be readily confirmed. Typically, when the party in the White House changes, more new appointments are made than when the party does not change, because the incoming president wants to put in place people who share his or her agenda. This was the case in 2009 when Democrat Barack Obama succeeded Bush and again when Republican Donald Trump succeeded Obama.

Foreign Policy and Shared Power

Policy Output	Presidential Role	Congressional Role
Public Laws	proposes, signs into law	proposes, approves for passage
Agency Reauthorizations	proposes, signs into law	approves for passage
Foreign Policy Budget	proposes, signs into law	authorizes/appropriates for passage
Treaties	negotiates, ratifies	Senate consents to treaty with 2/3 majority vote
Executive Agreements	negotiates, approves	none unless funding is required
Congressional-Executive Agreements	negotiates	approves by majority vote
Declaration of War	proposes	approves by majority vote
Military Use of Force	carries out operations at will; with notification to Congress; 60 day limit	approves for operations beyond sixty day limit
Presidential Appointment	nominated candidates	Senate approves by majority vote

Chart 10.8 Illustration of Policy Outputs and the Presidential and Congressional Roles

While presidents are more empowered by the Constitution in foreign than in domestic policy, they nonetheless must seek approval from Congress on a variety of matters; chief among these is the basic budgetary authority needed to run foreign policy programs. Indeed, most if not all of the foreign policy

instruments require inter-branch approval to go into effect. Such approval may sometimes be a formality, but it is still important. Even a sole executive agreement often requires subsequent funding from Congress in order to be carried out, and funding calls for majority support from the House and Senate. Presidents lead, to be sure, but they must consult with and engage the Congress on many matters of foreign policy. Presidents must also delegate a great deal in foreign policy to the bureaucratic experts in the foreign policy agencies.

Not every operation can be run from the West Wing of the White House. At bottom, the United States is a separation-of-powers political system with authority divided among executive and legislative branches, including in the foreign policy realm. The table shows the formal roles of the president and Congress in conducting foreign policy.

The main lesson of the table is that nearly all major outputs of foreign policy require a formal congressional role in order to be carried out. Foreign policy might be done by executive say-so in times of crisis and in the handful of sole executive agreements that pertain to major issues (like the Iran Nuclear Agreement). In general, however, a consultative relationship between the branches in foreign policy is the usual result of their constitutional sharing of power. A president who ignores Congress on matters of foreign policy and does not keep them briefed may find later interactions on other matters more difficult. Probably the most extreme version of this potential dynamic occurred during the Eisenhower presidency.

When President Dwight D. Eisenhower used too many executive agreements instead of sending key ones to the Senate as treaties, Congress reacted by considering a constitutional amendment (the Bricker Amendment) that would have altered the treaty process as we know it. Eisenhower understood the message and began to send more agreements through the process as treaties.[27]

Shared power creates an incentive for the branches to cooperate. Even in the midst of a crisis, such as the Cuban Missile Crisis in 1962, it is common for the president or senior staff to brief congressional leaders in order to keep them up to speed and ensure the country can stand unified on international matters. That said, there are areas of foreign policy where the president has more discretion, such as the operation of intelligence programs, the holding of foreign policy summits, and the mobilization of troops or agents in times of crisis. Moreover, presidents have more power and influence in foreign policymaking than they do in domestic policymaking. It is to that power that we now turn.

The Rising Challenge by Congress to Presidential Foreign Policy Leadership

Does the thesis's expectation of a more successful foreign policy presidency apply today? While the president still has stronger foreign policy powers than domestic powers, the governing context has changed in two key ways. First, the Cold War ended in 1989 with the demolition of the Berlin Wall, the subsequent disintegration of the Soviet Union, and the eventual opening up of Eastern European territories to independence and democracy.

These dramatic changes removed the competitive superpower aspect of the Cold War, in which the United States and the USSR were dueling rivals on the world stage. The absence of the Cold War has led to less of a rally-behind-the-president effect in the area of foreign policy.

Second, beginning in the 1980s and escalating in the 1990s, the Democratic and Republican parties began to become polarized in Congress. The moderate members in each party all but disappeared, while more ideologically motivated candidates began to win election to the House and later the Senate. Hence, the Democrats in Congress became more liberal on average, the Republicans became more conservative, and the moderates from each party, who had been able to work together, were edged out. It became increasingly likely that the party opposite the president in Congress might be more willing to challenge his initiatives, whereas in the past it was rare for the opposition party to publicly stand against the president in foreign policy.

Finally, several analysts have tried applying the two presidencies thesis to contemporary presidential-congressional relationships in foreign policy. Is the two presidencies framework still valid in the more partisan post–Cold War era? The answer is mixed. On the one hand, presidents are more successful on foreign policy votes in the House and Senate, on average, than on domestic policy votes. However, the gap has narrowed. Moreover, analysis has also shown that presidents are opposed more often in Congress, even on the foreign policy votes they win.[28]

Democratic leaders regularly challenged Republican George W. Bush on the Iraq War and it became common to see the most senior foreign relations committee members of the Republican Party opposing the foreign policy positions of Democratic president Barack Obama. Such challenging of the president by the opposition party simply didn't happen during the Cold War.

Therefore, it seems presidents no longer enjoy unanimous foreign policy support as they did in the early 1960s. They must work harder to get a consensus and are more likely to face opposition. Still, because of their formal powers in foreign policy, presidents are overall more successful on foreign policy than on domestic policy.

The Perspective of House and Senate Members

Congress is a bicameral legislative institution with 100 senators serving in the Senate and 435 representatives serving in the House. How interested in foreign policy are typical House and Senate members?

While key White House, executive, and legislative leaders monitor and regularly weigh in on foreign policy matters, the fact is that individual representatives and senators do so much less often. Unless there is a foreign policy crisis, legislators in Congress tend to focus on domestic matters, mainly because there is not much to be gained with their constituents by pursuing foreign policy matters.[29]

Domestic policy matters resonate more strongly with the voters at home. A sluggish economy, increasing health care costs, and crime matter more to them than U.S. policy toward North Korea, for example. In an open-ended Gallup poll question from early 2016 about the "most important problem" in the United States, fewer than 15 percent of respondents named a foreign policy topic (half of those respondents mentioned immigration).

These results suggest that foreign policy is not at the top of many voters' minds. In the end, legislators must be responsive to constituents in order to be good representatives and to achieve reelection.[30]

However, some House and Senate members do wade into foreign policy matters. First, congressional party leaders in the majority and minority parties speak on behalf of their institution and their party on all types of issues, including foreign policy. Some House and Senate members ask to serve on the foreign policy committees, such as the Senate Committee on Foreign Relations, the House Foreign Affairs Committee, and the two defense committees. These members might have military bases within their districts or states and hence have a constituency reason for being interested in foreign policy. Legislators might also simply have a personal interest in foreign policy matters that drives their engagement in the issue. Finally, they may have ambitions to move into an executive branch position that deals with foreign policy matters, such as secretary of state or defense, CIA director, or even president.



Image 10.6 Photos of Senators During Budget Hearings

Senator Bob Corker (R-TN) (a), the chairman of the Senate Committee on Foreign Relations, and Senator Ben Cardin (D-MD) (b), the ranking Democrat on the committee, each addressed Secretary of State John Kerry during the February 2016 discussion of the Obama administration's 2017 federal budget hearings. (Credit a, b: modification of work by the U.S. Department of State)

Public Laws and Foreign Policy

Many statutes affect what the government can do in the foreign policy realm, including the National Security Act, the Patriot Act, the Homeland Security Act, and the War Powers Resolution.

The National Security Act governs the way the government shares and stores information, while the Patriot Act (passed immediately after 9/11) clarifies what the government may do in collecting information about people in the name of protecting the country. The Homeland Security Act of 2002 authorized the creation of a massive new federal agency, the Department of Homeland Security, consolidating powers that had been under the jurisdiction of several different agencies. Their earlier lack of coordination may have prevented the United States from recognizing warning signs of the 9/11 terrorist attacks.

The **War Powers Resolution** was passed in 1973 by a congressional override of President Richard Nixon's veto. The bill was Congress's attempt to reassert itself in war-making. Congress has the power to declare war, but it had not formally done so since Japan's 1941 attack on Pearl Harbor brought the United

States into World War II. Yet the United States had entered several wars since that time, including in Korea, in Vietnam, and in focused military campaigns such as the failed 1961 Bay of Pigs invasion of Cuba.

The War Powers Resolution created a new series of steps to be followed by presidents in waging military conflict with other countries.

Its main feature was a requirement that presidents get approval from Congress to continue any military campaign beyond sixty days. The overall effect was to strengthen the role of the president in war-making. After all, the law clarified that presidents could act on their own for sixty days before getting authorization from Congress to continue, and many smaller-scale conflicts are over within sixty days. Before the War Powers Resolution, the first approval for war was supposed to come from Congress. In theory, Congress, with its constitutional war powers, could act to reverse the actions of a president once the sixty days have passed. However, a clear disagreement between Congress and the president, especially once an initiative has begun and there is a "rally around the flag" effect, is relatively rare. More likely are tough questions about the campaign to which continuing congressional funding is tied.

Reauthorization of the Foreign Policy Bureaucracy

All federal agencies, including those dedicated to foreign policy, face reauthorization every three to five years. If not reauthorized, agencies lose their legal standing and the ability to spend federal funds to carry out programs. Agencies typically are reauthorized, because they coordinate carefully with presidential and congressional staff to get their affairs in order when the time comes. However, the reauthorization requirements do create a regular conversation between the agency and its political principals about how well it is functioning and what could be improved. The federal budget process is an important annual requirement that affects all areas of foreign policy. The foreign policy and defense budgets are part of the discretionary budget, or the section of the national budget that Congress vets and decides on each year.

Foreign policy leaders in the executive and legislative branches must advocate for funding from this budget, and while foreign policy budgets are usually renewed, there are enough proposed changes each year to make things interesting. In addition to new agencies, new cross-national projects are proposed each year to add to infrastructure and increase or improve foreign aid, intelligence, and national security technology.

Agreements

International agreements represent another of the broad-based foreign policy instruments/tools. The United States finds it useful to enter into **international agreement**s with other countries for a variety of reasons and on a variety of different subjects. These agreements run the gamut from bilateral agreements about tariffs to multinational agreements among dozens of countries about the treatment of prisoners of war. One recent multinational pact was the seven-country Iran Nuclear Agreement in 2015, intended to limit nuclear development in Iran in exchange for the lifting of long-standing economic sanctions on that country.



The ministers of foreign affairs and other officials from China, France, Germany, the European Union, Iran, Russia, and the United Kingdom join Secretary of State John Kerry (far right) in April 2015 to announce the framework that would lead to the multinational Iran Nuclear Agreement. (Credit: modification of work by the U.S. Department of State)

Image 10.7 US Secretary of State at Meeting with other Foreign Ministers

The format that an international agreement takes has been the point of considerable discussion in recent years.

The U.S. *Constitution* outlines the **treaty** process in Article II. The president negotiates a treaty, the Senate consents to the treaty by a two-thirds vote, and finally the president ratifies it. Despite that constitutional clarity, today over 90 percent of the international agreements into which the United States enters are not treaties but rather executive agreements.[31]

Executive agreements are negotiated by the president, and in the case of sole executive agreements, they are simultaneously approved by the president as well. On the other hand, congressional-executive agreements, like the North American Free Trade Agreement (NAFTA), are negotiated by the president and then approved by a simple majority of the House and Senate (rather than a two-thirds vote in the Senate as is the case for a treaty). In the key case of *United States v. Pink* (1942), the Supreme Court ruled that executive agreements were legally equivalent to treaties provided they did not alter federal law.[32] Most executive agreements are not of major importance and do not spark controversy, while some, like the Iran Nuclear Agreement, generate considerable debate. Many in the Senate thought the Iran deal should have been completed as a treaty rather than as a sole executive agreement.

TREATY OR EXECUTIVE AGREEMENT?

Should new international agreements into which the United States enters be forged through the Article II treaty process of the U.S. Constitution, or through executive agreements? This question arose again in 2015 as the Iran Nuclear Agreement was being completed. That pact required Iran to halt further nuclear development and agree to nuclear inspections, while the United States and five other signatories lifted

long-standing economic sanctions on Iran. The debate over whether the United States should have entered the agreement and whether it should have been a treaty rather than an executive agreement was conducted in the news media and in many political forums.

Your view on the form of the pact will depend on how you see executive agreements being employed. Do presidents use them to circumvent the Senate (as the "evasion hypothesis" suggests)? Or are they an efficient tool that saves the Senate Committee on Foreign Relations the work of processing hundreds of agreements each year?

Politicians' opinions about the form of the Iran Nuclear Agreement fell along party lines. Democrats accepted the president's decision to use an executive agreement to finalize the pact, which they tended to support. Republicans, who were overwhelmingly against the pact, favored the use of the treaty process, which would have allowed them to vote the deal down. In the end, the president used an executive agreement and the pact was enacted.

The downside is that an executive agreement can be reversed by the next president. Treaties are much more difficult to undo because they require a new process to be undertaken in the Senate for the president to gain approval.

Foreign Policy Emergencies

In foreign policy emergencies, many quick decisions need to be made. These sharply focused foreign policy emergencies tend to be exclusively the province of the president, including the deployment of troops and/or intelligence agents in a crisis, executive summits between the president and other heads of state on targeted matters of foreign policy, presidential use of military force, and emergency funding measures to deal with foreign policy crises. These measures of foreign policy are more quickly enacted and demonstrate the "energy and dispatch" that Alexander Hamilton, writing in the *Federalist Papers*, saw as inherent in the institution of the presidency. Emergency spending does involve Congress through its power of the purse, but Congress tends to give presidents what they need to deal with emergencies. That said, the framers were consistent in wanting checks and balances sprinkled throughout the *Constitution*, including in the area of foreign policy and war powers.

The Executive Branch: Structure and Function

It is one thing to win an election; it is quite another to govern, as many frustrated presidents have discovered. Critical to a president's success in office is the ability to make a deft transition from the previous administration, including naming a cabinet and filling other offices.

The new chief executive must also fashion an agenda, which he or she will often preview in general terms in an inaugural address. Presidents usually embark upon their presidency benefiting from the nation's renewed hope and optimism, although often unrealistic expectations set the stage for subsequent disappointment.

Transition and Appointments

In the immediate aftermath of the election, the incoming and outgoing administrations work together to help facilitate the transfer of power. While the General Services Administration oversees the logistics of the process, such as office assignments, information technology, and the assignment of keys, prudent candidates typically prepare for a possible victory by appointing members of a transition team during the lead-up to the general election. The success of the team's actions becomes apparent on inauguration day, when the transition of power takes place in what is often a seamless fashion, with people evacuating their offices (and the White House) for their successors.



Read about **presidential transitions** as well as explore other topics related to the transfer of power at the White House Transition Project website.

It is often said among the president-elect's more important tasks is the selection of a "cabinet," that is the heads of the major departments of the federal government and several other key positions that are structurally at the top of the executive branch organization. George Washington's cabinet was made up of only four people, the attorney general and the secretaries of the Departments of War, State, and the Treasury. Currently, however, there are twenty-four members of the cabinet, including fifteen Department heads, including the Secretaries of Labor, Agriculture, Education, and others. In addition to the heads of key federal departments, the Cabinet is also made up of the head of the Office of Management and Budget (OMB), the ambassador to the United Nations, the Vice President, and several others designated by the President.

The most important members of the official cabinet—the heads of the Departments of Defense, Justice, State, and the Treasury (echoing Washington's original cabinet)—receive the most attention from the president, the Congress, and the media. However, the President and his personal staff would more often work with each of these members or others in the cabinet separately or in smaller groups depending on the subject or issue. That is to say, because of the large size of the current cabinet, with such differing levels of expertise, cabinet meetings themselves are not generally advisory and the cabinet meets relatively infrequently as a total body.[33]

When selecting cabinet level positions–key officials who run the federal government agencies and bureaucracy, presidents consider ability, expertise, influence, and reputation. More recently, some presidents have also tried to balance political and demographic representation (gender, race, religion, and other considerations) to produce a cabinet that is capable as well as descriptively representative, meaning that those in the cabinet reflect the U.S. population.

The Cabinet Room, shown here during a cabinet meeting on January 31, 2012, adjoins the Oval Office in the West Wing of the White House. (Credit: The White House; OpenStax included image)



Image 10.8 Photo of Cabinet Meeting

Once the new president has been inaugurated and can officially nominate people to fill cabinet positions, the Senate confirms or rejects these nominations by majority vote. At times, though rarely, cabinet nominations have failed to be confirmed or have even been withdrawn because of questions raised about the past behavior of the nominee.[34]

The Senate has been known to occasionally block or slow appointments, not because of the quality of the nominee, but rather as a general protest against the policies of the president and/or as part of the increasing partisan bickering that occurs especially when the presidency is controlled by one political party and the Senate by another. Moreover, because of Senate rules of debate, even a minority party can at least delay or slow down presidential appointments such as was done at the front-end of the Trump administration.

However, because of a change in Senate rules in 2013, such obstructionist delaying tactics can no longer permanently block a nominee if the President's own party is in the majority. Under the leadership of Nevada Senator Harry Reid, the Senate changed its rules to allow 51 votes for Senate approval of presidential nominees.[35]

Consider the Original

Nov 21 2013

COCHRAN OPPOSES DEMOCRATS' "NUCLEAR OPTION"

Mississippi Senator Calls New Filibuster Rule a Mistake That Diminishes Constitutional Responsibilities

WASHINGTON, D.C. – U.S. Senator Thad Cochran (R-Miss.) today issued the following statement regarding his strong opposition to the Senate Democratic majority's decision to implement the so-called "nuclear option" to limit the rights of the minority in the consideration of the President's nominees.

"The Democratic majority's action to overturn nearly 225 years of precedent will transform how the United States Senate conducts its business, and not for the better. Allowing a simple majority to end debate is a mistake and greatly diminishes the Senate's responsibility to provide advice and consent as set out in the Constitution. The Senate was never intended to operate like the House of Representatives or to serve as a rubber stamp for any President. This historic institution and the American people have lost something very important and special."

Senate.gov, https://www.cochran.senate.gov/public/index.cfm/news-releases?ID=ca10c9dd-39c8-4483-98ce-1c87fbd87552

Chart 10.9 Excerpt from Senator Cochran on "Nuclear Option"

The Vice President' Role

In recent administrations, a very visible member of the president's cabinet is the vice president. However, the vice president's importance is a relatively recent occurrence and clearly dependent on the president. Throughout most of the nineteenth and into the twentieth century, the vast majority of vice presidents took very little action in the office unless fate intervened. Few presidents consulted with their running mates. Indeed, until the twentieth century, many presidents even had little to do with the naming of their running mate at the nominating convention.

But in the 1970s, starting with Jimmy Carter, presidents made a far more conscious effort to make their vice presidents part of the governing team, placing them in charge of increasingly important issues. Sometimes, as in the case of Bill Clinton and Al Gore, the partnership appeared to be smooth if not always harmonious. In the case of George W. Bush and his very experienced vice president Dick Cheney, observers speculated whether the vice president might have exercised too much influence. Barack Obama's choice for a running mate and subsequent two-term vice president, former Senator Joseph Biden, was picked for his experience, especially in foreign policy. President Obama relied on Vice President Biden for advice throughout his tenure. Vice President Michael Pence, with both experience as a governor and a congressman, was selected by President Trump. Vice President Pence meets regularly with Republican members of Congress on legislative matters. The vice presidency is no longer quite as weak as it once was, and a capable vice president can do much to augment the president's capacity to govern across issues if the president so desires.[36]

Also subject to Senate approval are several non-cabinet subordinate administrators in the various departments of the executive branch, as well as the administrative heads of several agencies and commissions. These include the heads of the Internal Revenue Service, the Central Intelligence Agency, the Office of Management and Budget, the Federal Reserve, the Social Security Administration, the Environmental Protection Agency, the National Labor Relations Board, and the Equal Employment Opportunity Commission. **The Office of Management and Budget (OMB)** is the president's own budget department. In addition to preparing the executive budget proposal and overseeing budgetary implementation during the federal fiscal year, the OMB oversees the actions of the executive bureaucracy.

Not all the non-cabinet positions are open at the beginning of an administration, but presidents move quickly to install their preferred choices in most roles when given the opportunity. Finally, new presidents usually take the opportunity to nominate new ambassadors, whose appointments are subject to Senate confirmation. New presidents make thousands of new appointments in their first two years in office. All the senior cabinet agency positions and nominees for all positions in the Executive Office of the President are made as presidents enter office or when positions become vacant during their presidency. Federal judges serve for life. Therefore, vacancies for the federal courts and the U.S. Supreme Court occur gradually as judges retire.

Other presidential selections are not subject to Senate approval, including the president's personal staff (whose most important member is the White House chief of staff) and various advisers (most notably the national security adviser).

The **Executive Office of the President**, created in 1939 during the term of Franklin D. Roosevelt (FDR), now contains a number of advisory bodies, including the Council of Economic Advisers, the National Security Council, the OMB, and the Office of the Vice President. Presidents also choose political advisers, speechwriters, and a press secretary to manage the politics and the message of the administration. In recent years, the president's staff has become identified by the name of the place where many of its members work: the West Wing of the White House. These people serve at the pleasure of the president, and often the president reshuffles or reforms his staff during his term. Just as government bureaucracy has expanded over the centuries, so has the White House staff, which under Abraham Lincoln numbered a handful of private secretaries and a few minor functionaries. A recent report pegged the number of employees working within the White House over 450.[37] When the staff in nearby executive buildings of the Executive Office of the President are added in, that number increases four-fold.

The overwhelming majority of confirmations are routine, only rarely do holdups occur. When they do, the *Constitution* allows for a small presidential loophole called the recess appointment.

The relevant part of Article II, Section 2 of the *Constitution* notes, "The President shall have the Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."[38] The purpose of this provision was to give the president the power to temporarily fill vacancies during times when the Senate was not in session and could not act. However, presidents have typically used this loophole to get around a Senate that is inclined to either obstruct or be cautious. The Senate changed its rules to allow for a pro forma session or short meeting held with the understanding that no work will be done. These sessions have the effect of keeping the Senate officially in session while functionally in recess.

Forging an Agenda

Having secured election, the incoming president must soon decide how to deliver upon what was promised during the campaign. The chief executive must set priorities, chose what to emphasize, and formulate strategies to get the job done. He or she labors under the shadow of a measure of presidential effectiveness known as the first hundred days in office, a concept popularized during Franklin Roosevelt's first term in the 1930s. While one hundred days is too short a time for any president to boast of any real accomplishments, most presidents do recognize that they must address their major initiatives during their first two years in office. This is the time when the president is most powerful and is given the benefit of the doubt by the public and the media, especially if he or she enters the White House with a politically aligned Congress, as Barack Obama did. This early period in an administration is sometimes called the honeymoon period, but its length can vary by presidential popularity. For example, President Obama's honeymoon was quite short–perhaps six months–while President Trump, based upon low approval ratings experienced virtually no honeymoon period.

However, recent history suggests that even one-party control of Congress and the presidency does not ensure efficient policymaking. This difficulty is due as much to divisions within the governing party as to obstructionist tactics skillfully practiced by the minority party in Congress.

The incoming president must deal to some extent with the outgoing president's last budget proposal. While some modifications can be made, it is more difficult to pursue new initiatives immediately. Most presidents are well advised to prioritize what they want to achieve during the first year in office and not lose control of their agenda. At times, however, unanticipated events can determine policy, as happened in 2001 when nineteen hijackers perpetrated the worst terrorist attack in U.S. history and transformed U.S. foreign and domestic policy in dramatic ways under President George W. Bush.

Moreover, a president must be sensitive to what some scholars have termed "political time," meaning the circumstances under which he or she assumes power. Sometimes, the nation is prepared for drastic proposals to solve deep and pressing problems that cry out for immediate solutions, as was the case following the 1932 election of FDR at the height of the Great Depression. Most times, however, the country is far less inclined to accept revolutionary change. Being an effective president means recognizing the difference.[39]

The first act undertaken by the new president—the delivery of an **inaugural address**—can do much to set the tone for what is intended to follow. While such an address may be an exercise in rhetorical inspiration, it also allows the president to set forth priorities within the overarching vision of what he or she intends to do. Franklin Roosevelt used his first inaugural address to boldly proclaim that the country need not fear the change that would deliver it from the grip of the Great Depression, and he set to work immediately enlarging the federal government to that end.



Listen to **clips** of the most famous inaugural address in presidential history at the *Washington Post* website.

QUESTIONS TO CONSIDER

1. What can get in the way of coordination and compromise between branches?

   Show Answer
   ideology, opposing policy positions, disagreement on the scope of government, etc.

2. How do presidents work to fulfill their campaign promises once in office?

   Show Answer
   compromise with Congress; use executive agreements and orders; appeal directly to the people; etc.

3. What role has technology played increasing the power and reach of presidents?

   Show Answer
   presidents may make use of social media and technology to provide information directly to the people

4. When might they prefer passing a formal policy through Congress as a bill?

   Show Answer
   if a president does not want future opposition to easily dismantle policy objectives

5. What do you think about a cabinet secretary serving presidents from two different political parties?

   Show Answer
   personal opinion

6. Why do treaties require congressional approval?

   Show Answer
   consent of the governed is required to make an action binding on the American people; Congress provides our consent

TERMS TO REMEMBER

cabinet–a group of advisors to the president, consisting of the most senior appointed officers of the executive branch who head the fifteen executive departments

executive agreement–an international agreement between the president and another country made by the executive branch and without formal consent by the Senate; not binding on the American people without congressional consent

delegated power–power granted to the president by act of Congress

Executive Office of the President–the administrative organization that reports directly to the president and made up of important offices, units, and staff of the current president and headed by the White House chief of staff

executive order–a rule or order issued by the president without the cooperation of Congress and having the force of law

executive privilege–the president's right to withhold information from Congress, the judiciary, or the public

explicit (enumerated) power–presidential power specifically written in the *Constitution*

impeachment–the act of charging a government official with serious wrongdoing, which in some cases may lead to the removal of that official from office

implied (inherent) power–power claimed by the president as an extension of a constitutional provision or a delegated authorization of Congress

National Security Council (NSC)–advisors to the president on issues of foreign policy and national security

Office of Management and Budget (OMB)–an office within the Executive Office of the President charged with producing the president's budget, overseeing its implementation, and overseeing the executive bureaucracy

persuasion power–power of the president to influence policy debates by influencing public opinion; interpersonal negotiations with members of Congress

rally around the flag effect–a spike in presidential popularity during international crises

signing statement–a statement a president issues with the intent to influence the way a specific bill the president signs should be enforced

treaty–international agreement entered by the U.S. that requires presidential negotiation; two-thirds consent of the Senate; and final ratification by the president

two-presidents thesis–thesis proposed by Wildavsky that two presidencies exist–one for foreign and one for domestic policy arenas; positing presidents are more successful in foreign policy

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10.2 The President: The Public Presidency



Image 10.9 First Lady Jill Biden Advocates for Educational Opportunities
(Credit: The White House at whitehouse.gov/administration/dr-jill-biden/)

Learning Objectives

- Explain how technological innovations have empowered presidents.
- Identify ways in which presidents appeal to the public for approval.
- Explain how the role of first ladies changed over the course of the twentieth century.

Chart 10.10 Learning Objectives on the Public Face of the Presidency

With the advent of motion picture newsreels and voice recordings in the 1920s, presidents began to broadcast their message to the general public. Franklin Roosevelt, while not the first president to use the radio, adopted this technology to great effect. Over time, as radio gave way to newer and more powerful technologies like television, the Internet, and social media, other presidents have been able magnify their voices to an even-larger degree. Presidents now have far more tools at their disposal to shape public opinion and build support for policies. However, the choice to "go public" does not always lead to political success; it is difficult to convert popularity in public opinion polls into political power. Moreover, the modern era of information and social media empowers opponents at the same time that it provides opportunities for presidents.

The Shaping of the Modern Presidency

From the days of the early republic through the end of the nineteenth century, presidents were limited in the ways they could reach the public to convey their perspective and shape policy. Inaugural addresses and messages to Congress, while circulated in newspapers, proved clumsy devices to attract support even when a president used plain blunt language. Some presidents undertook tours of the nation, notably George Washington and Rutherford B. Hayes. Others promoted good relationships with newspaper editors and reporters, sometimes going so far as to sanction a pro-administration newspaper.

One president, Ulysses S. Grant, cultivated political cartoonist Thomas Nast to present the president's perspective in the pages of the magazine *Harper's Weekly*.[11]

Abraham Lincoln experimented with public meetings recorded by newspaper reporters and public letters that would appear in the press, sometimes after being read at public gatherings. Most presidents gave speeches, although few proved to have much immediate impact, including Lincoln's memorable Gettysburg Address.

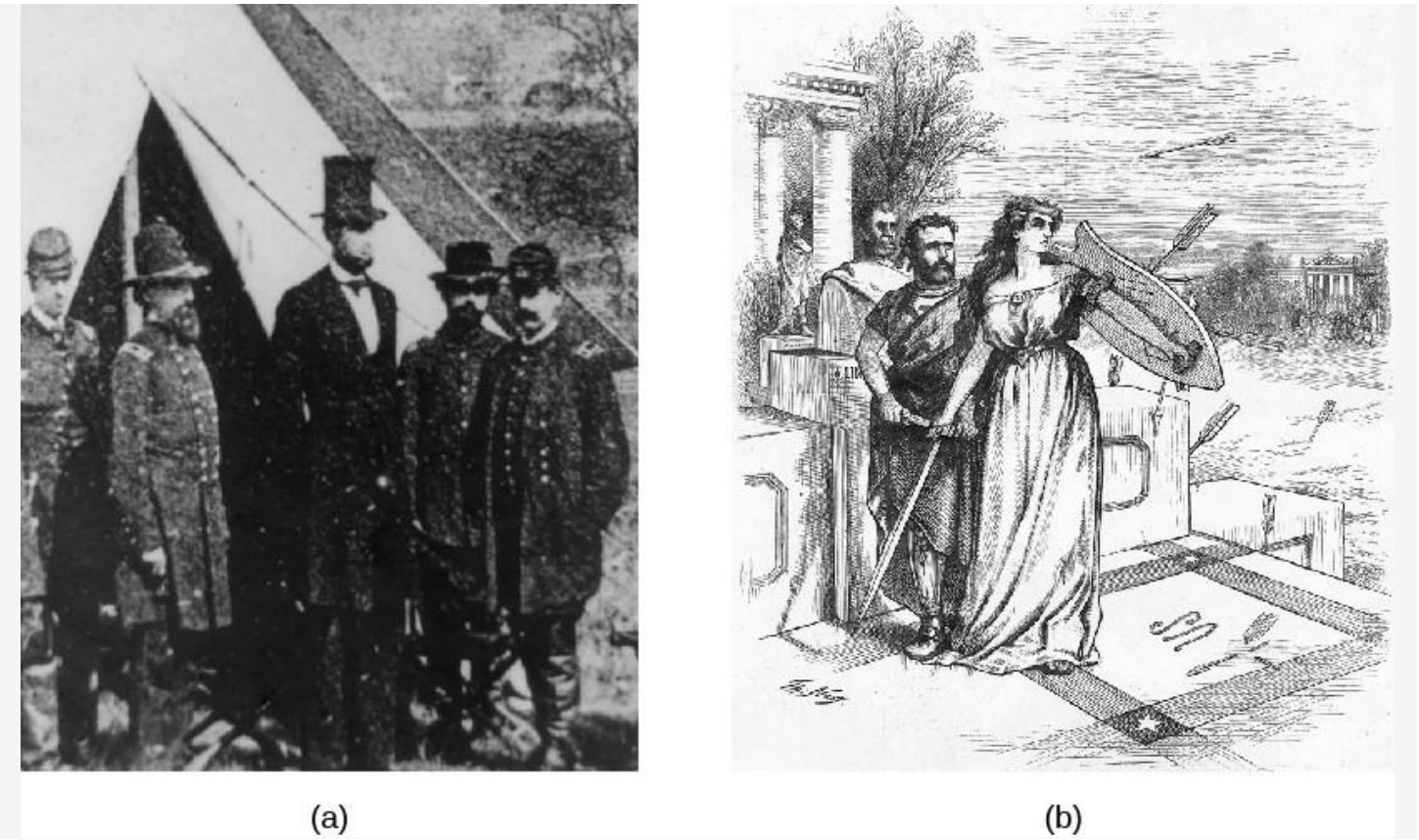


Image 10.10 Lincoln and Grant Make Use of Modern Media for Their Times

While President Abraham Lincoln was not the first president to be photographed, he was the first to use the relatively new power of photography to enhance his power as president and commander-in-chief. Here, Lincoln poses with Union soldiers (a) during his visit to Antietam, Maryland, on October 3, 1862. President Ulysses S. Grant cultivated a relationship with popular cartoonist Thomas Nast, who often depicted the president in the company of "Lady Liberty" (b) in addition to relentlessly attacking his opponent Horace Greeley. (Credit: Library of Congress; OpenStax included images)

Theodore Roosevelt came to the presidency in 1901, at a time when movie newsreels were becoming popular. Roosevelt, who had always excelled at cultivating good relationships with the print media,

eagerly exploited this new opportunity as he took his case to the people with the concept of the presidency as **bully pulpit**, a platform from which to push his agenda to the public.[2] The White House Press office was started. His successors followed suit, and they discovered and employed new ways of transmitting their message to the people in an effort to gain public support for policy initiatives. With the popularization of radio in the early twentieth century, it became possible to broadcast the president's voice into many of the nation's homes. Most famously, FDR used the radio to broadcast his thirty "fireside chats" to the nation between 1933 and 1944.

In the post–World War II era, television began to replace radio as the medium through which presidents reached the public.

This technology enhanced the reach of the handsome young president John F. Kennedy and the trained actor Ronald Reagan. At the turn of the twenty-first century, the new technology was the Internet. The extent to which this mass media technology can enhance the power and reach of the president to impact public opinion has yet to be fully realized.

Going Public: Promise and Pitfalls

The concept of going public involves the president delivering a major television address in the hope that Americans watching the address will be compelled to contact their House and Senate member and that such public pressure will result in the legislators supporting the president on a major piece of legislation. Technological advances have made it more efficient for presidents to take their messages directly to the people than was the case before mass media. Presidential visits can build support for policy initiatives or serve political purposes, helping the president reward supporters, campaign for candidates, and seek reelection.

"Going public" is closely aligned with power to persuade as previously attributed to Richard Neustadt's work on presidential power. Rather than bargaining solely with members of Congress alone, the president is essentially attempting to use his popularity to rally a broad coalition of supporters for some policy initiative. Public popularity is a resource of power for presidents, and they generally pay close attention to their public approval ratings. The concept, simply put, is that a more popular president is a more powerful president. Likewise, a president with a low popularity is assumed to have difficulty rallying even members of his own party in Congress to support policy initiatives.[3]

Despite its pervasive use by recent presidents; it remains an open question, however, whether choosing to go public actually enhances a president's political position in battles with Congress. Political scientist George C. Edwards goes so far as to argue that taking a president's position public serves to polarize political debate, increase public opposition to the president, and complicate the chances to get something done. It replaces deliberation and compromise with confrontation and campaigning. Edwards believes the best way for presidents to achieve change is to keep issues private and negotiate resolutions that preclude partisan combat. Going public may be more effective in rallying supporters than in gaining additional support or changing minds.[4]



Image 10.11 Photo of President Reagan at the Berlin Wall

With the advent of video technology and cable television, the power of the president to reach huge audiences increased exponentially. President Ronald Reagan, shown here giving one of his most famous speeches in Berlin, was an expert at using technology to help mold and project his presidential image to the public. His training as an actor certainly helped in this regard. (Credit: OpenStax included image)

Today, it is possible for the **White House** to take its case directly to the people via websites like White House Live, where the public can watch live press briefings and speeches.

The First Lady (First Gentleman?): The Changing Public Role

The president is not the only member of the First Family who can attempt to advance an agenda by going public. First ladies increasingly exploited the opportunity to gain public support for an issue of deep interest to them. Before 1933, most first ladies served as private political advisers to their husbands. In the 1910s, Edith Bolling Wilson took a more active but still private role assisting her husband, President Woodrow Wilson, afflicted by a stroke, in the last years of his presidency. The degree of public advocacy now varies by respective first ladies and the issues they choose to focus upon. It was Eleanor Roosevelt in the 1930s and 1940s who really opened the door for first ladies to move from a behind-the-scenes role to a more public and active role.



Image 10.12 First Lady Jill Biden

First Lady, Jill Biden (Credit: obamawhitehouse.archives.gov/administration/jill-biden)

Eleanor Roosevelt took an active role in championing civil rights, becoming in some ways a bridge between her husband and the civil rights movement. She coordinated meetings between FDR and members of the NAACP, championed anti-lynching legislation, openly defied segregation laws, and pushed the Army Nurse Corps to allow black women in its ranks. She also wrote a newspaper column and had a weekly radio show. Lady Bird Johnson in the mid and late 1960s endorsed an effort to beautify public spaces and highways in the United States. She also established the foundations of what came to be known as the Office of the First Lady, complete with a news reporter, Liz Carpenter, as her press secretary.

Betty Ford took over as first lady in 1974 and became an avid advocate of women's rights, proclaiming that she was pro-choice when it came to abortion and lobbying for the ratification of the Equal Rights Amendment (ERA). The public role of the first lady reached a new level with Hillary Clinton in the 1990s when her husband put her in charge of his efforts to achieve health care reform, a controversial decision that did not meet with political success. Her successors, Laura Bush in the first decade of the twenty-first century and Michelle Obama in the second, returned to the roles played by predecessors in advocating less controversial policies: Laura Bush, a former librarian, advocated literacy and education; while Michelle Obama emphasized physical fitness and healthy diet and exercise. Mealania Trump, former first

lady of the US, focused attention on well-being for youth and advocating against cyberbullying. Jill Biden has continued championing the causes that have defined her public life, including support for military families, educational opportunities, and ending cancer.

The public and political profiles of first ladies remain high, and in the future, the president's spouse will have the opportunity to use that unelected position to advance policies that might well be less controversial and more appealing than those pushed by the president.

QUESTIONS TO CONSIDER

1. In what ways have first ladies expanded the role?

   Show Answer
   by becoming more public and outspoken, by becoming more active and more engaged with the American people on selected and self-identified issues

2. How were presidents in the eighteenth and nineteenth centuries likely to reach the public? How did this change in the twentieth century? Has anything changed in the early twenty-first century?

   Show Answer
   print media, letters, public appearances moving later to radio and television; followed by internet, social media, and instantly accessible forms of communication

TERMS TO REMEMBER

bully pulpit–Theodore Roosevelt's notion of the presidency as a platform from which the president could push an agenda

going public–a term for when the president delivers a major television address in the hope that public pressure will result in legislators supporting the president on a major piece of legislation

1. Wendy Wick Reaves. 1987. "Thomas Nast and the President," *American Art Journal* 19, No. 1: 61–71.
2. For more information see Doris Kearns Goodwin's 2013 The Bully Pulpit by Simon and Schuster
3. Richard Fonte, Austin Community College
4. George C. Edwards. 2016. *Predicting the Presidency: The Potential of Persuasive Leadership*. Princeton: Princeton University Press; George C. Edwards and Stephen J. Wayne. 2003. *Presidential Leadership: Politics and Policy Making*. Belmont, CA: Wadsworth/Thomson Learning.

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11.1 The Bureaucracy: What is its function?

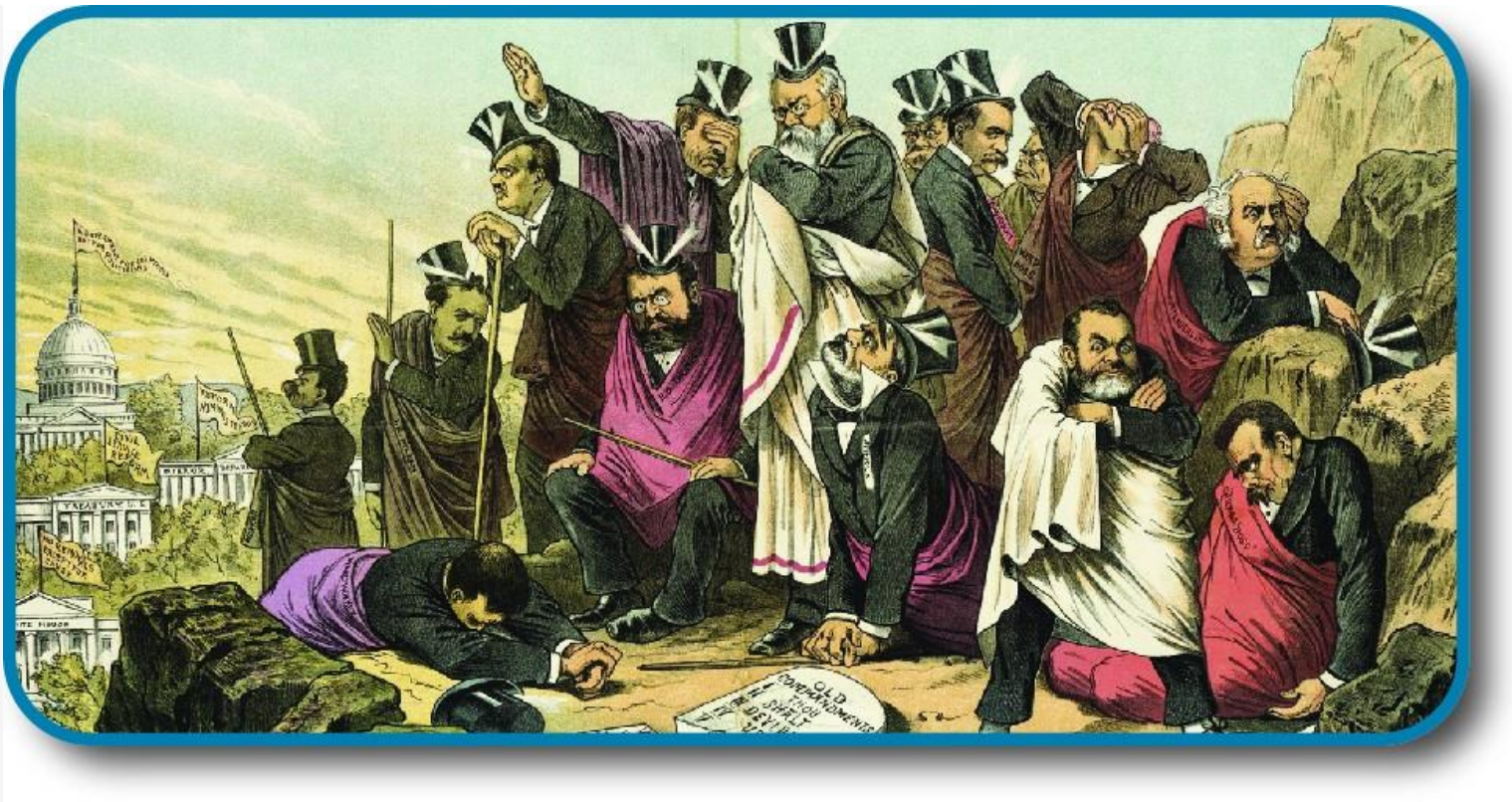


Image 11.1 Cartoon Illustrating the Spoils System and the U.S. Government Bureaucracy

This 1885 cartoon reflects the disappointment of office seekers who were turned away from bureaucratic positions they believed their political commitments had earned them. It was published just as the U.S. bureaucracy was being transformed from the spoils system to the merit system.
(Credit: OpenStax modified image)

Learning Objectives

- Define bureaucracy and bureaucrat.
- Identify the reasons people undertake civil service

Chart 11.1 Learning Objectives on the Bureaucracy and Civil Service

What does the word "**bureaucracy**" conjure in your mind? For many, it evokes inefficiency, corruption, red tape, and government overreach. For others, it triggers very different images—of professionalism, helpful and responsive service, and government management. Your experience with bureaucrats and the administration of government probably informs your response to the term. The ability of bureaucracy to inspire both revulsion and admiration is one of several features that make it a fascinating object of study.

More than that, the many arms of the federal bureaucracy, often considered the fourth branch of government, are valuable components of the federal system. Without this administrative structure,

staffed by nonelected workers who possess expertise to carry out their jobs, government could not function the way citizens need it to.

That does not mean, however, that bureaucracies are perfect. Throughout history, both small and large nations have elevated certain types of non-elected workers to positions of relative power within the governmental structure. Collectively, these essential workers are called the bureaucracy.

A **bureaucracy** is an administrative group of non-elected officials charged with carrying out functions connected to a series of policies and programs. In the United States, the bureaucracy began as a very small collection of individuals. Over time, however, it grew to be a major force in political affairs. Indeed, it grew so large that politicians in modern times have ridiculed it to great political advantage. However, the country's many **bureaucrats** or **civil servants**, the individuals who work in the bureaucracy, fill necessary and even instrumental roles in every area of government: from high-level positions in foreign affairs and intelligence collection agencies to clerks and staff in the smallest regulatory agencies. They are hired, or sometimes appointed, for their expertise in carrying out the functions and programs of the government.

What Does a Bureaucracy Do?

Modern society relies on the effective functioning of government to provide public goods, enhance quality of life, and stimulate economic growth. The activities by which government achieves these functions include—but are not limited to—taxation, homeland security, immigration, foreign affairs, and education. The more society grows and the need for government services expands, the more challenging bureaucratic management and **public administration** becomes. Public administration is both the implementation of public policy in government bureaucracies and the academic study that prepares civil servants for work in those organizations.

The classic version of a bureaucracy is hierarchical and can be described by an organizational chart that outlines the separation of tasks and worker specialization while also establishing a clear unity of command by assigning each employee to only one boss. Moreover, the classic bureaucracy employs a division of labor under which work is separated into smaller tasks assigned to different people or groups. Given this definition, bureaucracy is not unique to government but is also found in the private and nonprofit sectors. That is, almost all organizations are bureaucratic regardless of their scope and size; although public and private organizations differ in some important ways. For example, while private organizations are responsible to a superior authority such as an owner, board of directors, or shareholders, federal governmental organizations answer equally to the president, Congress, the courts, and ultimately the public. The underlying goals of private and public organizations also differ. While private organizations seek to survive by controlling costs, increasing market share, and realizing a profit, public organizations find it more difficult to measure the elusive goal of operating with efficiency and effectiveness.

Bureaucracy may seem like a modern invention, but bureaucrats have served in governments for nearly as long as governments have existed. Archaeologists and historians point to the sometimes elaborate

bureaucratic systems of the ancient world, from the Egyptian scribes who recorded inventories to the biblical tax collectors who kept the wheels of government well-greased.[1]

In Europe, government bureaucracy and its study emerged before democracies did. In contrast, in the United States, a democracy and the Constitution came first, followed by the development of national governmental organizations as needed, and then finally the study of U.S. government bureaucracies and public administration emerged.[2] In fact, the long pedigree of bureaucracy is an enduring testament to the necessity of administrative organization. More recently, modern bureaucratic management emerged in the eighteenth century from Scottish economist Adam Smith's support for the efficiency of the division of labor and from Welsh reformer Robert Owen's belief that employees are vital instruments in the functioning of an organization.

However, it was not until the mid-1800s that the German scholar Lorenz von Stein argued for public administration as both a theory and a practice since its knowledge is generated and evaluated through the process of gathering evidence. For example, a public administration scholar might gather data to see whether the timing of tax collection during a particular season might lead to higher compliance or returns. Credited with being the father of the science of public administration, von Stein opened the path of administrative enlightenment for other scholars in industrialized nations.

The Origins of the U.S. Bureaucracy

In the early U.S. republic, the bureaucracy was quite small. This is understandable since the American Revolution was largely a revolt against executive power and the British imperial administrative order. Nevertheless, while neither the word "bureaucracy" nor its synonyms appear in the text of the Constitution, the document does establish a few broad channels through which the emerging government could develop the necessary bureaucratic administration.

For example, Article II, Section 2, provides the president the power to appoint officers and department heads. In the following section, the president is further empowered to see that the laws are "faithfully executed." More specifically, Article I, Section 8, empowers Congress to establish a post office, build roads, regulate commerce, coin money, and regulate the value of money. Granting the president and Congress such responsibilities appears to anticipate a bureaucracy of some size. Yet the design of the bureaucracy is not described, and it does not occupy its own section of the Constitution as bureaucracy often does in other countries' governing documents; the design and form were left to be established in practice.

Under President George Washington, the bureaucracy remained small enough to accomplish only the necessary tasks at hand.[3] Washington's tenure saw the creation of the Department of State to oversee international issues, the Department of the Treasury to control coinage, and the Department of War to administer the armed forces. The employees within these three departments, in addition to the growing postal service, constituted the major portion of the federal bureaucracy for the first three decades of the republic. Two developments, however, contributed to the growth of the bureaucracy well beyond these humble beginnings.

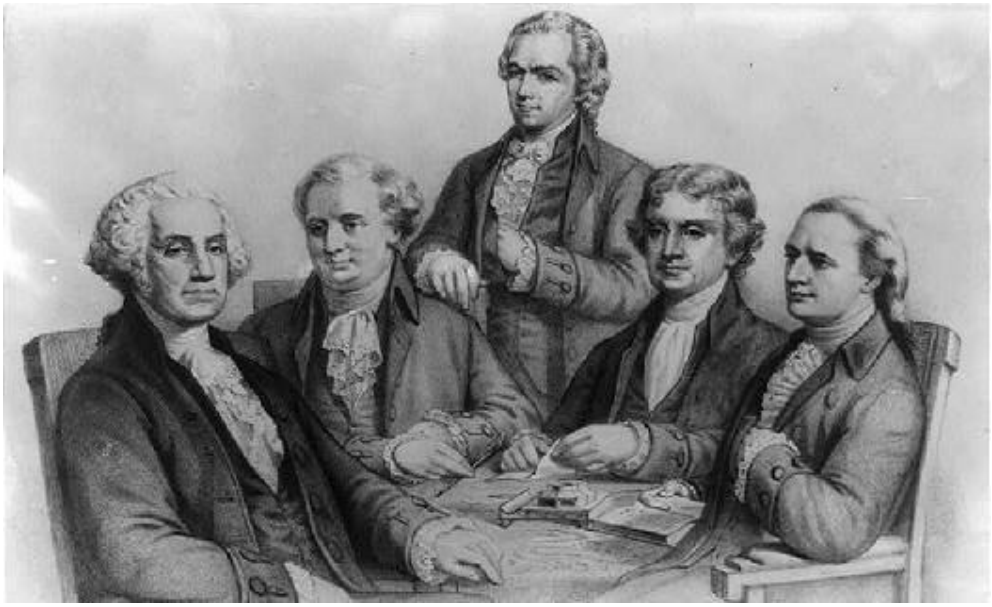


Image 11.2 Drawing of President Washington's Cabinet

The cabinet of President George Washington (far left) consisted of only four individuals: the secretary of war (Henry Knox, left), the secretary of the treasury (Alexander Hamilton, center), the secretary of state (Thomas Jefferson, right), and the attorney general (Edmund Randolph, far right). The small size of this group reflected the small size of the U.S. government in the late eighteenth century. (Credit: modification of work by the Library of Congress)

The first development was the rise of centralized party politics in the 1820s. Under Democratic President Andrew Jackson, many thousands of party loyalists filled the ranks of the bureaucratic offices around the country. This was the beginning of the **spoils system**, in which political appointments were transformed into political patronage doled out by the president on the basis of party loyalty.[4]

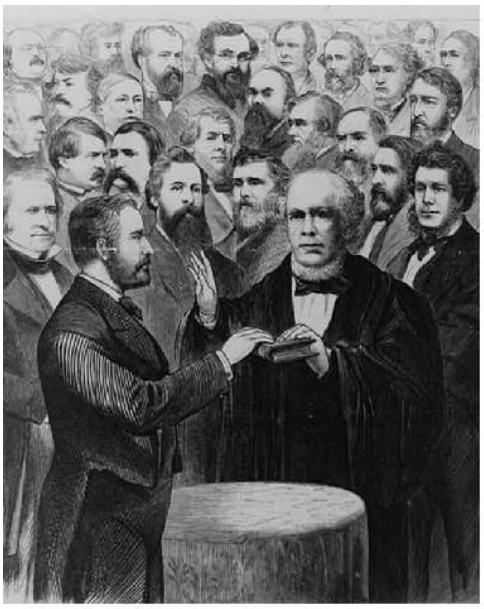
Political **patronage** is the use of state resources to reward individuals for their political support. The term "spoils" here refers to paid positions in the U.S. government.

As the saying goes, "to the victor," in this case the incoming president, "go the spoils." It was assumed that government would work far more efficiently if the key federal posts were occupied by those already supportive of the president and his policies.

This system served to enforce party loyalty by tying the livelihoods of the party faithful to the success or failure of the party. The number of federal posts the president sought to use as appropriate rewards for supporters swelled over the following decades.

The Fall of Political Patronage

Patronage had the advantage of putting political loyalty to work by making the government quite responsive to the electorate and keeping election turnout robust because so much was at stake. However, the spoils system also had a number of obvious disadvantages. It was a reciprocal system. Clients who wanted positions in the civil service pledged their political loyalty to a particular patron who then provided them with their desired positions. These arrangements directed the power and resources of government toward perpetuating the reward system. They replaced the system that early presidents like Thomas Jefferson had fostered, in which the country's intellectual and economic elite rose to the highest levels of the federal bureaucracy based on their relative merit.[5] Criticism of the spoils system grew, especially in the mid-1870s, after numerous scandals rocked the administration of President Ulysses S. Grant.





(a) (b)

Caption: It was under President Ulysses S. Grant, shown in this engraving being sworn in by Chief Justice Samuel P. Chase at his inauguration in 1873 (a), that the inefficiencies and opportunities for corruption embedded in the spoils system reached their height. Grant was famously loyal to his supporters, a characteristic that—combined with postwar opportunities for corruption—created scandal in his administration. This political cartoon from 1877 (b), nearly half a century after Andrew Jackson was elected president, ridicules the spoils system that was one of his legacies. In it he is shown riding a pig, which is walking over "fraud," "bribery," and "spoils" and feeding on "plunder." (Credit a, b: modification of work by the Library of Congress)

Image 11.3 Drawings Illustrating the Spoils System

As the negative aspects of political patronage continued to infect bureaucracy in the late nineteenth century, calls for civil service reform grew louder.

Those supporting the patronage system held that their positions were well earned; those who condemned it argued that federal legislation was needed to ensure jobs were awarded on the basis of merit. Eventually, after President James Garfield had been assassinated by a disappointed office seeker, Congress responded to cries for reform with the **Pendleton Act**, also called the **Civil Service Reform Act** of 1883.

The act established the Civil Service Commission, a centralized agency charged with ensuring that the federal government's selection, retention, and promotion practices were based on open, competitive examinations in a **merit system**.[6] The passage of this law sparked a period of social activism and political reform that continued well into the twentieth century.

The Bureaucracy Comes of Age

The late nineteenth and early twentieth centuries were a time of great bureaucratic growth in the United States: The Interstate Commerce Commission was established in 1887, the Federal Reserve Board in 1913, the Federal Trade Commission in 1914, and the Federal Power Commission in 1920.

New programs require bureaucrats to run them, and the national bureaucracy has ballooned.[7] For example, Reagan and Congress increased the defense budget dramatically over the course of the 1980s.[8]

"THE NINE MOST TERRIFYING WORDS IN THE ENGLISH LANGUAGE"

The two periods of increased bureaucratic growth in the United States, the 1930s and the 1960s, accomplished far more than expanding the size of government.

They transformed politics in ways that continue to shape political debate today. While the bureaucracies created in these two periods served important purposes, many at that time and even now argue that the expansion came with unacceptable costs, particularly economic costs. The common argument that bureaucratic regulation smothers capitalist innovation was especially powerful in the Cold War environment of the 1960s, 70s, and 80s. But as long as voters felt they were benefiting from the bureaucratic expansion, as they typically did, the political winds supported continued growth.

In the 1970s, however, Germany and Japan were thriving economies in positions to compete with U.S. industry. This competition, combined with technological advances and the beginnings of computerization, began to eat away at American prosperity. Factories began to close, wages began to stagnate, inflation climbed, and the future seemed a little less bright. In this environment, tax-paying workers were less likely to support generous welfare programs designed to end poverty. They felt these bureaucratic programs were adding to their misery in order to support unknown others.

When Ronald Reagan ran for president in 1980, his criticism of bureaucratic waste in Washington carried him to a landslide victory. Even as late as 1986, he continued to rail against the Washington bureaucracy, once declaring famously that "the nine most terrifying words in the English language are: I'm from the government, and I'm here to help."

OVERSIGHT OF GOVERNMENT FROM THE INSIDE--WHISTLEBLOWERS

One the most the most important forms of bureaucratic oversight come from inside the bureaucracy itself. Those within are in the best position to recognize and report on misconduct. But bureaucracies tend to jealously guard their reputations and are generally resistant to criticism from without and from within. This can create quite a problem for insiders who recognize and want to report mismanagement and even criminal behavior. The personal cost of doing the right thing can be prohibitive.[11] For a typical bureaucrat faced with the option of reporting corruption and risking possible termination or turning the other way and continuing to earn a living, the choice is sometimes easy.

Under heightened skepticism due to government inefficiency and outright corruption in the 1970s, government officials began looking for solutions. When Congress drafted the Civil Service Reform Act of 1978, it specifically included rights for federal **whistleblowers;** those who publicize misdeeds committed within a bureaucracy or other organization and set up protection from reprisals.

The act's Merit Systems Protection Board is a quasi-juridical institutional board headed by three members appointed by the president and confirmed by the Senate that hears complaints, conducts investigations into possible abuses, and institutes protections for bureaucrats who speak out.[12] Over time, Congress and the president have strengthened these protections with additional acts. These include the Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012, which further compelled federal agencies to protect whistleblowers who reasonably perceive that an institution or the people in the institution are acting inappropriately.



In 2013, Edward Snowden, an unknown computer professional working under contract within the National Security Agency, copied and released to the press classified information that revealed an expansive and largely illegal secret surveillance network the government was operating within the United States. Fearing reprisals, Snowden fled to Hong Kong and then Moscow. Some argue that his actions were irresponsible, and he should be prosecuted. Others champion his actions and hold that without them, the illegal spying would have continued. Regardless, the Snowden case reveals important weaknesses in whistleblower protections in the United States. (Credit: OpenStax; modification of work by Bruno Sanchez-Andrade Nuño)

Image 11.4 Photo of Bus with Advertisement from Political Group

QUESTIONS TO CONSIDER

1. What roles do professional government employees carry out?

   Show Answer
   the basic functions of government

2. Who are they and how do they acquire their jobs?

   Show Answer
   merit examination, education and experience

3. Who makes the rules of a bureaucracy?

   Show Answer
   Constitution; federal law passed by Congress, internal rules set by President and executive authority

4. Why might people be more sympathetic to bureaucratic growth during periods of prosperity?

   Show Answer
   more money and opportunity for more people

5. In what way do modern politicians continue to stir up popular animosity against bureaucracy to political advantage? Is it effective? Why or why not?

   Show Answer
   exposing waste in government

TERMS TO REMEMBER

bureaucracy–an administrative group of nonelected officials charged with carrying out functions connected to a series of policies and programs

bureaucrats–the civil servants or political appointees who fill nonelected positions in government and make up the bureaucracy

civil servants–the individuals who fill nonelected positions in government and make up the bureaucracy; also known as bureaucrats

merit system–a system of filling civil service positions by using competitive examinations to value experience and competence over political loyalties

patronage–the use of government positions to reward individuals for their political support

Pendleton Act/Civil Service Reform Act--to ensure jobs were awarded on the basis of merit; government jobs were to be about "what" individuals knew rather than "who" they knew

public administration–the implementation of public policy as well as the academic study that prepares civil servants to work in government

spoils system–a system that rewards political loyalties or party support during elections with bureaucratic appointments after victory

whistleblowers--those who publicize misdeeds committed within a bureaucracy or other organization

1. For general information on ancient bureaucracies see Amanda Summer. 2012. "The Birth of Bureaucracy". *Archaeology* 65, No. 4: 33–39; Clyde Curry Smith. 1977. "The Birth of Bureaucracy". *The Bible Archaeologist* 40, No. 1: 24–28; Ronald J. Williams. 1972. "Scribal Training in Ancient Egypt," *Journal of the American Oriental Society* 92, No. 2: 214–21.
2. Richard Stillman. 2009. *Public Administration: Concepts and Cases.* 9th edition. Boston: Wadsworth Cengage Learning.
3. For the early origins of the U.S. bureaucracy see Michael Nelson. 1982. "A Short, Ironic History of American National Bureaucracy," *The Journal of Politics* 44 No. 3: 747–78.
4. Daniel Walker Howe. 2007. *What Hath God Wrought: The Transformation of America, 1815-1848.* Oxford: Oxford University Press, 334.
5. Jack Ladinsky. 1966. "Review of Status and Kinship in the Higher Civil Service: Standards of Selection in the Administrations of John Adams, Thomas Jefferson, and Andrew Jackson," *American Sociological Review* 31 No. 6: 863–64.
6. For more on the Pendleton Act and its effects see Sean M. Theriault. 2003. "Patronage, the Pendleton Act, and the Power of the People," *The Journal of Politics* 65 No. 1: 50–68; Craig V. D. Thornton. 1983. "Review of Centenary Issues of the Pendleton Act of 1883: The Problematic Legacy of Civil Service Reform," *Journal of Policy Analysis and Management* 2 No. 4: 653–53.
7. For more on LBJ and the Great Society see: John A. Andrew. 1998. *Lyndon Johnson and the Great Society*. Chicago: Ivan R Dee; Julian E. Zelizer. 2015. *The Fierce Urgency of Now: Lyndon Johnson, Congress, and the Battle for the Great Society*. New York: Penguin Press.
8. John Mikesell. 2014. *Fiscal Administration*, 9th ed. Boston: Cengage.

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11.2 The Bureaucracy: How is it structured?



Image 11.5 Photo of a Person Eating a Hamburger

Photo of girl eating a hamburger from the FDA website and an article, "FDA Ensures Your Foods From Animals Are Safe." The FDA (Food and Drug Administration) is an agency in the Department of Health and Human Services, a department in the national government's bureaucracy. (Credit: FDA at https://www.fda.gov/forconsumers/consumerupdates/ucm419383.htm)

Learning Objectives

- Understand the basic structure of the executive branch and the bureaucracy.
- Examine the various groups that assist the president in implementing laws, rules and regulations.
- Know the difference between the various types of bureaucratic agencies.

Chart 11.2 Learning Objectives on Bureaucratic Regulatory Agencies

Turning a **spoils system** bureaucracy into a **merit-based civil service**, while desirable, comes with several different consequences. The patronage system tied the livelihoods of civil service workers to their party loyalty and discipline. Severing these ties, as has occurred in the United States over the last century and a half, has transformed the way bureaucracies operate. Without the patronage network, bureaucracies form their own motivations. These motivations, sociologists have discovered, are designed to benefit and perpetuate the bureaucracies themselves.

Bureaucracies are complex institutions designed to accomplish specific tasks. This complexity, and the fact that they are organizations composed of human beings, can make it challenging for us to understand how bureaucracies work.

Bureaucracies are naturally competitive and power-hungry. This means bureaucrats, especially at the highest levels, recognize that limited resources are available to feed bureaucracies, so they will work to enhance the status of their own bureaucracy to the detriment of others.

This effort can sometimes take the form of merely emphasizing to Congress the value of their bureaucratic task, but it also means the bureaucracy will attempt to maximize its budget by depleting all its allotted resources each

year. This ploy makes it more difficult for legislators to cut the bureaucracy's future budget, a strategy that succeeds at the expense of thrift. In this way, the bureaucracy will eventually grow far beyond what is necessary and create bureaucratic waste that would otherwise be spent more efficiently among the other bureaucracies.

Other theorists have come to the conclusion that the extent to which bureaucracies compete for scarce resources is not what provides the greatest insight into how a bureaucracy functions. Rather, it is the absence of competition.

Similarities exist between a bureaucracy like the Internal Revenue Service (IRS) and a private monopoly like a regional power company or internet service provider that has no competitors. Such organizations are frequently criticized for waste, poor service, and a low level of client responsiveness. Consider, for example, the Bureau of Consular Affairs (BCA), the federal bureaucracy charged with issuing passports to citizens. There is no other organization from which a U.S. citizen can legitimately request and receive a passport, a process that normally takes several weeks. Thus there is no reason for the BCA to become more efficient or more responsive or to issue passports any faster.



Image 11.6 Photo of Screen Showing FDA Emergency Operations Center (Credit: fda.gov/aboutfda/centersoffices)

Types of Bureaucratic Organizations

A bureaucracy is a government unit established to accomplish a specific set of goals and objectives as authorized by a legislative body. In the United States, the federal bureaucracy enjoys a great degree of autonomy compared to those of other countries. This is in part due to the sheer size of the federal budget, approximately $3.5 trillion as of 2015.[1] And because many of its agencies do not have clearly defined lines of authority—roles and responsibilities established by means of a chain of command—they also are able to operate with a high degree of autonomy. However, many agency actions are subject to judicial review. In *Schechter Poultry Corp. v. United States* (1935), the Supreme Court found that agency authority seemed limitless.[2] Yet, not all bureaucracies are alike. In the U.S. government, there are four general types:

cabinet departments, independent executive agencies, regulatory agencies, and government corporations.

Cabinet Departments

There are currently fifteen cabinet departments in the federal government. Cabinet departments are major executive offices that are directly accountable to the president.

They include the Departments of State, Defense, Education, Treasury, and several others. Occasionally, a department will be eliminated when government officials decide its tasks no longer need direct presidential and congressional oversight, such as happened to the Post Office Department in 1970.

Each cabinet department has a head called a secretary, appointed by the president and confirmed by the Senate. These secretaries report directly to the president, and they oversee a huge network of offices and agencies that make up the department. They also work in different capacities to achieve each department's mission-oriented functions. Within these large bureaucratic networks are a number of undersecretaries, assistant secretaries, deputy secretaries, and many others. The Department of Justice is the one department that is structured somewhat differently. Rather than a secretary and undersecretaries, it has an attorney general, an associate attorney general, and a host of different bureau and division heads.

Cabinet Department	Year Created	Purpose of Department
State	1789	oversee matters of foreign policy, international issues
Treasury	1789	oversee printing of currency, tax collection, management of government debt
Justice	1870	oversee enforcement of laws, matters related to public safety & crime prevention
Interior	1849	oversee conservation and management of U.S. lands, water, energy, wildlife
Agriculture	1862	oversee farming, agriculture, agricultural inspections
Commerce	1903	oversee promotion of economic growth, job creation, issue of patents
Labor	1913	oversee issues related to wages, unemployment, occupational safety
Defense	1947	oversee armed forces
Health & Human Services	1953	oversee promotion of public health, essential human services, food & drug laws
Housing & Urban Development	1965	oversee housing needs, homeownership, access to affordable housing
Transportation	1966	oversee networks of national transportation
Energy	1977	oversee energy needs, energy security, technological innovation
Education	1980	oversee public education, education policy, education research
Veterans' Affairs	1989	oversee services for veterans, healthcare and benefits programs
Homeland Security	2002	oversee agencies charged with protecting U.S. territory from natural & human threats

Chart 11.3 List of Cabinet Department, Years Created, and Purpose

Individual cabinet departments are composed of numerous levels of bureaucracy. These levels descend from the department head in a mostly hierarchical pattern and consist of essential staff, smaller offices, and bureaus. Their tiered, hierarchical structure allows large bureaucracies to address many different issues by deploying dedicated and specialized officers. For example, below the secretary of state are a number of undersecretaries. These include undersecretaries for political affairs, for management, for economic growth, energy, and the environment, and many others.

Each controls a few bureaus and offices. Each bureau and office in turn oversees a more focused aspect of the undersecretary's field of specialization. For example, below the undersecretary for public diplomacy and public affairs are three bureaus: educational and cultural affairs, public affairs, and international information programs.

Frequently, these bureaus have even more specialized departments under them. Under the bureau of educational and cultural affairs are the spokesperson for the Department of State and his or her staff, the Office of the Historian, and the United States Diplomacy Center.[3]

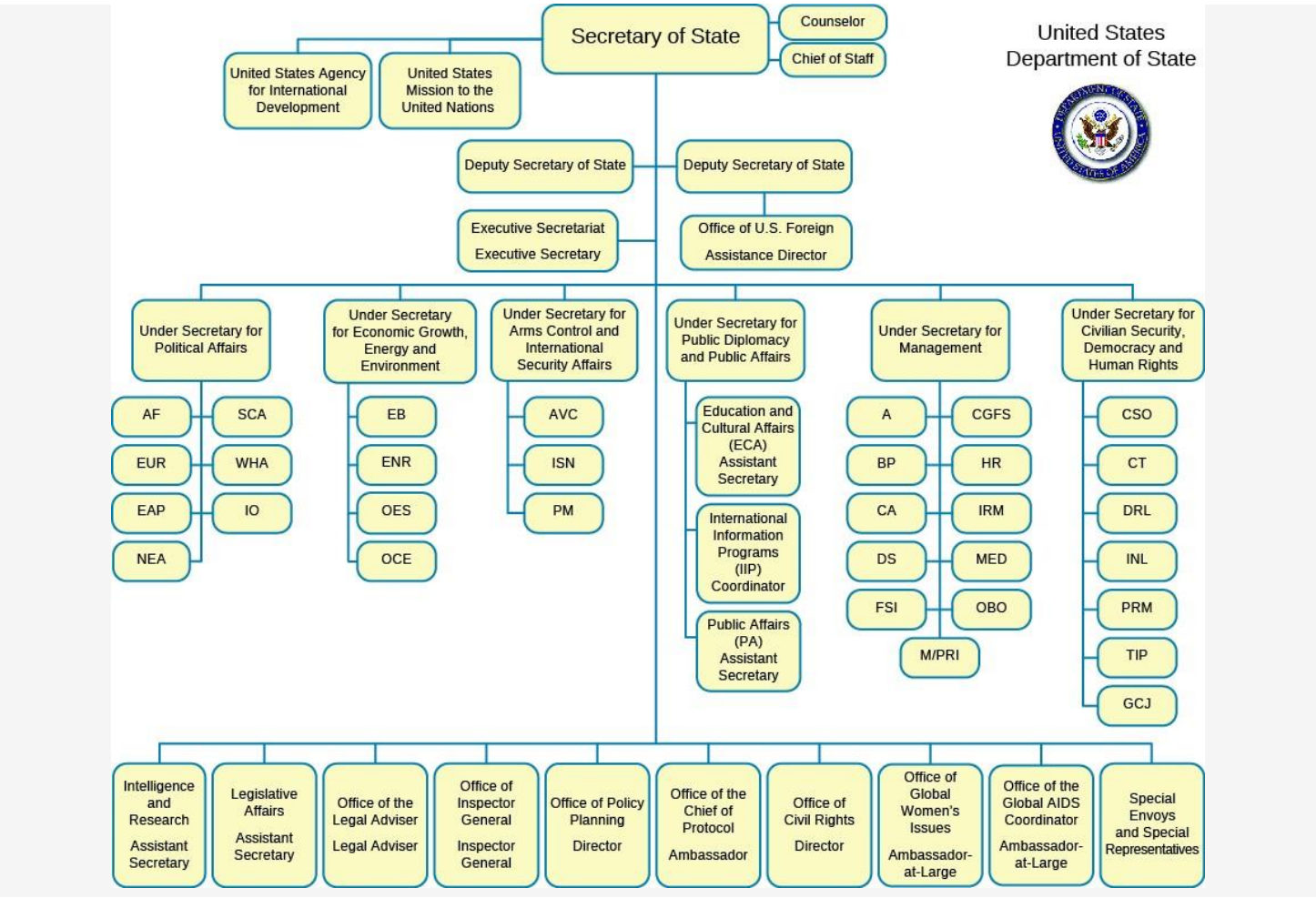


Chart 11.4 Organizational Chart of the United States Department of State

The multiple levels of the Department of State each work in a focused capacity to help the entire department fulfill its larger goals. (Credit: modification of work by the U. S. Department of State)

Created in 1939 by President Franklin D. Roosevelt to help manage the growing responsibilities of the White House, the **Executive Office of the President** still works today to "provide the President with the support that he or she needs to govern effectively."

Independent Executive Agencies and Regulatory Agencies

Like cabinet departments, **independent executive agencies** report directly to the president, with heads appointed by the president. Unlike the larger cabinet departments, however, independent agencies are assigned far more focused tasks. These agencies are considered independent because they are not subject to the regulatory authority of any specific department. They perform vital functions and are a major part of the bureaucratic landscape of the United States–providing information or services.

Some prominent independent agencies are the Central Intelligence Agency (CIA), which collects and manages intelligence vital to national interests and the National Aeronautics and Space Administration (NASA), charged with developing technological innovation for the purposes of space exploration.



Image 11.7 Logo for the United States Space Force Branch of the Military (Credit: whitehouse.gov)

In 2019, President Donald Trump established the United States Space Force under the Department of Defense. The Space Force is now the sixth branch of the U.S. Armed Forces, and they are "authorized to organize, train, and equip military space forces of the United States to ensure unfettered access to, and freedom to operate in, space, and to provide vital capabilities to joint and coalition forces in peacetime and across the spectrum of conflict," according to a presidential memorandum dated 19 February 2019.



Image 11.8 Photo of Moon Landing (Credit: NASA)

The **independent regulatory agency** emerged in the late nineteenth century as a product of the push to control the benefits and costs of industrialization. The first regulatory agency was the Interstate Commerce Commission (ICC), charged with regulating that most identifiable and prominent symbol of nineteenth-century industrialism, the railroad. Other regulatory agencies, such as the Commodity Futures Trading Commission, which regulates U.S. financial markets and the Federal Communications Commission, which regulates radio and television, have largely been created in the image of the ICC. The Securities and Exchange Commission (SEC) illustrates well the potential power of such agencies. The SEC's mission has expanded significantly in the digital era beyond mere regulation of stock floor trading.

Government Corporations

Agencies formed by the federal government to administer a quasi-business enterprise are called **government corporations**. They exist because the services they provide are partly subject to market forces and tend to generate enough profit to be self-sustaining, but they also fulfill a vital service the government has an interest in maintaining. Unlike a private corporation, a government corporation does not have stockholders. Instead, it has a board of directors and managers.

This distinction is important because whereas a private corporation's profits are distributed as dividends, a government corporation's profits are dedicated to perpetuating the enterprise. Unlike private businesses, which pay taxes to the federal government on their profits, government corporations are exempt from taxes. The most widely used government corporation is the U.S. Postal Service. Once a cabinet department, it was transformed into a government corporation in the early 1970s. Another widely used government corporation is the National Railroad Passenger Corporation, which uses the trade name Amtrak. Amtrak was the government's response to the decline in passenger rail travel in the 1950s and 1960s as the automobile came to dominate. Recognizing the need to maintain a passenger rail service despite dwindling profits, the government consolidated the remaining lines and created Amtrak.[4]



Image 11.9 Image of Amtrak Train and Crew

Had the U.S. government not created Amtrak in the 1970s, passenger rail service might have ceased to exist in the United States. (Credit: Library of Congress)

Bureaucrats must implement and administer a wide range of policies and programs as established by congressional acts or presidential orders.

Depending upon the agency's mission, a bureaucrat's roles and responsibilities vary greatly, from regulating corporate business and protecting the environment to printing money and purchasing office supplies.

Bureaucrats are government officials subject to legislative regulations and procedural guidelines. Because they play a vital role in modern society, they hold managerial and functional positions in government; they form the core of most administrative agencies. Although many top administrators are far removed from the masses, many interact with citizens on a regular basis.

Given the power bureaucrats have to adopt and enforce public policy, they must follow several legislative regulations and procedural guidelines. A *regulation* is a rule that permits government to restrict or prohibit certain behaviors among individuals and corporations. Bureaucratic rulemaking is a complex process that will be covered in more detail in the following section, but the rulemaking process typically

creates *procedural guidelines*, or more formally, *standard operating procedures*. These are the rules that lower-level bureaucrats must abide by regardless of the situations they face.

Elected officials are regularly frustrated when bureaucrats seem to not follow the path they intended. As a result, the bureaucratic process becomes inundated with **red tape**. This is the name for the procedures and rules that must be followed to get something done. Citizens frequently criticize the seemingly endless networks of red tape they must navigate in order to effectively utilize bureaucratic services, although these devices are really meant to ensure the bureaucracies function as intended.

QUESTIONS TO CONSIDER

1. Why might the executive branch create a government corporation?

   Show Answer
   to provide an essential service to the American people

2. What is the difference between an IEA and IRA?

   Show Answer
   executive agencies are mainly informational and regulatory agencies enforce rules

TERMS TO REMEMBER

government corporation (GC)–a corporation that fulfills an important public interest and is therefore overseen by government authorities to a much larger degree than private businesses

independent executive agency (IEA)–bureaucratic agency providing information or service to the public

independent regulatory agency (IRA)–bureaucratic agency enforcing government regulations/rules

red tape–the mechanisms, procedures, and rules that must be followed to get something done

1. Congressional Budget Office Report, https://www.cbo.gov/publication/44172 (June 6, 2016).
2. *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).
3. http://www.state.gov/r/pa/ei/rls/dos/436.htm (June 6, 2016).
4. David C. Nice. 1998. *Amtrak: the history and politics of a national railroad*. Boulder, CO: Lynne Rienner.

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11.3 The Bureaucracy: Who is in control?



Image 11.10 FBI Director Christopher Wray Questioned by Rep. Jim Jordan of the House Judiciary Committee, July 12, 2023 (Credit: Patrick Semansky/AP and ABC News at abcnews.go.com

Learning Objectives

- Explain the way Congress, the president, bureaucrats, and citizens provide meaningful oversight over the bureaucracies.
- Identify the ways in which privatization has made bureaucracies both more and less efficient.

Chart 11.5 Learning Objectives Bureaucratic Oversight

Bureaucracies are incredibly complicated. Understandably, then, the processes of rule-making and bureaucratic oversight are equally complex. Elected leaders and citizens have developed laws and institutions to help rein in bureaucracies that become either too independent, corrupt, or both.

Bureaucratic Rulemaking

When the particulars of implementation have been spelled out in the legislation authorizing a new program, bureaucracies move to enact it. When they encounter grey areas, many follow the federal **negotiated rule-making** process to propose a solution, that is, detailing how particular new federal polices, regulations, and/or programs will be implemented in the agencies. Congress cannot possibly legislate on that level of detail, so the experts in the bureaucracy do so.

Negotiated rule-making is a relatively recently developed bureaucratic device that emerged from the criticisms of bureaucratic inefficiencies in the 1970s, 1980s, and 1990s.[1] Before it was adopted, bureaucracies used a procedure called *notice-and-comment rule-making*. This practice required that agencies attempting to adopt rules publish their proposal in the *Federal Register*, the official publication for all federal rules and proposed rules.

By publishing the proposal, the bureaucracy was fulfilling its obligation to allow the public time to comment. But rather than encouraging the productive interchange of ideas, the comment period had the effect of creating an adversarial environment in which different groups tended to make extreme arguments for rules that would support their interests. As a result, administrative rulemaking became too lengthy, too contentious, and too likely to provoke litigation in the courts.

Consider the Original

|| Federalist No. 70 ||
The Executive Department Further Considered
From the New York Packet
Tuesday, March 18, 1788.
Author: **Alexander Hamilton**

To the People of the State of New York:
THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility. [...]

Federalist No. 70, "The Executive Department Further Considered, March 18, 1788 by Alexander Hamilton; https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-70

Chart 11.6 Excerpt from Federalist Paper No. 70

The *Federal Register* was once available only in print. Now, however, it is available online and is far easier to navigate and use. Have a **look** at all the important information the government's journal posts online.

Reformers argued that these inefficiencies needed to be corrected. They proposed the *negotiated rule-making process*, often referred to as regulatory negotiation, or "reg-neg" for short. This process was codified in the Negotiated Rule-making Acts of 1990 and 1996, which encouraged agencies to employ negotiated rule-making procedures. While negotiated rulemaking is required in only a handful of agencies and plenty still use the traditional process, others have recognized the potential of the new process and have adopted it.

In negotiated rulemaking, neutral advisers known as conveners put together a committee of those who have vested interests in the proposed rules. The conveners then set about devising procedures for reaching a consensus on the proposed rules. The committee uses these procedures to govern the process through which the committee members discuss the various merits and demerits of the proposals. With the help of neutral mediators, the committee eventually reaches a consensus on the rules.



Image 11.11 Lois Lerner, Former IRS Director, Testifies Before Congress

Government Bureaucratic Oversight

In this photograph, Lois Lerner, the former director of the Internal Revenue Service's Exempt Organizations Unit, sits before an oversight committee in Congress following a 2013 investigation. On the advice of her attorney, Lerner invoked her Fifth Amendment right not to incriminate herself and refused to answer questions. (Credit: U. S. Congress; OpenStax included image)

The ability for bureaucracies to develop their own rules and in many ways control their own budgets has often been a matter of great concern for elected leaders. As a result, elected leaders have employed a number of strategies and devices to control public administrators in the bureaucracy.

Congress is particularly empowered to apply oversight of the federal bureaucracy because of its power to control funding and approve presidential appointments. The various bureaucratic agencies submit annual summaries of their activities and budgets for the following year, and committees and subcommittees in both chambers regularly hold hearings to question the leaders of the various bureaucracies. These hearings are often tame, practical, fact-finding missions. Occasionally, however, when a bureaucracy has committed or contributed to a blunder of some magnitude, the hearings can become quite animated and testy.

This occurred in 2013 following the realization by Congress that the IRS had selected for extra scrutiny certain groups that had applied for tax-exempt status.

While the error could have been a mere mistake or have resulted from any number of reasons, many in Congress became enraged at the thought that the IRS might purposely use its power to inconvenience citizens and their groups.[2] The House directed its Committee on Oversight and Government Reform to launch an investigation into the IRS, during which time it interviewed and publicly scrutinized a number of high-ranking civil servants.



The mission of the U.S. House Oversight Committee is to "ensure the efficiency, effectiveness, and accountability of the federal government and all its agencies." The committee is an important congressional check on the power of the bureaucracy. Visit the **website** for more information about the U.S. House Oversight Committee.

Perhaps Congress's most powerful oversight tool is the **Government Accountability Office** (GAO).[3] The GAO is an agency that provides Congress, its committees, and the heads of the executive agencies with auditing, evaluation, and investigative services. It is designed to operate in a fact-based and nonpartisan manner to deliver important oversight information where and when it is needed. The GAO's role is to produce reports, mostly at the insistence of Congress.

In the approximately nine hundred reports it completes per year, the GAO sends Congress information about budgetary issues for everything from education, health care, and housing to defense, homeland security, and natural resource management.[4] Since it is an office within the federal bureaucracy, the GAO also supplies Congress with its own annual performance and accountability report. This report details the achievements and remaining weaknesses in the actions of the GAO for any given year.

Apart from Congress, the president also executes oversight over the extensive federal bureaucracy through several different avenues. Most directly, the president controls the bureaucracies by appointing the heads of the fifteen cabinet departments and of many independent executive agencies, such as the CIA, the EPA, and the Federal Bureau of Investigation. These cabinet and agency appointments go through the Senate for confirmation.

The other important channel through which the office of the president conducts oversight over the federal bureaucracy is the Office of Management and Budget (OMB).[5] The primary responsibility of the OMB is to produce the president's annual budget for the country.

With this huge responsibility, however, comes a number of other responsibilities. These include reporting to the president on the actions of the various executive departments and agencies in the federal government, overseeing the performance levels of the bureaucracies, coordinating and reviewing federal regulations for the president, and delivering executive orders and presidential directives to the various agency heads.

Citizen Bureaucratic Oversight

Several laws passed in the decades between the end of the Second World War and the late 1970s have created a framework through which citizens can exercise their own bureaucratic oversight.

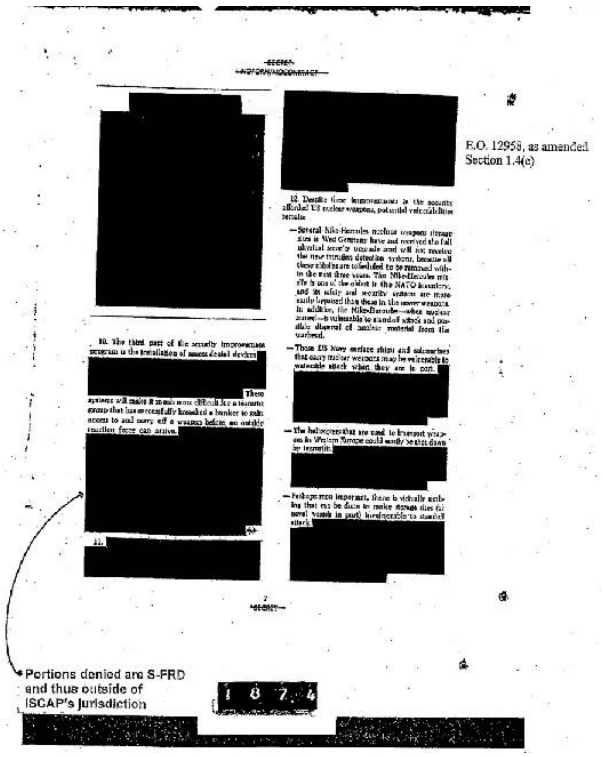


Image 11.12 Photo of Redacted Document

As this CIA document shows, even information released under FOIA can be greatly restricted by the agencies releasing it. The black marks (**redacting**) cover information the CIA deemed particularly sensitive. (Credit: Central Intelligence Agency)

The two most important laws are the **Freedom of Information Act** of 1966 and the Government in **Sunshine Act** of 1976.[6] Like many of the modern bureaucratic reforms in the United States, both emerged during a period of heightened skepticism about government activities.

The first, the Freedom of Information Act of 1966 (FOIA), emerged in the early years of the Johnson presidency as the United States was conducting secret Cold War missions around the world, the U.S. military was becoming increasingly mired in the conflict in Vietnam, and questions were still swirling around the Kennedy assassination. FOIA provides journalists and the general public the right to request records from various federal agencies. These agencies are required by law to release that information unless it qualifies for one of nine exemptions.

These exceptions cite sensitive issues related to national security or foreign policy, internal personnel rules, trade secrets, violations of personnel privacy rights, law enforcement information, and oil well data. FOIA also compels agencies to post some types of information for the public regularly without being requested.

In fiscal year 2020, the government received 772,869 FOIA requests, with just three departments—Defense, Homeland Security, and Justice—accounting for more than half those queries.[7] The Center for Effective Government analyzed the fifteen federal agencies that receive the most FOIA requests and concluded that they generally struggle to implement public disclosure rules. In its latest report, published in 2015 and using 2012 and 2013 data, ten of the fifteen did not earn satisfactory overall grades, scoring less than seventy of a possible one hundred points.[8]

The Government in Sunshine Act of 1976 is different from FOIA in that it requires all multi-headed federal agencies to hold their meetings in a public forum on a regular basis. The name "Sunshine Act" is derived from the old adage that "sunlight is the best disinfectant"—the implication being that governmental and bureaucratic corruption thrive in secrecy but shrink when exposed to the light of public scrutiny. The act defines a meeting as any gathering of agency members in person or by phone, whether in a formal or informal manner.

Like FOIA, the Sunshine Act allows for exceptions. These include meetings where classified information is discussed, proprietary data has been submitted for review, employee privacy matters are discussed, criminal matters are brought up, and information would prove financially harmful to companies were it released. Citizens and citizen groups can also follow rule-making and testify at hearings held around the

country on proposed rules. The rule-making process and the efforts by federal agencies to keep open records and solicit public input on important changes are examples of responsive bureaucracy.

Government Privatization

When those in government speak of privatization, they are often referring to one of a host of different models that incorporate the market forces of the private sector into the function of government to varying degrees.[9] These include 1) using contractors to supply goods and/or services, 2) distributing government vouchers with which citizens can purchase formerly government-controlled services on the private market, 3) supplying government grants to private organizations to administer government programs, 4) collaborating with a private entity to finance a government program; and, 5) even fully divesting the government of a function and directly giving it to the private sector. We will look at three of these types of privatization shortly.

Divestiture, or full **privatization**, occurs when government services are transferred, usually through sale, from government bureaucratic control into an entirely market-based, private environment. At the federal level this form of privatization is very rare, although it does occur. Consider the Student Loan Marketing Association, often referred to by its nickname, Sallie Mae.

When it was created in 1973, it was designed to be a government entity for processing federal student education loans. Over time, however, it gradually moved further from its original purpose and became increasingly private. Sallie Mae reached full privatization in 2004.[10]

Another example is the U.S. Investigations Services, Inc., which was once the investigative branch of the Office of Personnel Management (OPM) until it was privatized in the 1990s.

At the state level, however, the privatization of roads, public utilities, bridges, schools, and even prisons has become increasingly common as state and municipal authorities look for ways to reduce the cost of government.

QUESTIONS TO CONSIDER

What concerns might arise when Congress delegates decision-making authority to unelected leaders, sometimes called the fourth branch of government?

Show Answer
whose interests are they most likely to favor

Which model of bureaucracy best explains the way the government currently operates? Why?

Show Answer
personal opinion

Do you think Congress and the president have done enough to protect bureaucratic whistleblowers?

Show Answer
open for debate

TERMS TO REMEMBER

Divestiture--full privatization of a government function by turning the work over to the private sector

Freedom of Information Act-- FOIA provides journalists and the general public the right to request records from various federal agencies

Government Accountability Office—an agency that provides Congress, its committees, and the heads of the executive agencies with auditing, evaluation, and investigative services

negotiated rulemaking–a rulemaking process in which neutral advisors convene a committee of those who have vested interests in the proposed rules and help the committee reach a consensus on them

privatization–measures that incorporate the market forces of the private sector into the function of government to varying degrees; through contractors, distributing government vouchers, government grants, collaboration, and divesting the government of a function to the private sector

Sunshine Act-- requires all multi-headed federal agencies to hold their meetings in a public forum on a regular basis

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1. Philip J. Harter. 1982. "Negotiating Regulations: A Cure for Malaise," *Georgetown Law Journal*, 71, No. 1.
2. https://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf (May 1, 2016).
3. http://www.gao.gov/ (May 1, 2016).
4. http://www.gao.gov/about/products/about-gao-reports.html (May 1, 2016).
5. https://www.whitehouse.gov/omb (May 1, 2016).
6. https://www.law.cornell.edu/uscode/text/5/552; https://www.gpo.gov/fdsys/pkg/STATUTE-90/pdf/STATUTE-90-Pg1241.pdf(June 6, 2016).
7. http://www.foia.gov (May 1, 2016).
8. http://www.foreffectivegov.org/access-to-information-scorecard-2015/ (May 1, 2016).
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11. Alan K. Campbell. 1978. "Civil Service Reform: A New Commitment." *Public Administration Review* 38 No. 2, 99.
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12.1 Domestic Policy: Categorizing Public Policy



Image 12.1 Photo of Tea Party Protesters in Minnesota

Minnesota Tea Party members protest in 2011, demanding repeal of the recently enacted Patient Protection and Affordable Care Act. Protests against expanding the federal government's role in the economy. (Credit: OpenStax; modification of work by "Fibonacci Blue"/Flickr)

Learning Objectives

- Describe the different types of public policy categories.
- Compare the different costs and benefits of public policy types and the way they transfer, allocate, or regulate goods and services within a society.
- Identify the key domestic arenas of public policy.
- Describe the major social safety net programs.
- List the key agencies responsible for promoting and regulating U.S. business and industry.

Chart 12.1 Learning Objectives on Public Policy for Domestic Concerns



Image 12.2 President Trump Signs "Learn-to-Earn" Bill

Governments rarely want to keep their policies a secret. Elected officials want to be able to take credit for the things they have done to help their constituents and their opponents are all too willing to cast blame when policy initiatives fail. We can therefore think of policy as the formal expression of what elected or appointed officials are trying to accomplish.

President Trump, along side Virginia Foxx of North Carolina and others, signs the "learn-to-earn" executive order on apprenticeships on 15 June 2017 (Credit: PBS NewsHour at pbs.org; Laurie Kellman, Associated Press)

The idea of public policy is by its very nature a politically contentious one. Among the differences between American liberals and conservatives are the policy preferences prevalent in each group. Modern liberals tend to feel very comfortable with the idea of the government expansion of the public sector, believing that this expansion will lead to outcomes more equitable and fairer for all members of society. Conservatives, on the other hand, often find government and expansion of the public sector onerous and overreaching. They feel society would function more efficiently if oversight of most "public sector" matters were returned to the private sector. Before digging too deeply into a discussion of the current nature of public policy in the United States, let us look first at the range of public policy categories.

Classic Types of Policy

Public policy is the broad strategy government uses to do its job. It is the relatively stable set of purposeful governmental behaviors that address matters of concern to some part of society. Public policy, then, ultimately boils down to determining the strategy for the distribution and allocation of **public sector goods and services**. While the specifics of policy often depend on the circumstances, two broad questions all policymakers must consider are a) who pays the costs of creating and maintaining the goods, and b) who receives the benefits of the goods? When private sector goods are bought and sold in a market place, the costs and benefits go to the participants in the transaction. Your landlord benefits from receipt of the rent you pay, and you benefit by having a place to live. But non-private goods like roads, waterways, and national parks are controlled and regulated by someone other than the owners, allowing policymakers to make decisions about who pays and who benefits.

In 1964, Theodore Lowi argued that it was possible to categorize policy based upon the degree to which costs and benefits were concentrated on the few or diffused across the many.[1] One policy category, known as **distributive policy**, tends to collect tax dollars or resources from many but concentrates direct benefits on relatively few.[2] Lowi described a distributive government policy as a policy that collects resources broadly through general taxation paid for by many in a society but confers direct benefits of public sector goods or services on a much smaller targeted set of individuals.[3]

The preamble to the *U.S. Constitution* states, as one of its stated purposes, promotion of the general welfare which implies some level (although undefined) of distributive policy to support the economic prosperity of the nation. Thus, highways are often developed through distributive policy. While only those initially using the roads may directly benefit from this public cost, the "general welfare" and prosperity of the nation is still enhanced by a better overall transportation system.[4] Distributive policy is a more general societal benefit to having individuals obtain personal benefits such as higher education that offer long-term benefits, but the upfront cost may be too high for the average citizen.

One example of the way distributive policy works is the story of the Transcontinental Railroad. In the 1860s, the U.S. government began to recognize the value of building a robust railroad system to move passengers and freight around the country. A goal was connecting California and the other western territories acquired during the 1840s war with Mexico to the rest of the country. The problem was that constructing a nationwide railroad system was a costly and risky proposition.

To build and support continuous rail lines, private investors would need to gain access to tens of thousands of miles of land, some of which might be owned by private citizens.

The solution was to charter two private corporations—the Central Pacific and Union Pacific Railroads—and provide them with resources and land grants to facilitate the construction of the railroads.[5] Through these grants, publicly owned land was distributed to private citizens, who could then use it for their own gain. However, a broader public gain was simultaneously being provided in the form of a nationwide transportation network.



Image 12.3 Photo of Union Pacific Railroad Bridge Under Construction

In an example of distributive policy, the Union Pacific Railroad was given land and resources to help build a national railroad system. Here, its workers construct the Devil's Gate Bridge in Utah in 1869. (Credit: Library of Congress; OpenStax included image)

The same process operates in the agricultural sector, where various federal programs help farmers and food producers through price supports and crop insurance, among other forms of assistance. These programs help individual farmers and agriculture companies stay afloat and realize consistent profits. They also achieve the broader goal of providing plenty of sustenance for the people of the United States, so that few of us must "live off the land."

THE HOOVER DAM: THE FEDERAL EFFORT TO DOMESTICATE THE COLORADO RIVER

As westward expansion led to development of the American Southwest, settlers increasingly realized that they needed a way to control the frequent floods and droughts that made agriculture difficult in the region. As early as 1890, land speculators had tried diverting the Colorado River for this purpose, but it wasn't until 1922 that the U.S. Bureau of Reclamation (then called the Reclamation Service) chose the Black Canyon as a good location for a dam to divert the river. Since it would affect seven states (as well as

Mexico), the federal government took the lead on the project, which eventually cost $49 million and more than one hundred lives.

The dam faced significant opposition from members of other states, who felt its massive price tag (almost $670 million in today's dollars[6]) benefited only a small group, not the whole nation. However, in 1928, Senator Hiram Johnson and Representative Phil Swing, both Republicans from California, won the day.

Congress passed the Boulder Canyon Project Act, authorizing the construction of one of the most ambitious engineering feats in U.S. history. The Hoover Dam, completed in 1935, served the dual purposed of generating hydroelectric power and irrigating two million acres of land from the resulting reservoir (Lake Mead).

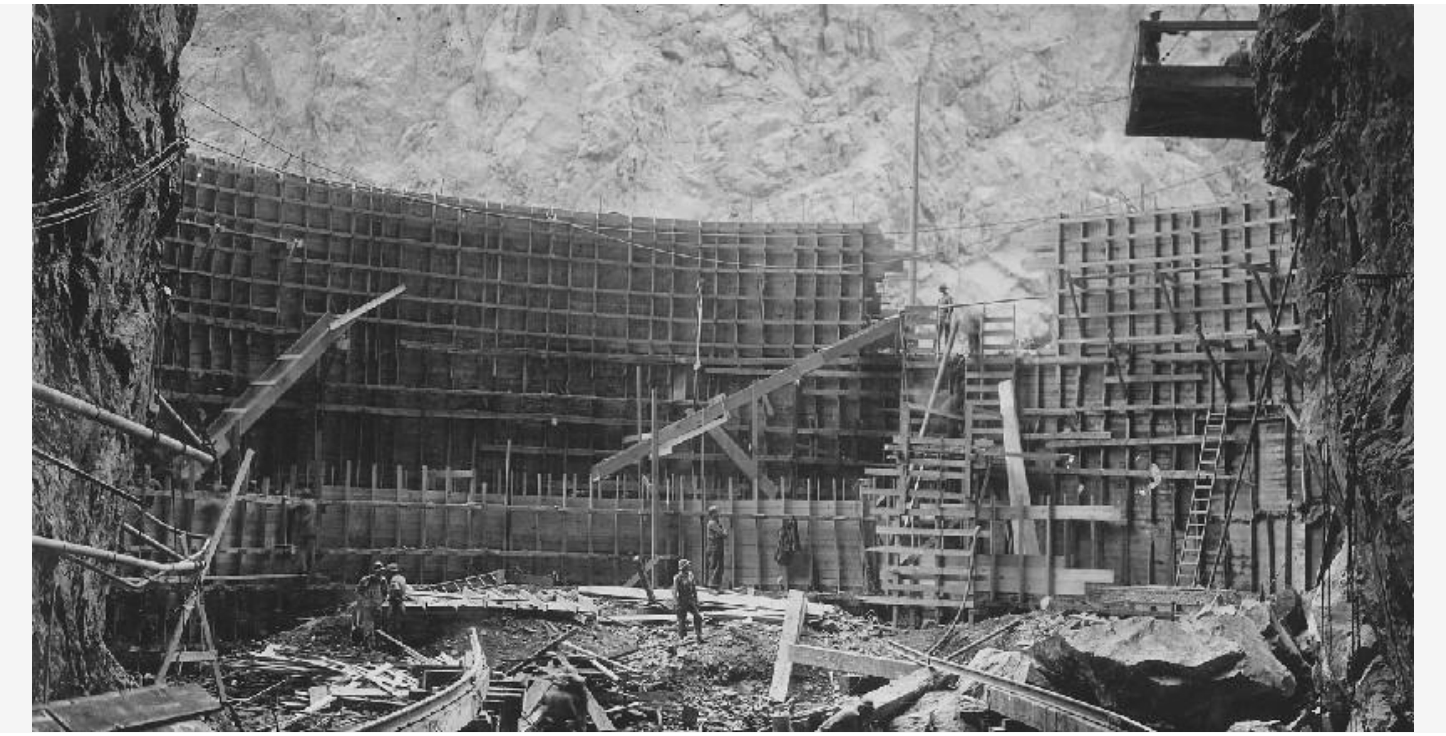


Image 12.4 Photo of Hoover Dam Under Construction

Workers construct the Hoover Dam, a distributive policy project, in Nevada in 1932. (Credit: US Congress)

Visit this **site** to see how the U.S. Bureau of Reclamation (USBR) presented the construction of the Hoover Dam. How would you describe the bureau's perspective?

American Rivers is an advocacy group whose goal is to protect and restore rivers, including the Colorado River. How does this group's view of the **Hoover Dam** differ from that of the USBR?

Other examples of **distributive policy** support citizens' efforts to achieve "the American Dream." American society recognizes the benefits of having citizens who are financially invested in the country's future. Among the best ways to encourage this investment are to ensure that citizens are highly educated and can acquire high-cost private goods such as homes and businesses. However, very few people have

the savings necessary to pay upfront for a college education, a first home purchase, or the start-up costs of a business. To help, the government has created a range of incentives that everyone in the country pays for through taxes but that directly benefits only the recipients. Examples include grants (such as Pell grants), tax credits and deductions, and subsidized or federally guaranteed loans.

Each of these programs aims to achieve a policy outcome. Pell grants exist to help students graduate from college, whereas Federal Housing Administration mortgage loans lead to home ownership.

While distributive policy, according to Lowi, has diffuse costs and concentrated benefits, **regulatory policy** features the opposite arrangement, with concentrated costs and diffuse benefits.[7]

A relatively small number of groups or individuals bear the costs of regulatory policy, but its benefits are expected to be distributed broadly across society. Regulatory government policies are implemented through rules that add costs to the operations of businesses or organizations by mandating certain practices in their operations that are intended to protect the public.

As you might imagine, regulatory policy is most effective for controlling or protecting public or common resources. Among the best-known examples are policies designed to protect public health and safety, and the environment. These regulatory policies prevent manufacturers or businesses from maximizing their profits by excessively polluting the air or water, selling products they know to be harmful, or compromising the health of their employees during production.

In the United States, nationwide calls for a more robust regulatory policy first grew loud around the turn of the twentieth century and the dawn of the Industrial Age. Investigative journalists—called *muckrakers* by politicians and business leaders who were the focus of their investigations—began to expose many of the ways in which manufacturers were abusing the public trust. Although various forms of corruption topped the list of abuses, among the most famous muckraker exposés was *The Jungle*, a 1906 novel by Upton Sinclair that focused on unsanitary working conditions and unsavory business practices in the meat-packing industry.[8] This work and others like it helped to spur the passage of the Pure Food and Drug Act (1906) and ultimately led to the creation of government agencies such as the U.S. Food and Drug Administration (FDA).[9] The nation's experiences during the depression of 1896 and the Great Depression of the 1930s also led to more robust regulatory policies designed to improve the transparency of financial markets and prevent monopolies from forming.

A final type of policy is **redistributive policy**, so named because it redistributes resources in society from one group to another.[10] That is, according to Lowi, the costs are concentrated and so are the benefits, but different groups bear the costs and enjoy the benefits.[11]Redistribution policies have costs paid by taxes born by a relatively smaller number of more wealthy individuals but the benefits are provided only to lower-income individuals and families.

Most redistributive policies are intended to have a sort of "Robin Hood" effect; their goal is to transfer income and wealth from one group to another such that everyone enjoys at least a minimal standard of living.

Typically, the wealthy and middle class pay into the federal tax base, which then funds need-based programs that support low-income individuals and families. A few examples of redistributive policies are Head Start (education), **Medicaid** (health care), Temporary Assistance for Needy Families (TANF, income support), and food programs like the Supplementary Nutritional Aid Program (SNAP).

Public Sector Goods and Services

In practice, public policy consists of specific programs that provide resources to members of society, create regulations that protect U.S. citizens, and attempt to equitably fund the government. We can broadly categorize most policies based on their goals or the sector of society they affect, although many, such as food stamps, serve multiple purposes. Implementing these policies costs hundreds of billions of dollars each year and understanding the goals of this spending and where the money goes is of vital importance to citizens and students of politics alike.

Social Welfare Policy

The U.S. government began developing a social welfare policy during the Great Depression of the 1930s. By the 1960s, social welfare had become a major function of the federal government—one to which most public policy funds are devoted—and had developed to serve several overlapping functions. First, social welfare policy is designed to ensure some level of equity in a democratic political system based on competitive, free-market economics.

During the Great Depression, many politicians came to fear that the high unemployment and low-income levels plaguing society could threaten the stability of democracy, as was happening in European countries like Germany and Italy.

The assumption in this thinking is that democratic systems work best when poverty is minimized. In societies operating in survival mode, in contrast, people tend to focus more on short-term problem-solving than on long-term planning.

Second, social welfare policy creates an automatic stimulus for a society by building a **safety net** that can catch members of society who are suffering economic hardship through no fault of their own. For an individual family, this safety net makes the difference between eating and starving; for an entire economy, it could prevent an economic recession from sliding into a broader and more damaging depression.

One of the oldest and largest pieces of social welfare policy is Social Security, which cost the United States about $845 billion in 2014 alone.[12] These costs are offset by a 12.4 percent payroll tax on all wages up to $118,500; employers and workers who are not self-employed split the bill for each worker, whereas the self-employed pay their entire share.[13]

In 1930, when this Ford automotive plant opened in Long Beach, California, American workers had few economic protections to rely on if they were injured or could not maintain such physical activity as they aged. (Credit: OpenStax included image)



Image 12.5 Photo of Workers in Ford Automotive Plant

Social Security addresses concerns with three important tools. First and best known is the retirement benefit. After completing a minimum number of years of work, American workers may claim a form of pension upon reaching retirement age.

It is often called an **entitlement** program since it guarantees benefits to a group, and virtually everyone will eventually qualify for the plan given the relatively low requirements for enrollment.

The amount of money a worker receives is based loosely on his or her lifetime earnings. Full retirement age was originally set at sixty-five, although changes in legislation have increased it to sixty-seven for workers born after 1959.[14] A valuable added benefit is that, under certain circumstances, this income may also be claimed by the survivors of qualifying workers, such as spouses and minor children, even if they themselves did not have a wage income.

A second Social Security benefit is a disability payout, which the government distributes to workers who become unable to work due to physical or mental disability. To qualify, workers must demonstrate that the injury or incapacitation will last at least twelve months.

A third and final benefit is Supplemental Security Income, which provides supplemental income to adults or children with considerable disability or to the elderly who fall below an income threshold. The sheer volume of retiring "Baby Boomers" is placing a financial strain on the Social Security system and threatening its potential solvency. According to the Social Security Office of Policy, "… the system will face financial challenges in the near future" due to declining "fertility rates" and increasing "life expectancies. A study by Gayle Reznick, Dave Shoffner and David Weaver in the *Social Security Bulletin*, Vol. 66, No. 4, the "system is experiencing a declining worker-to-beneficiary ratio, which will fall from 3.3 in 2005 to 2.1 in 2040 (the year in which the Social Security trust fund is projected to be exhausted)."

While Social Security was designed to provide cash payments to sustain the aged and disabled, Medicare and Medicaid were intended to ensure that vulnerable populations have access to health care. **Medicare**, like Social Security, is an entitlement program funded through payroll taxes.

Its purpose is to make sure that senior citizens and retirees have access to low-cost health care they might not otherwise have, because most U.S. citizens get their health insurance through their employers. Medicare provides three major forms of coverage: a guaranteed insurance benefit that helps cover major hospitalization, fee-based supplemental coverage that retirees can use to lower costs for doctor visits and other health expenses, and a prescription drug benefit. Medicare faces many of the same long-term challenges as Social Security, due to the same demographic shifts.[15]

Medicaid is a formula-based, health insurance program, which means beneficiaries must demonstrate they fall within a income category. Individuals in the Medicaid program receive a comprehensive set of health benefits; although access to health care may be limited because fewer providers accept payments from the program (it pays them less for services than does Medicare).

Medicaid differs dramatically from Medicare in that it is partially funded by states, many of which have reduced access to the program by setting the income threshold so low that few people qualify. The ACA (2010) sought to change that by providing more federal money to the states if they agreed to raise minimum income requirements.

Many states have refused, which has helped to keep the overall costs of Medicaid lower, even though it has also left many people without health coverage they might receive if they lived elsewhere. Total costs for Medicaid in 2020 were about $627 billion, about $405 billion of which was paid by the federal government.[16]



Image 12.6 Photo of Space Shuttle Launch

NASA launches the space shuttle *Discovery* from the Kennedy Space Center in 2007. Should the private sector fund space exploration programs rather than the government? (Credit: NASA)

Collectively, Social Security, Medicare, and Medicaid make up the lion's share of total federal government spending, almost 48 percent in 2019. Several other smaller programs also provide income support to families. Most of these are formula-based, or means-tested, requiring citizens to meet certain maximum income requirements in order to qualify. A few examples are TANF, SNAP (also called food stamps), the unemployment insurance program, and various housing assistance programs. Collectively, these programs add up to a little over $480 billion.

Much of the nation's science and technology policy benefits its military, for instance, in the form of research and development funding for a range of defense projects. The federal government still promotes research for civilian uses, mostly through the National Science Foundation, the National Institutes of Health, the National Aeronautics and Space Administration (NASA), and the National Oceanic and Atmospheric Administration. Recent debate over these agencies has focused on whether government funding is necessary or if private entities would be better suited.

For example, although NASA continues to develop a replacement for the now-defunct U.S. space shuttle program, much of its workload is currently being performed by private companies working to develop their own space launch, resupply, and tourism programs. The problem of trying to direct and fund the education of a modern U.S. workforce is familiar to many students of American government. Historically, education has largely been the job of the states. While they have provided a very robust K–12 public education system, the national government has

never moved to create an equivalent system of national higher education academies or universities as many other countries have done. As the need to keep the nation competitive with others became more pressing, however, the U.S. government did step in to direct its education dollars toward creating greater equity and ease of access to the existing public and private systems.

The overwhelming portion of the government's education money is spent on student loans, grants, and work-study programs. Resources are set aside to cover job-retraining programs for individuals who lack private-sector skills or who need to be retrained to meet changes in the economy's demands for the labor force. National policy toward elementary and secondary education programs has typically focused on increasing resources available to school districts for nontraditional programs (such as preschool and special needs), or helping poorer schools stay competitive with wealthier institutions.

Business Stimulus and Regulation

A final key aspect of domestic policy is the growth and regulation of business. The size and strength of the economy is very important to politicians whose jobs depend on citizens' believing in their own future prosperity. At the same time, people in the United States want to live in a world where they feel safe from unfair or environmentally damaging business practices. These desires have forced the government to perform a delicate balancing act between programs that help grow the economy by providing benefits to the business sector and those that protect consumers, often by curtailing or regulating the business sector.

Two of the largest recipients of government aid to business are agriculture and energy. Both are multi-billion-dollar industries concentrated in rural and/or electorally influential states. Because voters are affected by the health of these sectors every time they pay their grocery or utility bill, the U.S. government has chosen to provide significant agriculture and energy subsidies to cover the risks inherent in the unpredictability of the weather and oil exploration. Government subsidies also protect these industries' profitability. These two purposes have even overlapped in the government's controversial decision to subsidize the production of ethanol, a fuel source similar to gasoline but generated from corn.

When it comes to regulation, the federal government has created several agencies responsible for providing for everything from worker safety (OSHA, the Occupational Safety and Health Administration), to food safety (FDA), to consumer protection, where the recently created Bureau of Consumer Protection ensures that businesses do not mislead consumers with deceptive or manipulative practices. Another prominent federal agency, the EPA, is charged with ensuring that businesses do not excessively pollute the nation's air or waterways. A complex array of additional regulatory agencies governs specific industries such as banking and finance, which are detailed later in this chapter.

QUESTIONS TO CONSIDER

1. What is public policy?

   Show Answer
   laws, rules, and regulations affecting the American people

2. Name a program the national government currently provides?

   Show Answer
   food stamps, Medicare, assistance for education, etc.

3. What are some of the challenges to getting a new public policy considered and passed as law?

   Show Answer
   ideological differences; Congress and the President do not agree; scope of government differences; etc.

4. Of the types of public policy categories discussed in this section, which do you feel is the least controversial and which is the most controversial? Why?

   Show Answer
   personal opinion; with major political parties having strong differences of ideological opinion about redistribution and regulatory policies

5. Which public policies are most important and why?

   Show Answer
   open for debate

6. What societal ills are social welfare programs designed to address?

   Show Answer
   basic human needs of food, clothing, shelter, and work

7. What is the difference between an entitlement program and a means-tested program?

   Show Answer
   means-tested programs are based upon financial need

TERMS TO REMEMBER

distributive policy–a policy that collect resources broadly through general taxation paid for by many in society but confers direct benefits of a public sector good or service on a relatively few or much smaller targeted set of individuals

entitlement–a program that guarantees benefits to members of a specific group or segment of the population from contributions by those receiving the entitlement benefit or from US taxpayers who received a benefit from the recipients' service or contribution

means-tested–a program providing a benefit to low-income individuals from US taxpayers

Medicaid–a health insurance program for low-income citizens from US taxpayers

Medicare–an entitlement health insurance program for older people and retirees who no longer get health insurance through their work

public policy–the broad strategy government uses to do its job; the relatively stable set of purposeful governmental behaviors that address matters of concern to some part of society

redistributive policy–a policy in which costs are paid for by taxes from a relatively small number of generally more affluent individuals, but benefits of the policies are expected to be provided to a different group in society that is typically made up of lower income individuals and families

regulatory policy–a policy generally implemented through administrative rules that may add costs to the operation of companies and organizations by mandating or forbidding certain practices in a way that are intended to protect the public

safety net–a way to provide for members of society experiencing economic hardship

Social Security–a social welfare policy for people who no longer receive an income from employment

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12.2 Domestic Policy: Who are the policymakers?



Image 12.7 Photo of President Trump and Kanye West at the White House

The President is often a leading policy maker by promoting a particular agenda during their term of office; however, every citizen may be part of the policy making process in a variety of ways. Here celebrity and activist Kanye West visits the White House to discuss policy with President Trump.
(Credit: PBS NewsHour at pbs.org, 11 October 2018, "Why Kanye's visit was 'a weird moment' for the White House"
also credit to Catherine Lucey, Associated Press and DNA India at dnaindia.com)

Learning Objectives

- Identify types of policymakers in different issue areas.
- Describe the public policy process.

Chart 12.2 Learning Objectives on Types of Policymakers

Many Americans were concerned when Congress began debating the ACA. As the program took shape, some people felt the changes it proposed were being debated too hastily, would be implemented too quickly, or would summarily give the government control over an important piece of the U.S. economy—the health care industry. Ironically, the government had been heavily engaged in providing health care for decades. More than 50 percent of all health care dollars spent were being spent by the U.S. government well before the ACA was enacted. As you have already learned, Medicare was created decades earlier. Despite protesters' resistance to government involvement in health care, there is no keeping government out of Medicare; the government IS Medicare.

What many did not realize is that few if any of the proposals that eventually became part of the ACA were original. While the country was worried about problems like terrorism, the economy, and conflicts over gay rights, armies of individuals were debating the best ways to fix the nation's health care delivery. Two important but overlapping groups defended their preferred policy changes: policy advocates and policy analysts.

Policy Advocates

Take a minute to think of a policy change you believe would improve some condition in the United States. Now ask yourself this: "Why do I want to change this policy?" Are you motivated by a desire for justice? Do you feel the policy change would improve your life or that of members of your community?

Is your sense of morality motivating you to change the status quo? Would your profession be helped? Do you feel that changing the policy might raise your status?

Most people have some policy position or issue they would like to see altered. One of the reasons the news media are so enduring is that citizens have a range of opinions on public policy, and they are very interested in debating how a given change would improve their lives or the country's. But despite their interests, most people do little more than vote or occasionally contribute to a political campaign. A few people, however, become **policy advocates** by actively working to propose or maintain public policy.

One way to think about policy advocates is to recognize that they hold a normative position on an issue, that is, they have a conviction about what should or ought to be done. The best public policy, in their view, is one that accomplishes a specific goal or outcome. For this reason, advocates often begin with an objective and then try to shape or create proposals that help them accomplish that goal. Facts, evidence, and analysis are important tools for convincing policymakers or the general public of the benefits of their proposals. Private citizens often find themselves in advocacy positions, particularly if they are required to take on leadership roles in their private lives or in their organizations. The most effective advocates are usually hired professionals who form lobbying groups or think tanks to promote their agenda.



Image 12.8 Photo of Michelle Obama with AARP Card

Former First Lady Michelle Obama shows her AARP membership card on her fiftieth birthday in January 2014. AARP is a major policy advocate for older people and retirees. (Credit: The White House; OpenStax included image)

A lobbying group that frequently takes on advocacy roles is AARP (formerly the American Association of Retired Persons). AARP's primary job is to convince the government to provide more public resources and services to senior citizens, often through regulatory or redistributive politics. Chief among its goals are lower health care costs and the safety of Social Security pension payments. These aims put AARP in the Democratic Party's electoral coalition, since Democrats have historically been stronger advocates for Medicare's creation and expansion. In 2002, for instance, Democrats and Republicans were debating a major change to Medicare.

The Democratic Party supported expanding Medicare to include free or low-cost prescription drugs, while the Republicans preferred a plan that would require seniors to purchase drug insurance through a private insurer. The government would subsidize costs, but many seniors would still have substantial out-of-pocket expenses. To the surprise of many, AARP supported the Republican proposal. While Democrats argued that their position would have provided a better deal for individuals, AARP reasoned that the Republican plan had a much better chance of passing. The Republicans controlled the House and looked likely to reclaim control of the Senate in the upcoming election.

Then-president George W. Bush was a Republican and would almost certainly have vetoed the Democratic approach. AARP's support for the legislation helped shore up support for Republicans in the 2002 midterm election and also help convince a number of moderate Democrats to support the bill (with some changes), which passed despite apparent public disapproval. AARP had done its job as an advocate for seniors by creating a new benefit it hoped could later be expanded, rather than fighting for an extreme position that would have left it with nothing.[1]

Not all policy advocates are as willing to compromise their positions. It is much easier for a group like AARP to compromise over the amount of money seniors will receive, for instance, than it is for an evangelical religious group to compromise over issues like abortion, or for civil rights groups to accept something less than equality. Nor are women's rights groups likely to accept pay inequality as it currently exists. It is easier to compromise over financial issues than over our individual views of morality or social justice.

Policy Analysts

A second approach to creating public policy is a bit more objective. Rather than starting with what ought to happen and seeking ways to make it so, **policy analysts** try to identify all the possible choices available to a decision maker and then gauge their impacts if implemented. The goal of the analyst is not really to encourage the implementation of any of the options; rather, it is to make sure decision makers are fully informed about the implications of the decisions they do make.

Understanding the financial and other costs and benefits of policy choices requires analysts to make strategic guesses about how the public and governmental actors will respond. For example, when policymakers are considering changes to health care policy, one very important question is how many people will participate. If very few people had chosen to take advantage of the new health care plans available under the ACA marketplace, it would have been significantly cheaper than advocates proposed, but it also would have failed to accomplish the key goal of increasing the number of insured. But if people who currently have insurance had dropped it to take advantage of ACA's subsidies, the program's costs would have skyrocketed with very little real benefit to public health. Similarly, had all states chosen to create their own marketplaces, the cost and complexity of ACA's implementation would have been greatly reduced.

Because advocates have an incentive to understate costs and overstate benefits, policy analysis tends to be a highly politicized aspect of government. It is critical for policymakers and voters that policy analysts

provide the most accurate analysis possible. Several independent or semi-independent think tanks have sprung up in Washington, DC, to provide assessments of policy options. Most businesses or trade organizations also employ their own policy-analysis wings to help them understand proposed changes or even offer some of their own. Some of these try to be as impartial as possible. Most, however, have a known bias toward policy advocacy. The Cato Institute, for example, is well known and highly respected policy analysis group that both liberal and conservative politicians have turned to when considering policy options. But the Cato Institute has a known libertarian bias; most of the problems it selects for analysis have the potential for private sector solutions. This means its analysts tend to include the rosiest assumptions of economic growth when considering tax cuts and to overestimate the costs of public sector proposals.

The **RAND Corporation** has conducted objective policy analysis for corporate, nonprofit, and government clients since the mid-twentieth century. What are some of the policy areas it has explored?

Both the Congress and the president have tried to reduce the bias in policy analysis by creating their own theoretically nonpartisan policy branches. In Congress, the best known of these is the **Congressional Budget Office**, or CBO. Authorized in the 1974 Congressional Budget and Impoundment Control Act, the CBO was formally created in 1975 as a way of increasing Congress's independence from the executive branch. The CBO is responsible for scoring the spending or revenue impact of all proposed legislation to assess its net effect on the budget. In recent years, it has been the CBO's responsibility to provide Congress with guidance on how to best balance the budget. The formulas that the CBO uses in scoring the budget have become an important part of the policy debate, even as the group has tried to maintain its nonpartisan nature.

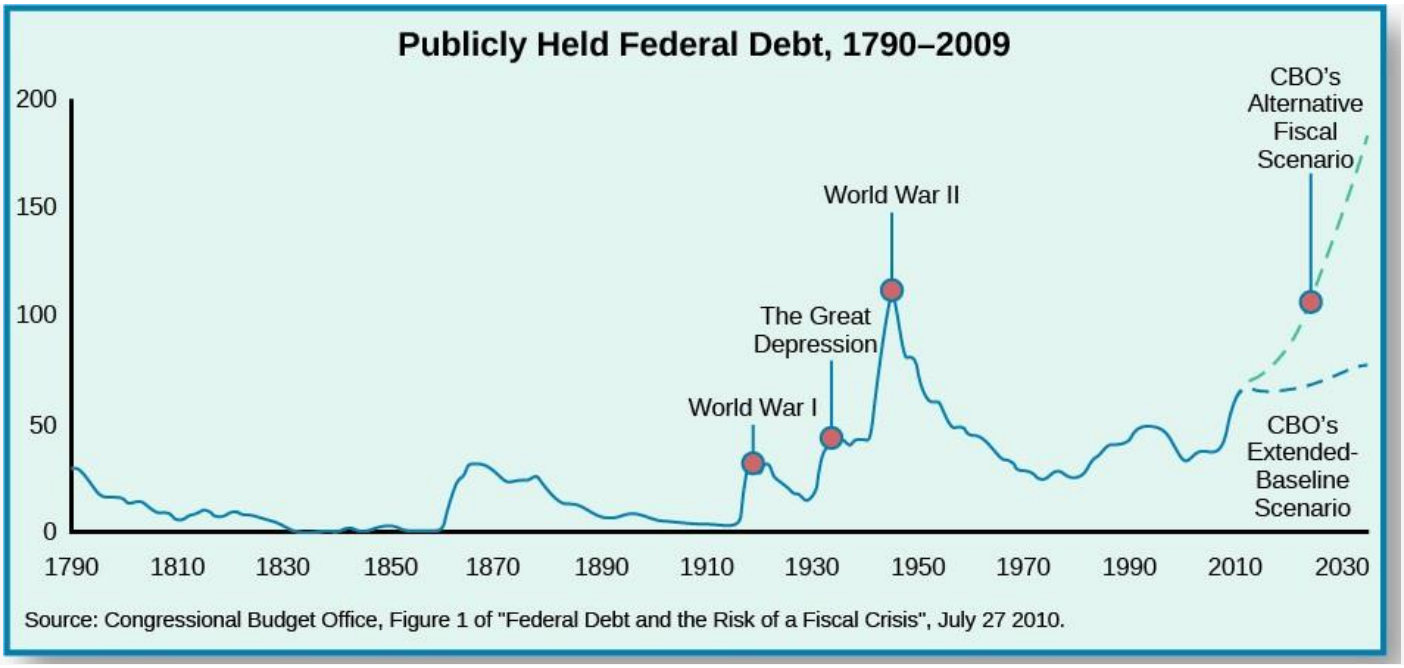


Chart 12.3 Graph of Publicly Held Debt

The Congressional Budget Office (CBO) is responsible for studying the impact of all proposed legislation to assess its net effect on the budget and tracking federal debt. For example, this 2010 CBO chart shows federal debt held by the public as a percentage of gross domestic product from 1790 through 2010 and projected to 2035.

In the executive branch, each individual department and agency is technically responsible for its own policy analysis. The assumption is that experts in the Federal Communications Commission or the Federal Elections Commission are best equipped to evaluate the impact of various proposals within their policy domain. Law requires that most regulatory changes made by the federal government also include the opportunity for public input so the government can both gauge public opinion and seek outside perspectives.

Executive branch agencies are usually also charged with considering the economic impact of regulatory action, although some agencies have been better at this than others. Critics have frequently singled out the EPA and OSHA for failing to adequately consider the impact of new rules on business.

Within the White House itself, the Office of Management and Budget (OMB) was created to "serve the President of the United States in implementing his [or her] vision" of policy. Policy analysis is important to the OMB's function, but as you can imagine, it frequently compromises its objectivity during policy formulation.



How do the **OMB** and the **CBO** compare when it comes to impartiality?

PREPARING TO BE A POLICYMAKER

What is your passion? Is there an aspect of society you think should be changed? Become a public policy advocate for it! One way to begin is by petitioning the Office of the President. In years past, citizens wrote letters to express grievances or policy preferences. Today, you can visit We the People, the White House online petitions platform. At this government site, you can search for petitions related to your cause or post your own. If your petition gets enough signatures, the White House will issue a response. The petitions range from serious to silly, but the process is an important way to speak out about the policies that are important to you.



*Follow-up activity: Choose an issue you are passionate about. Visit **We the People** to see if there is already a petition there concerning your chosen issue. If so, join the community promoting your cause. If not, create your own petition and try to gather enough signatures to receive an official response.*

The Policy Process

The **policy process** contains four sequential stages: (1) agenda setting, (2) policy enactment, (3) policy implementation, and (4) evaluation. Given the sheer number of issues already processed by the government, called the continuing agenda, and the large number of new proposals being pushed at any one time, it is typically quite difficult to move a new policy all the way through the process.

Agenda setting is the crucial first stage of the public policy process. Agenda setting has two sub-phases: problem identification and alternative specification. Problem identification identifies the issues that merit discussion. Not all issues make it onto the governmental agenda because there is only so much

attention that government can pay. Thus, one of the more important tasks for a policy advocate is to frame his or her issue in a compelling way that raises a persuasive dimension or critical need.[2] For example, health care reform has been attempted on many occasions over the years. One key to making the topic salient has been to frame it in terms of health care access, highlighting the percentage of people who do not have health insurance.

Alternative specification, the second sub-phase of agenda setting, considers solutions to fix the difficulty raised in problem identification. For example, government officials may agree in the problem sub-phase that the increase in childhood obesity presents a societal problem worthy of government attention.

However, the solution can be complex, and people who otherwise agree might come into conflict over what the best answer is. Alternatives might range from reinvestment in school physical education programs and health education classes, to taking soda and candy machines out of the schools and requiring good nutrition in school lunches. Agenda setting ends when a given problem has been selected, a solution has been paired with that problem, and the solution goes to the decision makers for a vote. Acid rain provides another nice illustration of agenda setting and the problems and solutions sub phases. Acid rain is a widely recognized problem that did not make it on to the governmental policy agenda until Congress passed the Air Quality Act of 1967, long after environmental groups started asking for laws to regulate pollution.

In the second policy phase, enactment, the elected branches of government typically consider one specific solution to a problem and decide whether to pass it. This stage is the most visible one and usually garners the most press coverage. And yet it is somewhat anticlimactic. By the time a specific policy proposal (a solution) comes out of agenda setting for a yes/no vote, it can be something of a foregone conclusion that it will pass.

Once the policy has been enacted—usually by the legislative and/or executive branches of the government, like Congress or the president at the national level or the legislature or governor of a state—government agencies do the work of implementing it. On a national level, policy implementation can be either top-down or bottom-up. In top-down implementation, the federal government dictates the specifics of the policy, and each state implements it the same exact way. In bottom-up implementation, the federal government allows local areas some flexibility to meet their specific challenges and needs.[3]

Evaluation, the last stage of the process, should be tied directly to the policy's desired outcomes. Evaluation essentially asks, "How well did this policy do what we designed it to do?" The answers can sometimes be surprising. In one hotly debated case, the United States funded abstinence-only sex education for teens with the goal of reducing teen pregnancy. A 2011 study published in the journal *PLoS One*, however, found that abstinence-only education actually *increased* teen pregnancy rates.[4] The information from the evaluation stage can feed back into the other stages, informing future decisions and creating a public policy cycle.

QUESTION TO CONSIDER

1. In the implementation phase of the policy process, is it better to use a top-down approach or a bottom-up approach on Federal policies? Why?

   Show Answer
   open for debate

TERMS TO REMEMBER

Congressional Budget Office–(CBO) the congressional office that scores the spending or revenue impact of all proposed legislation to assess its net effect on the budget

policy advocates–people who actively work to propose or maintain public policy

policy analysts–people who identify all possible choices available to a decision maker and assess the potential impact of each

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1. Thomas R. Oliver, Philip R. Lee, and Helene L. Lipton. 2004. "A Political History of Medicare and Prescription Drug Coverage," *Milbank Quarterly* 82, No. 2: 283–354, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2690175/.
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3. Daniel Mazmanian and Paul Sabatier. 1989. *Implementation and Public Policy*. Washington, DC: Rowman and Littlefield.
4. Kathrin F. Stanger-Hall and David W. Hall. 2011. "Abstinence-Only Education and Teen Pregnancy Rates: Why We Need Comprehensive Sex Education in the U.S.," *PLoS One* October 14, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3194801/.

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12.3 Domestic Policy: How are budgeting and tax policy implemented?



Image 12.9 Graphic Images of Various Types of Disasters

(Credit: Internal Revenue Service at http://internalrevenueservice.tumblr.com/)

Learning Objectives

- Discuss economic theories that shape U.S. economic policy.
- Explain how the government uses fiscal policy tools to maintain a healthy economy.
- Analyze the taxing and spending decisions made by Congress and the president.
- Discuss the role of the Federal Reserve Board in monetary policy.

Chart 12.4 Learning Objectives on Economic Theories and Taxation

A country spends, raises, and regulates money in accordance with its values. In all, the federal government's budget for 2020 was $6.68 trillion. This chapter has provided a brief overview of some of the budget's key areas of expenditure, and thus some insight into modern American values.

But these values are only part of the budgeting story. Policymakers make considerable effort to ensure that long-term priorities are protected from the heat of the election cycle and short-term changes in public opinion. The decision to put some policy-making functions out of the reach of Congress also

reflects economic philosophies about the best ways to grow, stimulate, and maintain the economy. The role of politics in drafting the annual budget is indeed large, but we should not underestimate the challenges elected officials face as a result of decisions made in the past.

Approaches to the Economy

Until the 1930s, most policy advocates argued that the best way for the government to interact with the economy was through a hands-off approach formally known as **laissez-faire** economics. These policymakers believed the key to economic growth and development was the government's allowing private markets to operate efficiently. Proponents of this school of thought believed private investors were better equipped than governments to figure out which sectors of the economy were most likely to grow and which new products were most likely to be successful. They also tended to oppose government efforts to establish quality controls or health and safety standards, believing consumers themselves would punish bad behavior by not trading with poor corporate citizens. Finally, laissez-faire proponents felt that keeping government out of the business of business would create an automatic cycle of economic growth and contraction. Contraction phases where there is no economic growth for two consecutive quarters, called recessions, would bring business failures and higher unemployment. But this condition, they believed, would correct itself on its own if the government simply allowed the system to operate.

The Great Depression challenged the laissez-faire view, however. When President Franklin Roosevelt came to office in 1933, the United States had already been in the depths of the Great Depression for several years, since the stock market crash of 1929. Roosevelt sought to implement a new approach to economic regulation known as Keynesianism. Named for its developer, the economist John Maynard Keynes, Keynesian economics argues that it is possible for a recession to become so deep, and last for so long, that the typical models of economic collapse and recovery may not work. Keynes suggested that economic growth was closely tied to the ability of individuals to consume goods. It didn't matter how or where investors wanted to invest their money if no one could afford to buy the products they wanted to make. And in periods of extremely high unemployment, wages for newly hired labor would be so low that new workers would be unable to afford the products they produced.

Keynesianism counters this problem by increasing government spending in ways that improve consumption. Some of the proposals Keynes suggested were payments or pension for the unemployed and retired, as well as tax incentives to encourage consumption in the middle class. His reasoning was that these individuals would be most likely to spend the money they received by purchasing more goods, which in turn would encourage production and investment. Keynes argued that the wealthy class of producers and employers had sufficient capital to meet the increased demand of consumers that government incentives would stimulate. Once consumption had increased and capital was flowing again, the government would reduce or eliminate its economic stimulus, and any money it had borrowed to create it could be repaid from higher tax revenues.

Keynesianism dominated U.S. fiscal or spending policy from the 1930s to the 1970s. By the 1970s, however, high inflation began to slow economic growth. There were a number of reasons, including higher oil prices and the costs of fighting the Vietnam War.

However, in the 1970s as inflation pushed more and more Americans into higher tax brackets, some economists, such as Arthur Laffer, challenged the dominant Keynesian view. While many Keynesians believe that government spending to stimulate demand for products should be the solution for a poorly performing economy and that higher taxes will increase tax revenue, Laffer began to argue that high tax policies and regulation created in the name of Keynesianism impeded growth in the economy and therefore governmental revenue.[1] They called for an approach known as supply-side economics, which argues that economic growth is largely a function of the productive capacity of a country. Supply-siders have argued that increased regulation and higher taxes reduce the incentive to invest new money into the economy, to the point where little growth can occur. They have advocated reducing taxes and regulations to spur economic growth. They argued that as a tax cut increases income for taxpayers, they will spend it. The increase in demand creates more business activity, spurring an increase in production and employment. Supply-siders argued that highest taxes were a major drag on the economy and that the top rates for wealthier investors and business could be reduced without a significant loss in revenue, encouraging investment. The lower tax rates for the more wealthy have been criticized and named "trickle down" economics.[2]

Mandatory Spending vs. Discretionary Spending

The desire of Keynesians to create a minimal level of aggregate demand, coupled with a Depression-era preference to promote social welfare policy, led the president and Congress to develop a federal budget with spending divided into two broad categories: mandatory and discretionary. Of these, **mandatory spending** is the larger, consisting of about $4.9 of the 2020 budget, or roughly 71 percent of all federal expenditures.[3]

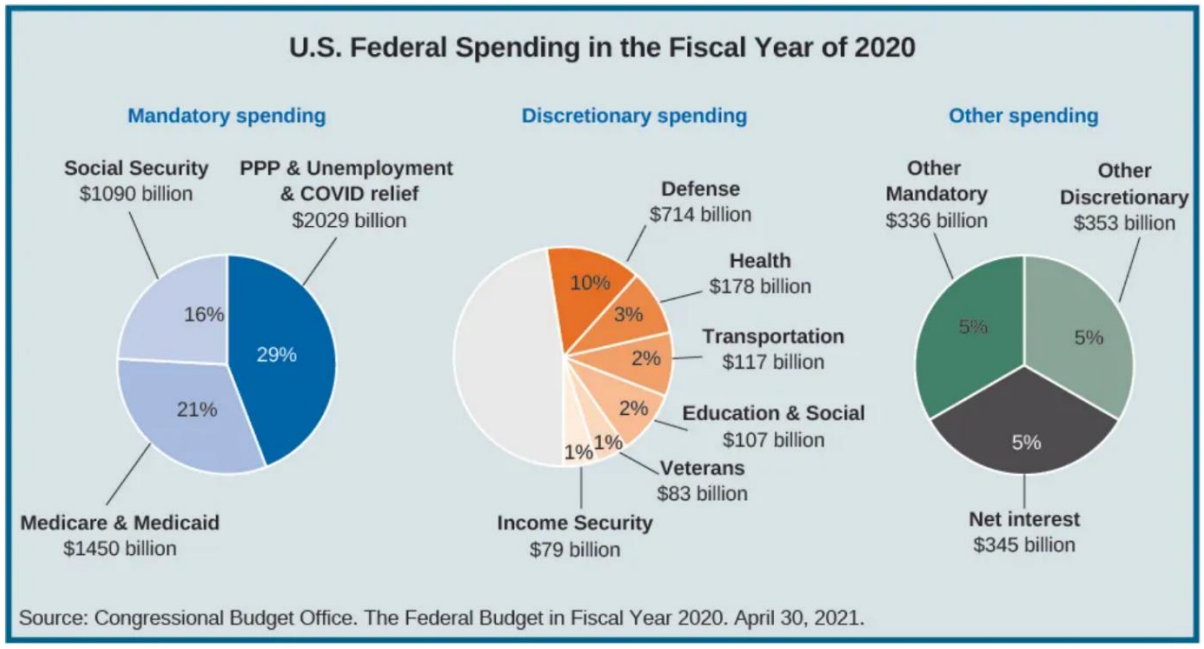


Chart 12.5 Graphs on U.S. Federal Spending for 2020 Showing Proportions of Mandatory and Discretionary Spending

(Credit: Openstax OER US Government 3e)

The overwhelming portion of mandatory spending is earmarked for entitlement programs guaranteed to those who meet certain qualifications, usually based on age, income, or disability. These programs, discussed above, include Medicare and Medicaid, Social Security, and major income security programs such as unemployment insurance and SNAP. The costs of programs tied to age are relatively easy to estimate and grow largely as a function of the aging of the population. Income and disability payments are a bit more difficult to estimate.

They tend to go down during periods of economic recovery and rise when the economy begins to slow down, in precisely the way Keynes suggested. A comparatively small piece of the mandatory spending pie is devoted to benefits designated for former federal employees, including military retirement.

Congress is ultimately responsible for setting the formulas for mandatory payouts, but as we saw in the earlier discussion regarding Social Security, major reforms to entitlement formulas are difficult to enact. As a result, the size and growth of mandatory spending in future budgets are largely a function of previous legislation that set the formulas up in the first place. So long as supporters of programs can block changes to the formulas, funding will continue almost on autopilot. Keynesians support this mandatory spending, along with other elements of social welfare policy, because they help maintain a minimal level of consumption that should, in theory, prevent recessions from turning into depressions, which are more severe downturns.

Portions of the budget not devoted to mandatory spending are categorized as **discretionary spending** because Congress must pass legislation to authorize money to be spent each year. About 50 percent of the approximately $1.2 trillion set aside for discretionary spending each year pays for most of the operations of government, including employee salaries and the maintenance of federal buildings. It also covers science and technology spending, foreign affairs initiatives, education spending, federally provided transportation costs, and many of the redistributive benefits most people in the United States have come to take for granted.[4] The other half of discretionary spending—and the second-largest component of the total budget—is devoted to the military. Defense spending is used to maintain the U.S. military presence at home and abroad, procure and develop new weapons, and cover the cost of any wars or other military engagements in which the United States is currently engaged.



Figure 3 Image 12.10 Series of Photos of Military Personnel (Credit: OpenStax included images)

The war in Afghanistan, 2001-2022, cost the United States billions of dollars in discretionary military spending authorized by Congress every year. (Credit: OpenStax included images)

In theory, the amount of revenue raised by the national government should be equal to these expenses, but except for a brief period from 1998 to 2000, that has not been the case. In 2022, the country's total **debt** was 99.5% of GDP (gross domestic product) at $30 trillion

dollars—the amount of money the government owes its creditors according to the Department of the Treasury.[5]

Balancing the budget has been a major goal of both the Republican and Democratic parties for the past several decades, although the parties tend to disagree on the best way to accomplish the task. One frequently offered solution is to simply cut spending. This has proven to be much easier said than done. If Congress were to try to balance the budget only through discretionary spending, it would need to cut about one-third of spending on programs like defense, higher education, agriculture, police enforcement, transportation, and general government operations. Given the number and popularity of many of these programs, it is difficult to imagine this would be possible. To use spending cuts alone to control the deficit, Congress will almost certainly be required to cut or control the costs of mandatory spending programs like Social Security and Medicare—a radically unpopular step.

Tax Policy

The other option available for balancing the budget is to increase revenue. All governments must raise revenue in order to operate. The most common way is by applying some sort of tax on residents (or on their behaviors) in exchange for the benefits the government provides. As necessary as taxes are, however, they are not without potential downfalls. First, the more money the government collects to cover its costs, the less residents are left with to spend and invest. Second, attempts to raise revenues through taxation may alter the behavior of residents in ways that are counterproductive to the state and the broader economy. Excessively taxing necessary and desirable behaviors like consumption (with a sales tax) or investment (with a capital gains tax) will discourage citizens from engaging in them, potentially slowing economic growth. The goal of tax policy, then, is to determine the most effective way of meeting the nation's revenue obligations without harming other public policy goals.



Image 12.11 Photo of Individual Filling Out Tax Form

A U.S. marine fills out an income tax form. Income taxes in the United States are progressive taxes. (Credit: OpenStax included image)

As you would expect, Keynesians and supply-siders disagree about which forms of tax policy are best. Keynesians, with their concern about whether consumers can really stimulate demand, prefer **progressive tax** systems that increase the effective tax rate as the taxpayer's income increases.

Supply-siders, on the other hand, prefer a more compressed, flatter tax rate, that is, less progressive with lower tax rates overall. It advocates tax cuts for wealthier individuals and businesses as a way to encourage job creation, business expansion, and entrepreneurial activity.

Some taxes are not based on income. Consider, for example, the use of **excise taxes** on specific goods or services as a source of revenue.[5] Sometimes called "sin taxes" because they tend to be applied to goods

like alcohol, tobacco, and gasoline, excise taxes have a regressive quality, since the amount of the good purchased by the consumer, and thus the tax paid, does not increase at the same rate as income. A person who makes $250,000 per year is likely to purchase more gasoline than a person who makes $50,000 per year. But the higher earner is not likely to purchase *five times more* gasoline, which means the proportion of his or her income paid out in gasoline taxes is less than the proportion for a lower-earning individual. These types of taxes are called **regressive taxes** and refer to a tax that is applied uniformly regardless of income.



Image 12.12 Photo of Gas Pump

A gas station shows fuel prices over $3.00 a gallon in 2005, shortly after Hurricane Katrina disrupted gas production in the Gulf of Mexico. Taxes on gasoline that are based on the quantity purchased are regressive taxes. (Credit: OpenStax included image)

Another example of a regressive tax paid by most U.S. workers is the payroll tax that funds Social Security. While workers contribute 7.65 percent of their income to pay for Social Security and their employers pay a matching amount, in 2023, the payroll tax was applied to only the first $160,200 of income. Individuals who earned more than that, or who made money from other sources like investments, saw their overall tax rate fall as their income increased.

The balance of revenue is split nearly evenly between revenues from the Federal Reserve and a mix of revenues from import tariffs, estate and gift taxes, and various fees or fines paid to the government.

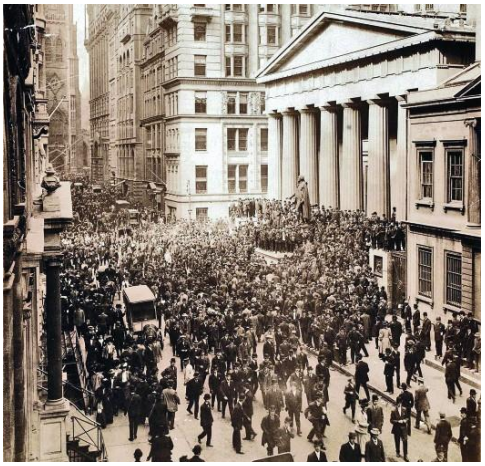


Image 12.13 Photo of Panic of 1907 on Wall Street (Credit: Library of Congress)

The Federal Reserve Board and Interest Rates

Financial panics arise when too many people, worried about the solvency of their investments, try to withdraw their money at the same time. Such panics plagued U.S. banks until 1913, when Congress enacted the Federal Reserve Act.

The act established the Federal Reserve System, also known as the Fed, as the central bank of the United States. The Fed's three original goals to promote were maximum employment, stable prices, and moderate long-term interest rates.[6] All of these goals bring stability.

The Fed's role is now broader and includes influencing monetary policy (the means by which the nation controls the size and growth of the money supply), supervising and regulating banks, and providing them with financial services like loans.

The Federal Reserve System is overseen by a board of governors, known as the Federal Reserve Board. The president of the United States appoints the seven governors, each of whom serves a fourteen-year term (the terms are staggered). A chair and vice chair lead the board for terms of four years each. The most important work of the board is participating in the Federal Open Market Committee to set monetary policy, like interest rate levels and macroeconomic policy. The board also oversees a network of twelve regional Federal Reserve Banks, each of which serves as a "banker's bank" for the country's financial institutions.



Do you think you have what it takes to be chair of the Federal Reserve Board? Play this **game** and see how you fare!

QUESTIONS TO CONSIDER

1. If you had to define the poverty line, what would you expect people to be able to afford just above that line?

   Show Answer
   basic human necessities of food, clothing, housing

2. What is the proper role of the government in regulating the private sector so people are protected from unfair or dangerous business practices? Why?

   Show Answer
   question for debate

3. Is it realistic to expect the U.S. government to balance its budget? Why or why not?

   Show Answer
   personal opinion

TERMS TO REMEMBER

debt–the total amount the government owes across all years

deficit–the annual amount by which expenditures are greater than revenues

discretionary spending–government spending that Congress must pass legislation to authorize each year

excise taxes–taxes applied to specific goods or services as a source of revenue

mandatory spending–government spending earmarked for entitlement programs guaranteeing support to those who meet certain qualifications

progressive tax–a tax that tends to increase the effective tax rate as the wealth or income of the taxpayer increases

recession–a temporary contraction of the economy in which there is no economic growth for two consecutive quarters

regressive tax–refers to a tax that is applied uniformly regardless of income; common forms of regressive tax include sales tax, gas tax, and payroll tax

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1. Arthur B. Laffer, Stephen Moore and Peter J. Tanous. 2009. *The End of Prosperity: How Higher Taxes Will Doom the Economy*. New York: Simon & Schuster.
2. "The Political Failure of Trickle-Down Economics." Paul Krugman Blog, 20 August 2017
3. "Mandatory Spending in 2015: An Infographic," 18 June 2019; https://www.cbo.gov/publication/55343.
4. Department of the Treasury, Treasury Bulletin, Federal Debt
5. "Excise tax," **https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Excise-Tax** (March 1, 2016).
6. "U.S. Code § 225a - Maintenance of long run growth of monetary and credit aggregates," **https://www.law.cornell.edu/uscode/text/12/225a** (March 1, 2016).

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13.1 Foreign Policy: Basics and International Actors



Image 13.1 Photos Left of President Biden with Lithuanian President Gitanas Nauseda and Right President Putin and President Trump

President Joe Biden and President Gitanas Nauseda of Lithuania (Credit: WhiteHouse.gov 2023)
President Donald Trump meets with Russian President Vladimir Putin at the G20 Summit, Friday, July 7, 2017, in Hamburg. (Credit: AP Photo/Evan Vucci)

Learning Objectives

- Explain what foreign policy is and how it differs from domestic policy.
- Identify the objectives of U.S. foreign policy.
- Describe the different types of foreign policy.
- Identify the U.S. government's main challenges in the foreign policy realm.

Chart 13.1 Learning Objectives on Foreign Policy Objectives

The U.S. government interacts with many international actors, from other governments to private organizations, to fight global problems like terrorism and proliferation of nuclear weapons and to meet many other national foreign policy goals such as encouraging trade and protecting the safety and security of the American people. Sometimes these goals are conflicting. Perhaps because of these realities, the president is in many ways the leader of the foreign policy domain.

When the United States wishes to discuss important issues with other nations, the president (or a representative of the executive branch such as the secretary of state or defense) typically does the talking, as when President Joe Biden visited with Lithuanian President Gitanas Nauseda in 2023.

While the president is the country's foreign policy leader, Congress also has many foreign policy responsibilities, including approving treaties and agreements, allocating funding, making war, and confirming ambassadors. These and various other activities constitute the patchwork quilt that is U.S. foreign policy.

When we consider policy as our chapter focus, we are looking broadly at the actions the U.S. government carries out for purposes. In the case of foreign policy, that purpose is to manage its relationships with other nations of the world. Another distinction is that policy results from a course of action or a pattern of actions over time, rather than from a single action or decision. For example, U.S. foreign policy with Russia has been forged by several presidents, as well as by cabinet secretaries, House and Senate members, and foreign policy agency bureaucrats. Policy is also purposive, or intended to do something; that is, policymaking is not random. When the United States enters into an international agreement with other countries on aims such as free trade or nuclear disarmament, it does so for specific reasons. With that general definition of policy established, we shall now dig deeper into the specific domain of U.S. foreign policy.

Consider the Original

George Washington's Farewell Address
United States 19th September 1796

Friends, & Fellow–Citizens.

[page 25 of the address…] Against the insidious wiles of foreign influence, (I conjure you to believe me fellow citizens,), the jealousy of a free people ought to be *constantly* awake; since history and experience prove that foreign influence is one of the most baneful foes of Republican Government. But that jealousy to be useful must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defence against it. Excessive partiality for one foreign nation and excessive dislike of another, cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real Patriots, who may resist the intriegues of the favourite, are liable to become suspected and odious; while its tools and dupes usurp the applause & confidence of the people, to surrender their interests.
The Great rule of conduct for us, in regard to foreign Nations is in extending our comercial relations to have with them as little *political* connection as possible.

Go: Washington

Originally published in David C. Claypoole's *American Daily Advertiser* on September 19, 1796, Washington devoted much of the address to domestic issues of the time, warning against the rise of political parties and sectionalism as a threat to national unity. In the area of foreign affairs, Washington called for America "to steer clear of permanent alliances with any portion of the foreign world." at Library of Congress; **http://memory.loc.gov/cgi-bin/ampage?collId=mgw2&fileName=gwpage024.db&recNum=228**

Chart 13.2 Excerpt for George Washington's Farewell Address 1796



Image 13.2 Davos Conference Photo of World Leaders

Domestic issues can sometimes become international ones when it comes to such topics as foreign trade. Here, President Donald Trump meets with Israeli Prime Minister Benjamin Netanyahu at the World Economic Forum Conference Center on 25 January 2018 in Davos, Switzerland. (Credit: Official White House photo by Shealah Craighead from WhiteHouse.gov)

Foreign Policy Basics

What is **foreign policy**? We can think of it on several levels, as "the goals that a state's officials seek to attain abroad, the values that give rise to those objectives, and the means or instruments used to pursue them."[1] This definition highlights some of the key topics in U.S. foreign policy, such as national goals abroad and the manner in which the United States tries to achieve them. Note too that we distinguish foreign policy, which is externally focused, from domestic policy, which sets strategies internal to the United States, though the two types of policies can become quite intertwined. So, for example, one might talk about Latino politics as a domestic issue when considering educational policies designed to increase the number of Hispanic Americans who attend and graduate from a U.S. college or university.[2]

However, as demonstrated in the primary debates leading up to the 2016 election, Latino politics can quickly become a foreign policy matter when considering topics such as immigration from and foreign trade with countries in Central America and South America.[3] What are the objectives of U.S. foreign policy? While the goals of a nation's foreign policy are always open to debate and revision, there are nonetheless four main goals to which we can attribute much of what the U.S. government does in the foreign policy realm: (1) the protection of the U.S. and its citizens, (2) the maintenance of access to key resources and markets, (3) the preservation of a balance of power in the world, and (4) the protection of human rights and democracy.

The first goal is the protection of the United States and the lives of it citizens, both while they are in the United States and when they travel abroad. Related to this security goal is the aim of protecting the country's allies, or countries with which the United States is friendly and mutually supportive. In the international sphere, threats and dangers can take several forms, including military threats from other nations or terrorist groups and economic threats from boycotts and high tariffs on trade.

In an economic boycott, the United States ceases trade with another country unless or until it changes a policy to which the United States objects. Ceasing trade means U.S. goods cannot be sold in that country and its goods cannot be sold in the United States. For example, in recent years the United States and other countries implemented an economic boycott of Iran as it escalated the development of its nuclear energy program. The recent Iran nuclear deal is a pact in which Iran agrees to halt nuclear development while the United States and six other countries lift economic sanctions to again allow trade with Iran. Barriers to trade also include tariffs, or fees charged for moving goods from one country to another. Protectionist trade policies raise tariffs so that it becomes difficult for imported goods, now more expensive, to compete on price with domestic goods. Free trade agreements seek to reduce these trade barriers.

The second main goal of U.S. foreign policy is to ensure the nation maintains access to key resources and markets across the world. Resources include natural resources, such as oil, and economic resources, including the infusion of foreign capital investment for U.S. domestic infrastructure projects like buildings, bridges, and weapons systems. Of course, access to the international marketplace also means access to goods that American consumers might want, such as Swiss chocolate and Australian wine. U.S. foreign policy also seeks to advance the interests of U.S. business, to both sell domestic products in the international marketplace and support general economic development around the globe (especially in developing countries).

A third main goal is the preservation of a balance of power in the world. An ideal **balance of power** means no one nation or region is much more powerful militarily than are the countries of the rest of the world.

The achievement of a perfect balance of power is probably not possible; but, general stability or predictability in the operation of governments, strong institutions, and the absence of violence within and between nations may be possible. For much of U.S. history, leaders viewed world stability through the lens of Europe. If the European continent was stable, the world was largely stable. During the Cold War era that followed World War II, stability was achieved by the existence of dual superpowers, the United States and the Soviet Union, and by the real fear of the nuclear annihilation of which both were capable. Until approximately 1989–1990, advanced industrial democracies aligned themselves behind one of these two superpowers.



Image 13.3 President Obama and French President Hollande at Terrorist Attack Memorial

President Barack Obama, along with French president François Hollande and Paris mayor Anne Hidalgo, place roses on the makeshift memorial in front of the Bataclan concert hall, one of the sites targeted in the Paris terrorist attacks of November 13, 2015. (Credit: The White House; OpenStax included image)

Today, in the post–Cold War era, many parts of Europe are politically freer than they were during the years of the Soviet bloc, and there is less fear of nuclear war than when the United States and the Soviet Union had missiles pointed at each other for four straight decades. However, despite the mostly stabilizing presence of the European Union (EU), which now has twenty-eight member countries, several wars have been fought in Eastern Europe and the former Soviet Union. Moreover, the EU itself faces some challenges, including a vote in the United Kingdom to leave the EU, the ongoing controversy about how to resolve the national debt of Greece, and the crisis in Europe created by thousands of refugees from the Middle East.

Carefully planned acts of terrorism in the United States, Asia, and Europe have introduced a new type of enemy into the balance of power equation—non-state or nongovernmental organizations, such as al-

Qaeda and ISIS (or ISIL), consisting of various terrorist cells located in many different countries and across all continents.

The fourth main goal of U.S. foreign policy is the protection of human rights and democracy. The payoff of stability that comes from other U.S. foreign policy goals is peace and tranquility. While certainly looking out for its own strategic interests in considering foreign policy strategy, the United States nonetheless attempts to support international peace through many aspects of its foreign policy, such as foreign aid, and through its support of and participation in international organizations such as the United Nations, the North Atlantic Treaty Organization (NATO), and the Organization of American States.

The **United Nations (UN)** is one of many international organizations in the world today. The main institutional bodies of the UN are the General Assembly and the Security Council. The General Assembly includes all member nations and admits new members and approves the UN budget by a two-thirds majority.

The Security Council includes fifteen countries, five of which are permanent members (including the United States) and ten that are non-permanent and rotate on a five-year-term basis. The entire membership is bound by decisions of the Security Council, which makes all decisions related to international peace and security.

Two other important units of the UN are the International Court of Justice in The Hague (Netherlands) and the UN Secretariat, which includes the Secretary-General of the UN and the UN staff directors and employees.

THE CREATION OF THE UNITED NATIONS

One of the unique and challenging aspects of global affairs is the fact that no world-level authority exists to mandate when and how the world's nations interact. After the failed attempt by President Woodrow Wilson and others to formalize a "League of Nations" in the wake of World War I in the 1920s, and on the heels of a worldwide depression that began in 1929, came World War II, history's deadliest military conflict.

Now, in the early decades of the twenty-first century, it is common to think of the September 11 terrorist attacks in 2001 as the big game-changer. Yet while 9/11 was hugely significant in the United States and abroad, World War II was even more so. The December 1941 Japanese attack on Pearl Harbor (Hawaii) was a comparable surprise-style attack that plunged the United States into war.

The scope of the conflict, fought in Europe and the Pacific Ocean, and Hitler's nearly successful attempt to take over Europe entirely, struck fear in minds and hearts. The war brought about a sea of change in international relations and governance, from the Marshall Plan to rebuild Europe, to NATO that created a cross-national military shield for Western Europe, to the creation of the UN in 1945, when the representatives of fifty countries met and signed the Charter of the United Nations in San Francisco, California.



Image 13.4 Speaker Pelosi at Anniversary Event for UN

On June 26, 2015, House minority leader Nancy Pelosi (D-CA) joined UN secretary-general Ban Ki-moon, California governor Jerry Brown, and other dignitaries to commemorate the seventieth anniversary of the adoption of the UN Charter in San Francisco.
(Credit: modification of work by "Nancy Pelosi"/Flickr)

Today, the United Nations, headquartered in New York City, includes 193 of the 195 nations of the world. It is a voluntary association to which member nations pay dues based on the size of their economy. The UN's main purposes are to maintain peace and security, promote human rights and social progress, and develop friendly relationships among nations.

An ongoing question for the United States in waging the war against terrorism is to what degree it should work in concert with the UN to carry out anti-terrorism initiatives around the world in a multilateral manner, rather than pursuing a "go it alone" strategy of unilateralism. The fact that the U.S. government has such a choice suggests the voluntary nature of the United States (or another country) accepting world-level governance in foreign policy. If the United States truly felt bound by UN opinion regarding the way it carries out its war on terrorism, it would approach the UN Security Council for approval.

Another cross-national organization to which the United States is tied, and that exists to forcefully represent Western allies and in turn forge the peace, is the **North Atlantic Treaty Organization (NATO)**. NATO was formed after World War II as the Cold War between East and West started to emerge. While more militaristic in approach than the United Nations, NATO has the goal of protecting the interests of Europe and the West and the assurance of support and defense from partner nations.

However, while it is a strong military coalition, it has not sought to expand and take over other countries. Rather, the peace and stability of Europe are its main goals. NATO initially included only Western European nations and the United States. However, since the end of the Cold War, additional countries

from Eastern Europe, have entered the NATO alliance. The recent conflict between Russia and the Ukraine has renewed the importance of NATO to its members.

Besides participating in the UN and NATO, the United States also distributes hundreds of billions of dollars each year in foreign aid to improve the quality of life of citizens in developing countries. The United States may also forgive the foreign debts of these countries. Developing countries are not modernized in terms of infrastructure and social services and thus suffer from instability. Helping them modernize and develop stable governments is intended as a benefit to them and a prop to the stability of the world. An alternative view of U.S. assistance is that there are more nefarious goals at work, that perhaps it is intended to buy influence in developing countries, secure a position in the region, obtain access to resources, or foster dependence on the United States.

The United States pursues its four main foreign policy goals through several different foreign policy types, or distinct substantive areas of foreign policy in which the United States is engaged. These types are trade, diplomacy, sanctions, military/defense, intelligence, foreign aid, and global environmental policy.

Trade policy is the way the United States interacts with other countries to ease the flow of commerce and goods and services between countries. A country is said to be engaging in **protectionism** when it does not permit other countries to sell goods and services within its borders, or when it charges them very high tariffs (or import taxes) to do so. At the other end of the spectrum is a **free trade** approach, in which a country allows the unfettered flow of goods and services between itself and other countries. At times the United States has been free trade–oriented, while at other times it has been protectionist. Perhaps its most free trade–oriented move was the 1991 implementation of the **North American Free Trade Agreement** (NAFTA). This pact removed trade barriers and other transaction costs levied on goods moving between the United States, Mexico, and Canada.

Critics see a free trade approach as problematic and instead advocate for protectionist policies that shield U.S. companies and their products against cheaper foreign products that might be imported here. One of the more prominent recent examples of protectionist policies occurred in the steel industry, as U.S. companies in the international steel marketplace struggled with competition from Chinese factories.

The **balance of trade** is the relationship between a country's inflow and outflow of goods. The United States sells many goods and services around the world, but overall it maintains a trade deficit, in which more goods and services are coming in from other countries than are going out to be sold overseas. The current U.S. trade deficit is $37.4 billion, which means the value of what the United States imports from other countries is much larger than the value of what it exports to other countries.[4] This trade deficit has led some to advocate for protectionist trade policies.

For many, foreign policy is synonymous with diplomacy. **Diplomacy** is the establishment and maintenance of a formal relationship between countries that governs their interactions on matters as diverse as tourism, the taxation of goods they trade, and the landing of planes on each other's runways. While diplomatic relations are not always rosy, when they are operating it does suggest that things are

going well between the countries. Diplomatic relations are formalized through the sharing of ambassadors.

Ambassadors are country representatives who live and maintain an office (known as an embassy) in the other country. Just as exchanging ambassadors formalizes the bilateral relationship between countries, calling them home signifies the end of the relationship. Diplomacy tends to be the U.S. government's first step when it tries to resolve a conflict with another country.

To illustrate how international relations play out when countries come into conflict, consider what has become known as the Hainan Island incident. In 2001, a U.S. spy plane collided with a Chinese jet fighter near Chinese airspace, where U.S. planes were not authorized to be. The Chinese jet fighter crashed, and the pilot died. The U.S. plane made an emergency landing on the island of Hainan. China retrieved the aircraft and captured the U.S. pilots. U.S. ambassadors then attempted to negotiate for their return. These negotiations were slow and ended up involving officials of the president's cabinet, but they ultimately worked. Had they not succeeded, an escalating set of options likely would have included diplomatic sanctions (removal of ambassadors), economic sanctions (such as an embargo on trade and the flow of money between the countries), minor military options (such as establishment of a no-fly zone just outside Chinese airspace), or more significant military options (such as a focused campaign to enter China and get the pilots back). Nonmilitary tools to influence another country, like economic sanctions, are referred to as **soft power**, while the use of military power is termed **hard power**.[5]

At the more serious end of the foreign policy decision-making spectrum and usually as a last resort when diplomacy fails, the U.S. military and defense establishment exists to provide the United States the ability to wage war against other state and non-state actors.

Such war can be offensive, as were the Iraq War in 2003 and the 1989 removal of Panamanian leader Manuel Noriega. Or it can be defensive, to respond to aggression from others, such as the Persian Gulf War in 1991, also known as Operation Desert Storm. The potential for military engagement, and indeed the scattering about the globe of hundreds of U.S. military installations, can also be a potential source of foreign policy strength for the United States. On the other hand, in the world of diplomacy, such an approach can be seen as imperialistic by other world nations.

Intelligence policy is related to defense and includes the overt and covert gathering of information from foreign sources that might be of strategic interest to the United States. The intelligence world, perhaps more than any other area of foreign policy, captures the imagination of the general public. Many books, television shows, and movies entertain us (with varying degrees of accuracy) through stories about U.S. intelligence operations and people.

Foreign aid and global environmental policy are the final two foreign policy types. With both, as with the other types, the United States operates as a strategic actor with its own interests in mind, but here it also acts as an international steward trying to serve the common good. With foreign aid, the United States provides material and economic aid to other countries, especially developing countries, in order to improve their stability and their citizens' quality of life. This type of aid is sometimes called humanitarian

aid; in 2013 the U.S. contribution totaled $32 billion. Military aid is classified under military/defense or national security policy (and totaled $8 billion in 2013). At $40 billion the total U.S. foreign aid budget for 2013 was sizeable, though it represented less than 1 percent of the entire federal budget.[6]

Global environmental policy addresses world-level environmental matters such as climate change and global warming, the thinning of the ozone layer, rainforest depletion in areas along the Equator, and ocean pollution and species extinction. The United States' commitment to such issues has varied considerably over the years. For example, the United States was the largest country not to sign the 1997 Kyoto Protocol on greenhouse gas emissions. However, few would argue that the U.S. government has not been a leader on global environmental matters.

Unique Challenges in Foreign Policy

U.S. foreign policy is a massive and complex enterprise. What are its unique challenges for the country?

First, there exists no true world-level authority dictating how the nations of the world should relate to one another. If one nation negotiates in bad faith or lies to another, there is no central world-level government authority to sanction that country. This makes diplomacy and international coordination an ongoing bargain as issues evolve and governmental leaders and nations change. Foreign relations are certainly made smoother by the existence of cross-national voluntary associations like the United Nations, the Organization of American States, and the African Union. However, these associations do not have strict enforcement authority over specific nations, unless a group of member nations takes action in some manner (which is ultimately voluntary). The **European Union** is the single supranational entity (transnational government) with some real and significant authority over its member nations. Adoption of its common currency, the euro, brings with it sovereignty concessions from countries on a variety of matters, and the EU's economic and environmental regulations are the strictest in the world. Yet even the EU has enforcement issues, as evidenced by the battle within its ranks to force member Greece to reduce its national debt or the recurring problem of Spain overfishing in the North Atlantic Ocean.

International relations take place in a relatively open venue in which it is seldom clear how to achieve collective action among countries generally or between the United States and specific other nations.

When does it make sense to sign a multinational pact and when doesn't it? Is a bilateral economic agreement truly as beneficial to the United States as to the other party, or are we giving away too much in the deal? These are open and complicated questions. A second challenge for the United States is the widely differing views among countries about the role of government in people's lives. The government of hardline communist North Korea regulates everything in its people's lives every day. At the other end of the spectrum are countries with little government activity at all, such as parts of the island of New Guinea. In between is a vast array of diverse approaches to governance. Countries like Sweden provide cradle-to-grave human services programs like health care and education that in some parts of India are minimal at best. In Egypt, the nonprofit sector provides many services rather than the government. The United States relishes its tradition of freedom and the principle of limited government, but practice and reality can be somewhat different.

In the end, it falls somewhere in the middle of this continuum because of its focus on law and order, educational and training services, and old-age pensions and health care in the form of Social Security and Medicare. The challenge of pinpointing the appropriate role of government may sound more like a domestic than a foreign policy matter, and to some degree it is an internal choice about the way government interacts with the people. Yet the internal (or domestic) relationship between a government and its people can often become intertwined with foreign policy. For example, the narrow stance on personal liberty that Iran has taken in recent decades led other countries to impose economic sanctions that crippled the country internally. Some of these sanctions have eased considering the new nuclear deal with Iran. So the domestic and foreign policy realms are intertwined in terms of what we view as national priorities—whether they consist of nation building abroad or infrastructure building here at home, for example. This latter choice is often described as the "guns versus butter" debate.



Image 13.5 President Obama and Administration Officials Watch Raid on bin Laden Compound

President Barack Obama (second from left) with Vice President Joe Biden (far left), Secretary of State Hillary Clinton (second from right), Secretary of Defense Robert Gates (far right), and other national security advisers in the Situation Room of the White House, watching the successful raid on Osama bin Laden's compound on May 1, 2011. (Credit: The White House; OpenStax included image)

A third and related, unique challenge for the United States in the foreign policy realm is other countries' varying ideas about the appropriate form of government.

These forms range from democracies on one side to various authoritarian (or nondemocratic) forms of government on the other. Relations between the United States and democratic states tend to operate more smoothly, proceeding from the shared core assumption that government's authority comes from the people. Monarchies and other nondemocratic forms of government do not share this assumption, which can complicate foreign policy discussions immensely. People in the United States often assume that people who live in a nondemocratic country would prefer to live in a democratic one. However, in some regions of the world, such as the Middle East, this does not seem to be the case—people often prefer having stability within a nondemocratic system over changing to a less predictable democratic form of government.

Or they may believe in a theocratic form of government. And the United States does have formal relations with some more totalitarian and monarchical governments, such as Saudi Arabia, when it is in U.S. interests to do so. A fourth challenge is that many new foreign policy issues transcend borders. That is, there are no longer simply friendly states and enemy states. Problems around the world that might affect the United States, such as terrorism, the international slave trade, and climate change, originate with groups and issues that are not country specific. They are transnational.

So, for example, while we can readily name the enemies of the Allied forces in World War II (Germany, Italy, and Japan), the U.S. war against terrorism has been aimed at terrorist groups that do not fit neatly within the borders of any one country with which the United States could quickly interact to solve the

problem. Intelligence-gathering and focused military intervention are needed more than traditional diplomatic relations, and relations can become complicated when the United States wants to pursue terrorists within other countries' borders. An ongoing example is the use of U.S. drone strikes on terrorist targets within the nation of Pakistan, in addition to the 2011 campaign that resulted in the death of Osama bin Laden, the founder of al-Qaeda.

The fifth and final unique challenge is the varying conditions of the countries in the world and their effect on what is possible in terms of foreign policy and diplomatic relations. Relations between the United States and a stable industrial democracy are going to be easier than between the United States and an unstable developing country being run by a military junta (a group that has taken control of the government by force). Moreover, an unstable country will be more focused on establishing internal stability than on broader world concerns like environmental policy. In fact, developing countries are temporarily exempt from the requirements of certain treaties while they seek to develop stable industrial and governmental frameworks.



The **Council on Foreign Relations** is one of the nation's oldest organizations that exist to promote thoughtful discussion on U.S. foreign policy.

FOREIGN POLICY: QUESTIONS TO CONSIDER

1. How are foreign and domestic policy-making different?

   Show Answer
   foreign involves the US relationship with other countries; domestic is internal policy

2. What is the main foreign policy goal of the United States?

   Show Answer
   safety and security of the American people

3. What tools may the president use for conducting foreign policy and achieving foreign policy objectives?

   Show Answer
   diplomacy, military, humanitarian aid, etc.

4. What is the general purpose of the UN?

   Show Answer
   international security and cooperation

TERMS TO REMEMBER

balance of power–a situation in which no one nation or region is much more powerful militarily than any other in the world

balance of trade–the relationship between a country's inflow and outflow of goods

Cold War–the period from shortly after World War II until approximately 1989–1990 when advanced industrial democracies divided behind the two superpowers (East: Soviet Union, West: United States) and the fear of nuclear war abounded

diplomacy–the establishment and maintenance of a formal relationship between countries

foreign policy–a government's goals in dealing with other countries or regions and the strategy used to achieve them

free trade–a policy in which a country allows the unfettered flow of goods and services between itself and other countries

hard power–the use or threat of military power to influence the behavior of another country

North Atlantic Treaty Organization (NATO)–a cross-national military organization with bases in Belgium and Germany formed to maintain stability in Europe

protectionism–a policy in which a country does not permit other countries to sell goods and services within its borders or charges them very high tariffs (import taxes) to do so

soft power–nonmilitary tools used to influence another country, such as economic sanctions

United Nations (UN)–an international organization of nation-states that seeks to promote peace, international relations, and economic and environmental programs

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13.2 Foreign Policy: Approaches



Image 13.6 U.S. Soldiers at Fort Bliss Training

Use of the United States military is only one of many methods of approaching and achieving various policy objectives. U.S. Soldiers of the 101st Airborne Division (Air Assault), participate in a simulated force-on-force training training exercise during the Network Integration Evaluation (NIE) 17.2 at Fort Bliss, Texas, July 15th, 2017. (Credit: U.S. Army photo at https://www.army.mil/)

Learning Objectives

- Explain classic schools of thought on U.S. foreign policy.
- Describe contemporary schools of thought on U.S. foreign policy.
- Delineate the U.S. foreign policy approach with Russia and China.

Chart 13.3 Learning Objectives on Foreign Policy and Schools of Thought

Frameworks and theories help us make sense of the environment of governance in a complex area like foreign policy. A variety of schools of thought exist about how to approach foreign policy, each with different ideas about what "should" be done. These approaches also vary in terms of what they assume about human nature, how many other countries ought to be involved in U.S. foreign policy, and what the tenor of foreign policymaking ought to be. They help us situate the current U.S. approach to many foreign policy challenges around the world.

Classic Approaches

A variety of traditional concepts of foreign policy remain helpful today as we consider the proper role of the United States in, and its approach to, foreign affairs. These include isolationism, the idealism versus

realism debate, liberal internationalism, hard versus soft power, and the grand strategy of U.S. foreign policy.

Foreign Policy	Description of Policy Position
isolationism	country stays out of foreign entanglements; keeps to itself; non-involvement
containment	country tries to limit spread of opposing ideological viewpoint or military expansion
preemption	country uses threat of or actual use of force to promote policy goals
retaliatory	country counters measures taken by another country; economic, political, military
selective engagement	country maintains military presence; engagement through alliances & installations
intervention	country intervenes for humanitarian reasons; economic aid, health resources, etc.
interdependence	country ties itself to other countries through political, economic & defense policies

Chart 13.4 Chart on Foreign Policy Positions

From the end of the Revolutionary War in the late eighteenth century until the early twentieth century, **isolationism**—whereby a country stays out of foreign entanglements and keeps to itself—was a popular stance in U.S. foreign policy. Among the founders, Thomas Jefferson especially was an advocate of isolationism or non-involvement. He thought that by keeping to itself, the United States stood a better chance of becoming a truly free nation. This fact is full of irony, because Jefferson later served as ambassador to France and president of the United States, both roles that required at least some attention to foreign policy. Still, Jefferson's ideas had broad support. After all, Europe was where volatile changes were occurring. The new nation was tired of war, and there was no reason for it to be entangled militarily with anyone. Indeed, in his farewell address, President George Washington famously warned against the creation of "entangling alliances."[11]

Despite this legacy, the United States was pulled squarely into world affairs with its entry into World War I. But between the Armistice in 1918 that ended that war and U.S. entry into World War II in 1941, isolationist sentiment returned, based on the idea that Europe should learn to govern its own affairs.

Then, after World War II, the United States engaged the world stage as one of two superpowers and the military leader of Europe and the Pacific. Isolationism never completely went away, but now it operated in the background. Again, Europe seemed to be the center of the problem, while political life in the United States seemed calmer somehow.

The end of the Cold War opened up old wounds as a variety of smaller European countries sought independence and old ethnic conflicts reappeared. Some in the United States felt the country should again be isolationist as the world settled into a new political arrangement, including a vocal senator, Jesse

Helms (R-NC), who was against the United States continuing to be the military "policeman" of the world. Helms was famous for opposing nearly all treaties brought to the Senate during his tenure. Congressman Ron Paul (R-TX) and his son Senator Rand Paul (R-KY) were both isolationist candidates for the presidency (in 2008 and 2016, respectively); both thought the United States should retreat from foreign entanglements, spend far less on military and foreign policy, and focus more on domestic issues.

At the other end of the spectrum is liberal internationalism. Liberal internationalism advocates a foreign policy approach in which the United States becomes proactively engaged in world affairs. Its adherents assume that liberal democracies must take the lead in creating a peaceful world by cooperating as a community of nations and creating effective world structures such as the United Nations. To fully understand liberal internationalism, it is helpful to understand the idealist versus realist debate in international relations. Idealists assume the best in others and see it as possible for countries to run the world together, with open diplomacy, freedom of the seas, free trade, and no military. Everyone will take care of each other. There is an element of idealism in liberal internationalism, because the United States assumes other countries will also put their best foot forward. A classic example of a liberal internationalist is President Woodrow Wilson, who sought a League of Nations to voluntarily save the world after World War I.



Image 13.7 President Nixon's Historic Visit to China

President Nixon and First Lady Patricia Nixon visited the Great Wall on their 1972 trip to China. The Chinese showed them the sights and hosted a banquet for them in the Great Hall of the People. Nixon was the first U.S. president to visit China following the Communist victory in the civil war in 1949. (Credit: National Archives and Records Administration)

Realists assume that others will act in their own self-interest and hence cannot necessarily be trusted. They want a healthy military and contracts between countries in case others want to wiggle out of their commitments. Realism also has a place in liberal internationalism, because the United States approaches foreign relationships with open eyes and an emphasis on self-preservation.

Soft power, or diplomacy, with which the United States often begins a foreign policy relationship or entanglement, is in line with liberal internationalism and idealism, while hard power, which allows the potential for military force, is the stuff of realism. For example, at first the United States was rather isolationist in its approach to China, assuming it was a developing country of little impact that could safely be ignored. Then President Nixon opened China as an area for U.S. investment, and an era of open diplomatic relations began in the early 1970s.

As China modernized and began to dominate the trade relationship with the United States, many

came to see it through a realist lens and to consider whether China's behavior really warranted its beneficial most-favored-nation trading status.

The final classic idea of foreign policy is the so-called grand strategy—employing all available diplomatic, economic, and military resources to advance the national interest. The grand strategy invokes the possibility of hard power, because it relies on developing clear strategic directions for U.S. foreign policy and the methods to achieve those goals, often with military capability attached. The U.S. foreign policy plan in Europe and Asia after World War II reflects a grand strategy approach. In order to stabilize the world, the United States built military bases in Italy, Germany, Spain, England, Belgium, Japan, Guam, and Korea. It still operates nearly all these, though often under a multinational arrangement such as NATO. These bases help preserve stability on the one hand, and U.S. influence on the other.

More Recent Schools of Thoughts

Two events in foreign policy caused many to change their views about the proper approach to U.S. involvement in world affairs. First, the debacle of U.S. involvement in the civil war in Vietnam in the years leading up to 1973 caused many to rethink the country's traditional **containment** approach to the Cold War. Containment was the U.S. foreign policy goal of limiting the spread of communism. In Vietnam the United States supported one governing faction within the country (democratic South Vietnam), whereas the Soviet Union supported the opposing governing faction (communist North Vietnam). The U.S. military approach of battlefield engagement did not translate well to the jungles of Vietnam, where "guerrilla warfare" predominated.

Skeptics became particularly pessimistic about liberal internationalism given how poorly the conflict in Vietnam had played out. U.S. military forces withdrew from South Vietnam in 1973, and Saigon, its capital, fell to North Vietnam and the communists eighteen months later. Many of those pessimists then became neoconservatives on foreign policy.

Neoconservatives believe that rather than exercising restraint and always using international organizations as the path to international outcomes, the United States should aggressively use its might to promote its values and ideals around the world. The aggressive use (or threat) of hard power is the core value of neo-conservatism. Acting unilaterally is acceptable in this view, as is adopting a preemptive strategy in which the United States intervenes militarily before the enemy can make its move. **Preemption** is a new idea; the United States has tended to be **retaliatory** in its use of military force, as in the case of Pearl Harbor at the start of World War II. Examples of neo-conservatism in action are the 1980s U.S. campaigns in Central American countries to turn back communism under President Ronald Reagan, the Iraq War of 2003 led by



Heading to a going-away party for departing defense secretary Donald Rumsfeld in December 2006, former president George

Image 13.8 President Bush and Administration Officials

twenty-first century foreign policy neoconservative. Rumsfeld is on the right. (Credit: OpenStax; modification of work by photographer D. Myles Cullen)

President George W. Bush and his vice president Dick Cheney, and the current use of drones as counter-terrorism weapons during the Obama administration.

Neo-isolationism, like earlier isolationism, advocates keeping free of foreign entanglements. Yet no advanced industrial democracy completely separates itself from the rest of the world. Foreign markets beckon, tourism helps spur economic development at home and abroad, and global environmental challenges require cross-national conversation. In the twenty-first century, neo-isolationism means distancing the United States from the United Nations and other international organizations that get in the way. The strategy of **selective engagement**—retaining a strong military presence and remaining engaged across the world through alliances and formal installations—is used to protect the national security interests of the United States. However, this strategy also seeks to avoid being the world's policeman.

The second factor that changed minds about twenty-first century foreign policy is the rise of elusive new enemies who defy traditional designations. Rather than countries, these enemies are terrorist groups such as al-Qaeda and ISIS (or ISIL) that spread across national boundaries. A hybrid approach to U.S. foreign policy that uses multiple schools of thought as circumstances warrant may thus be the wave of the future. President Obama has often taken a hybrid approach. In some respects, he has been a liberal internationalist seeking to put together broad coalitions to carry out world business. At the same time, his sending teams of troops and drones to take out terrorist targets in other legitimate nation-states without those states' approval fits with a neoconservative approach. Finally, President Obama's desire to not be the "world's policeman" makes it appear as if he has followed selective engagement.

Several interest groups debate what should happen in U.S. foreign policy, many of which are included in this **list** compiled by the Council on Foreign Relations.

U.S. Foreign Policy in the Cold War and with China

The foreign policy environment from the end of World War II until the end of the Cold War in 1990 was dominated by a duel of superpowers between the United States and its Western allies on the one hand and the Soviet Union and the communist bloc of countries in the East on the other. Both superpowers developed thousands of weapons of mass destruction and readied for a potential world war to be fought with nuclear weapons. That period was certainly challenging and ominous at times, but it was simpler than the present era. Nations knew what team they were on, and there was generally an incentive to not go to war because it would lead to the unthinkable—the end of the Earth as we know it, or mutually assured destruction. The result of this logic, essentially a standoff between the two powers, is sometime referred to as nuclear deterrence. When the Soviet Union imploded and the Cold War ended, it was in many ways a victory for the West and for democracy. However, once the bilateral nature of the Cold War was gone, dozens of countries sought independence and old ethnic conflicts emerged in several regions of the world, including Eastern Europe. This new era holds great promise, but it is in many ways more complex than the Cold War. The rise of cross-national terrorist organizations further complicates the equation because the enemy hides within the borders of potentially dozens of countries around the globe. In summary, the United States pursues a variety of topics and goals in different areas of the world in the

twenty-first century. The Soviet Union dissolved into many component parts after the Cold War, including Russia, various former Soviet republics like Georgia and Ukraine, and smaller nation-states in Eastern Europe, such as the Czech Republic. The general approach of the United States has been to encourage the adoption of democracy and economic reforms in these former Eastern bloc countries. Many of them now align with the EU and even with the West's cross-national military organization, NATO. With freedoms can come conflict, and there has been much of that in these fledgling countries as opposition coalitions debate how the future course should be charted, and by whom. Under President Vladimir Putin, Russia is again trying to strengthen its power on the country's western border, testing expansionism while invoking Russian nationalism. The United States is adopting a defensive position and trying to prevent the spread of Russian influence. The EU and NATO factor in here from the standpoint of an internationalist approach.

In many ways the more visible future threat to the United States is China, the potential rival superpower of the future. A communist state that has also encouraged much economic development, China has been growing and modernizing for more than thirty years. Its nearly 1.4 billion citizens are stepping onto the world economic stage with other advanced industrial nations. In addition to fueling an explosion of industrial domestic development, public and private Chinese investors have spread their resources to every continent and most countries of the world. Indeed, Chinese investors lend money to the United States government on a regular basis, as U.S. domestic borrowing capacity is pushed to the limit in most years.

Many in the United States are worried by the lack of freedom and human rights in China. During the Tiananmen Square massacre in Beijing on June 4, 1989, thousands of pro-democracy protesters were arrested, and many were killed as Chinese authorities fired into the crowd and tanks crushed people who attempted to wall them out. Over one thousand more dissidents were arrested in the following weeks as the Chinese government investigated the planning of the protests in the square. The United States instituted minor sanctions for a time, but President George H. W. Bush chose not to remove the most-favored-nation trading status of this long-time economic partner. Most in the U.S. government, including leaders in both political parties, wish to engage China as an economic partner while they keep a watchful eye on its increasing influence around the world, especially in developing countries. Elsewhere in Asia, the United States has good relationships with most other countries, especially South Korea and Japan, which have both followed paths the United States favored after World War II. Both countries embraced democracy, market-oriented economies, and the hosting of U.S. military bases to stabilize the region. North Korea, however, is another matter. A closed, communist, totalitarian regime, North Korea has been testing nuclear bombs in recent decades, to the concern of the rest of the world. Like China many decades earlier, India is a developing country with a large population that is expanding and modernizing. Unlike China, India has embraced democracy, especially at the local level.



You can plot U.S. government attention to different types of policy matters (including international affairs and foreign aid and its several dozen more focused subtopics) by using the online **trend analysis tool** at the Comparative Agendas Project.

QUESTIONS TO CONSIDER

1. In your view, what are the best ways to get the community of nations working together?

   Show Answer
   personal opinion
2. What are the three most important foreign policy issues facing the United States today? Why?

   Show Answer
   open for debate

3. If you were president and wanted to gather support for a new foreign policy initiative, which three U.S. foreign policy actors would you approach and why?

   Show Answer
   personal opinion

TERMS TO REMEMBER

containment–the effort by the United States and Western European allies, begun during the Cold War, to prevent the spread of communism

isolationism–a foreign policy approach that advocates a nation's staying out of foreign entanglements and keeping to itself

internationalism–a foreign policy approach of becoming proactively engaged in world affairs by cooperating in a community of nations

neo-isolationism–a policy of distancing the United States from the United Nations and other international organizations, while still participating in the world economy

selective engagement–a policy of retaining a strong military presence and remaining engaged across the world

1. "George Washington's Farewell Address." 1796. New Haven, CT: School Avalon Project, Yale Law Library. http://avalon.law.yale.edu/18th_century/washing.asp (May 12, 2016).

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14.1 U. S. Courts: Purpose and Function



Image 14.1 Protesters Advocate for Same-Gender Marriage

The Marriage Equality Act vote in Albany, New York, 2011 (left), was just one of a number of cases testing the constitutionality of national and state law in the years leading up to the 2015 ruling on marriage equality and was a key issue at Seattle's 2012 Pride parade (right).
(Credit: OpenStax; left: modification of work by "Celebration chapel"/Wikimedia; Credit right: modification of work by Brett Curtiss).

Learning Objectives
• Examine the basic provisions of Article III of the *Constitution* and the Judiciary Act of 1789.
• Describe the evolving role of the courts since the ratification of the *Constitution.*
• Understand the concept of judicial review.
• Recognize how the courts make public policy.
• Explain why courts are uniquely situated to protect individual liberties and rights.

Chart 14.1 Learning Objectives on Courts and Civil Liberties

The U. S. courts are set up to achieve two significant functions: 1) as part of the system of checks and balances, they protect the sanctity of the *U. S. Constitution* from breaches by the other branches of government, and 2) they protect individual liberties and rights against societal and governmental oppression.

The Basic Structure of the Judicial Branch

At the national level, nine Supreme Court justices are nominated by the president and confirmed by the Senate for lifetime appointments. Hence, populist control over them is indirect at best, but this provides

the courts with needed independence. Court power is confined to interpreting the law rather than making the law, as law-making power resides with the legislative branch. Under the *Articles of Confederation*, there was no national judiciary. The *Constitution* addressed this need in Article III, which addresses "the judicial power of the United States" and is the shortest and least detailed of the three articles creating branches of government. This article calls for the creation of "one supreme Court," establishes the Court's **jurisdiction** (its authority to hear cases and make decisions) and notes the types of cases the Court may hear.

It distinguishes which are matters of **original jurisdiction** and which are for **appellate jurisdiction**. The *Constitution* also limits the Supreme Court's original jurisdiction to those rare cases of disputes between states or between the United States and foreign ambassadors or ministers. So, for the most part, the Supreme Court is an appeals court, operating under appellate jurisdiction and hearing appeals from the lower courts. Under original jurisdiction, a case is heard for the first time, whereas under appellate jurisdiction, a court hears a case on appeal from a lower court and may change the lower court's decision.

Under the *Constitution*, the development of the judicial system and the creation of the lower courts were left in the hands of Congress. In explaining the importance of an independent judiciary separated from the other branches of government, Hamilton said "interpretation" was a key role of the courts as they seek to protect people from unjust laws.[1] But he also believed "the Judiciary Department" would "always be the least dangerous" because "with no influence over either the sword or the purse," it had "neither force nor will, but merely judgment."[2] The courts were to make decisions and write opinions–not take action to write laws. With no control over how those decisions would be implemented and no power to enforce their choices, they could exercise only judgment based upon the Constitution and the law.

Consider the Original

Alexander Hamilton//*Federalist No. 78*.

[...] The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder (trial by legislature), no ex-post-facto laws (after the fact), and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, **whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing** [*...emphasis added*]
No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the

people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid [...]
That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws [...].

Alexander Hamilton, Federalist #78, at http://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-78.

Chart 14.2 Text from Federalist Paper No. 78

The first session of the first U.S. Congress laid the framework for today's national judicial system, establishing in the **Judiciary Act of 1789,** the basic structure of the judicial branch. Although legislative changes over the years have altered it, the basic structure of the judicial branch remains as it was set early on. At the lowest level district courts, this is where federal cases involving national laws are tried, witnesses testify, and evidence and arguments are presented.

A losing party unhappy with a district court decision may appeal to the U. S. courts of appeal, where the decision of the lower court is reviewed—appellate jurisdiction—only if an identifiable procedural error or an error in applying the law is evident under the *U. S. Constitution*.

Still further appeal to the U.S. Supreme Court is possible; but, of the thousands of petitions for appeal, the Supreme Court will typically hear fewer than one hundred each year.[3]

U. S. Supreme Court Jurisdiction

Type of Jurisdiction	Description
original	Authority to directly hear rare cases involving disputes between states or between U.S. and foreign ambassadors and ministers.
appellate	Authority to hear cases brought on appeal from a lower court; over turn a prior decision after hearing oral arguments and reviewing written briefs about the legality of a prior court's decision.

Chart 14.3 Defining Original and Appellate Jurisdiction

This public site maintained by the **Administrative Office of the U.S. Courts** provides detailed information from and about the judicial branch.

How did the new judiciary get started?



Image 14.2 Photo of the Exterior of the Supreme Court Building in Washington, D.C.

The Supreme Court building in Washington, DC, was not completed until 1935. Engraved on its marble front is the motto "Equal Justice Under Law," while its east side says, "Justice, the Guardian of Liberty." (Credit: US Courts)

Starting in New York in 1790, the early **Supreme Court** focused on establishing its rules and procedures.

It took years for the Court to establish its interpreter position, and it faced several setbacks on the way. In their first case of significance, *Chisholm v. Georgia* (1793), the justices ruled that the federal courts could hear cases brought by a citizen of one state against a citizen of another state, and that Article III, Section 2, of the *Constitution* did not protect the states from facing such an interstate lawsuit.[4]

The decision was almost immediately overturned by the Eleventh Amendment, passed by Congress in 1794 and

ratified by the states in 1795. In protecting the states, the Eleventh Amendment put a prohibition on the courts by stating, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." It was an early hint that Congress had the power to change the jurisdiction of the courts as it saw fit–**checks and balances** in action.

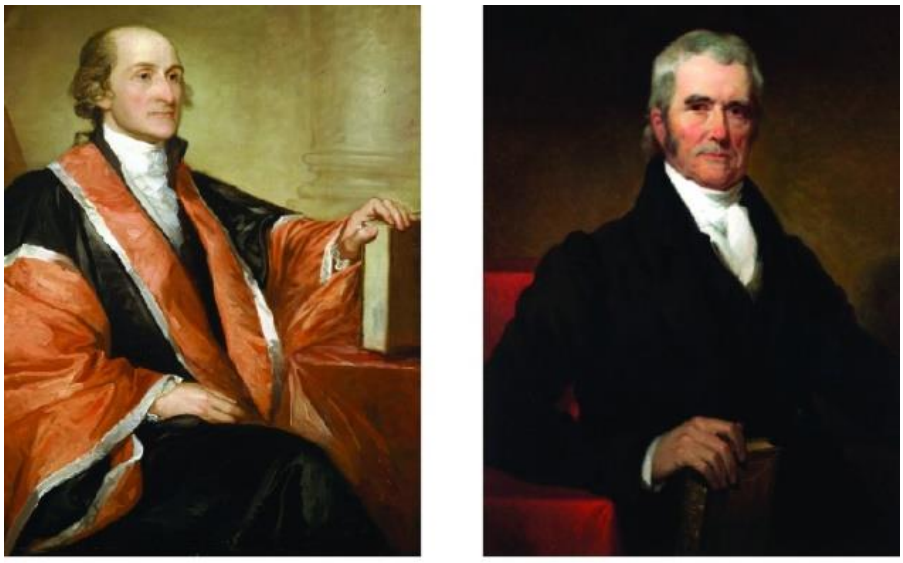
In an atmosphere of perceived weakness, the first chief justice John Jay, an author of *The Federalist Papers* and appointee of President George Washington, resigned his post to become Governor of New York. He later declined President John Adams's offer of a subsequent term on the Supreme Court.[5]

In fact, the Court might have remained in a state of what Hamilton called its "natural feebleness" if not for the man who filled the vacancy Jay had refused—the fourth chief justice, John Marshall. Often credited with defining the modern court, clarifying its power, and strengthening its role, Marshall served in the chief's position for thirty-four years. One landmark case, *Marbury v. Madison*, during his tenure changed the course of the judicial branch's history.

In 1803, the Supreme Court declared for itself the power of **judicial review**, a power that Hamilton referred to in Federalist #78 but is not expressly mentioned (enumerated) in the *Constitution*.

Judicial review is the power of the courts, as part of the system of checks and balances, to look at actions taken by the other branches of government and the states and determine whether they are constitutional.

If the courts find an action to be unconstitutional, it becomes null and void. Judicial review was established in the Supreme Court case *Marbury v. Madison* when, for the first time, the Court declared an act of Congress to be un constitutional.[6]



(a) (b)

Image 14.3 Portraits of John Jay and John Marshall

"Life and Legacy." The John Marshall Foundation. http://www.johnmarshallfoundation.org (March 1, 2016). John Jay (a) was the first chief justice of the Supreme Court but resigned his post to become governor of New York. John Marshall (b), who served as chief justice for thirty-four years, is often credited as the major force in defining the modern court's role in the U.S. governmental system. (Credit: US Courts; OpenStax included image)

Marshall defined this power as the "very essence of judicial duty," and it continues today as one of the most significant aspects of judicial power. Judicial review lies at the core of the court's ability to check the other branches of government—and the states.

Since *Marbury*, the power of judicial review has continually expanded. The Court not only rules on actions of Congress and the president as unconstitutional, but it extended its power to include review of state and local actions.

Judicial review is not confined to the Supreme Court but is also exercised by the lower federal courts and even the state courts. Any legislative or executive action at the federal or state level inconsistent with the U.S. *Constitution* or a state constitution can be subject to judicial review.[7]

MARBURY V. MADISON (1803)

The Supreme Court found itself in the middle of a dispute between the outgoing presidential administration of John Adams and that of incoming president (and opposition party member) Thomas Jefferson. It was an interesting circumstance at the time, particularly because Jefferson and the man who would decide the case—John Marshall—were themselves political rivals.

President Adams had appointed William Marbury to a position in Washington, DC, but his commission was not delivered before Adams left office. Marbury petitioned the Supreme Court to use its power under the Judiciary Act of 1789 and issue a **writ of mandamus** (mandate, command, compel an action) to force the new president's secretary of state James Madison to deliver the commission documents. Madison refused. A unanimous Court under the leadership of Chief Justice John Marshall ruled that although Marbury was entitled to the job, the Court did not have the power to issue the writ and order Madison to deliver the documents, because the provision in the Judiciary Act giving the Court that power was unconstitutional.[8]

Perhaps Marshall feared a confrontation with the Jefferson administration and thought Madison would refuse his directive anyway. In any case, his ruling shows an interesting contrast in the early Court. The Court declined a power—issuing a writ of mandamus—given to it by Congress; however, it laid the foundation for legitimizing a much more important power—judicial review. Marbury never got his commission, but the Court's ruling in the case has become more significant for the precedent it established.

As the first time the Court declared and act of Congress unconstitutional, it established the power of judicial review—a key power enabling the judicial branch to remain a powerful check on the other branches of government.

As Marshall put it, "it is emphatically the province and duty of the judicial department to say what the law is."[9]

Even with judicial review in place, the courts do not always stand ready to throw out actions of the other branches of government. The United States has a common law system in which law is largely developed through binding judicial decisions. These decisions build upon one another over the decades and centuries, informing decisions made by the courts today.

The U. S. Court System and Public Policy Making

In their role as policymakers, Congress and the President tend to consider broad questions of public policy and their costs and benefits. The courts consider specific cases with narrower questions, enabling

them to focus more closely than other government institutions, in their role of interpreting the law. While the legislature can make policy through statute/law, and the executive can implement and enforce policy through regulations and administration based upon constitutionally delegated power or legislative authority, the judicial branch can indirectly influence policy through its rulings and interpretations. Thus, as cases are brought to the courts, court decisions shape policy outcomes through interpretation of these laws and the *U. S. Constitution.*

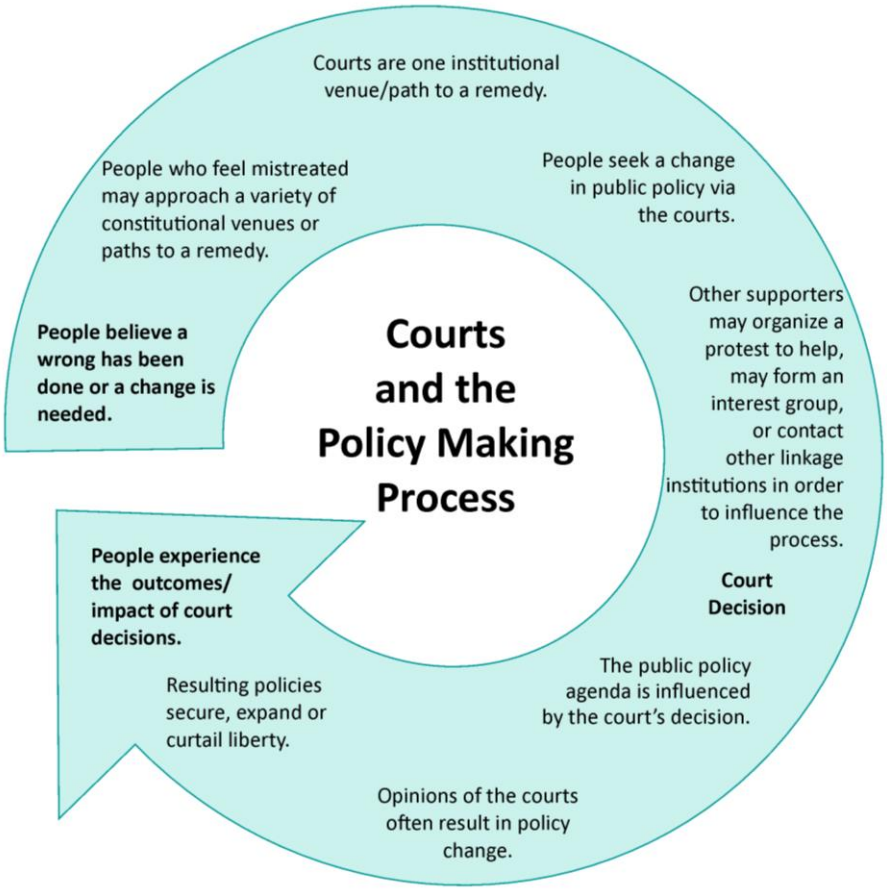


Chart 14.4 Policy Making and the Courts Diagram

Consider health care, for example. In 2010, President Barak Obama signed into law the Patient Protection and Affordable Care Act (PPACA), a statute to change the nation's healthcare system. The goal was providing more widely attainable and affordable health insurance, and "Obamacare" was hailed by some and soundly denounce by others. People who opposed the law and understood a congressional repeal would not happen eminently sought help in the courts. They challenged the constitutionality of the law in *National Federation of Independent Business v. Sebelius*, hoping the Supreme Court would overturn the PPACA.[10] The practice of judicial review enabled the law's critics to exercise this opportunity, even though their hopes were dashed by a narrow 5-4 margin when the Supreme Court upheld the law as an extension of Congress' power to tax.

Since the 2012 decision, the ACA has continued to face challenges, the most notable of which is a setback in 2014, when the Court ruled in *Burwell v. Hobby Lobby* that, for religious reasons, some for-profit

corporations could be exempt from the requirement that employers provide insurance coverage of abortifacients for their female employees.[11] The ACA attained a victory in *King v. Burwell* when the Court upheld the ability of the federal government to provide tax credits for people buying health insurance through an exchange created by the law.[12]

With each ACA case, the Supreme Court served as the umpire, upholding the law and some of its provisions but ruling some aspects unconstitutional. Supporters and opponents claim victory, while the Court further defines and fine-tunes the law—thus impacting public policy in this area.

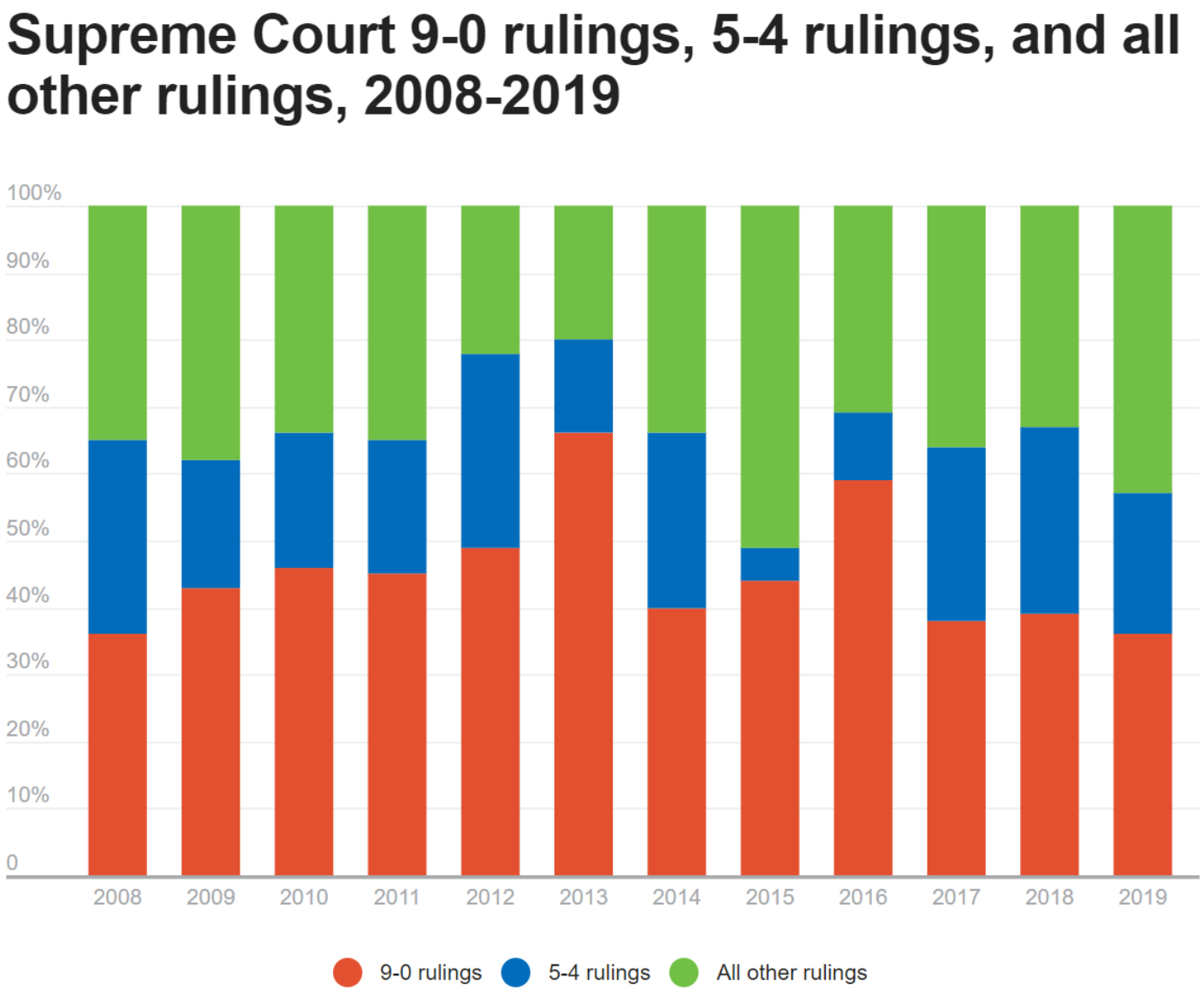


Chart 14.5 SCOTUS Rulings 2008 to 2019 from the Austin American Statesman, Louis Jacobson, PolitiFact.com, 24 June 2021 and SCOTUSBlog

As an interesting exercise, SCOTUSBlog provided information illustrating Supreme Court rulings where the vote was 9-0 ranged as high as sixty-six present in 2013. 9-0 rulings are less rare than most people believe, but it is important to remember that most SCOTUS decisions involve technical rather than controversial or dramatic issues.

Protecting Individual Rights Against Societal and Governmental Oppression

As part of **checks and balances**, courts protect the *Constitution* from breaches by the other branches of government, and they protect individual rights against societal and governmental oppression.

The purpose of the courts, outlined in the preamble to the *Constitution*, is to establish justice. This system of justice, to support the rules made by citizens via their representatives, is to provide restitution of some form for individuals residing in this country who are damaged or harmed by other individuals or government itself, which attempts to take away their life, health, or property.

While the U.S. Supreme Court and state supreme courts exert power over many individuals when reviewing laws or declaring acts of other branches unconstitutional, they become particularly important when a single individual or group comes before them with an alleged wrong.

A citizen or group that feels mistreated may approach a variety of institutional venues in the U. S. system for assistance in changing policy or seeking support. Organizing protests, garnering special interest group support, and changing laws through the legislative and executive branches are all possible; but, an individual is more likely to find the courts especially well-suited to analyzing the particulars of his/her case.

The **judiciary** is arguably the branch where the individual has the best chance to be heard and where the Constitution provides guarantees that individual action against the life, liberty and property of another will be reviewed in a fair manner.

In a court case, it is one party versus the other. It is up to an impartial person or group, such as the judge or jury, to determine which party prevails. The federal court system is most often called upon when a case touches on constitutional rights. Over time, the courts have made many decisions broadening the civil rights and liberties of individuals.

In this same vein, the courts are key interpreters of the *U. S. Constitution*, continuously interpreting it and applying it to modern times and circumstances. Certainly, when the Bill of Rights first declared that government could not abridge freedom of speech, its framers could never have envisioned Facebook™ or any other modern technology.

Freedom of speech, for example, just like many constitutional concepts, has come to mean different things to different generations and the courts have designed the lens through which we understand the *Constitution* in modern times.

It is often said that the *Constitution* changes less by amendment and more by interpretation. Rather than collecting dust on a shelf, the 230-year-old document has come with us into the modern age.

QUESTIONS TO CONSIDER

1. How do courts make decisions?

   Show Answer
   they follow established legal procedure; the rely on precedent; the use the Constitution; etc.

2. How do they exercise their power to protect individual rights?

   Show Answer
   courts may preempt states' slower decision making processes to intervene on behalf of individuals

3. What distinguishes the Supreme Court from all others?

   Show Answer
   SCOTUS has both appellate and original jurisdiction; specifically granted power as the highest court

4. Why do you believe the *Constitution*'s framers chose lifetime terms?
   Show Answer
   personal opinion; debate selection/appointment versus election

TERMS TO REMEMBER

appellate jurisdiction–where the decision of the lower court is reviewed due to a legal or procedural error

Article III–establishes a third branch of government, the judiciary

checks and balances–limitations placed on governmental power; separation into branches that oversee one another

judicial review–the power of the courts to review actions taken by the other branches of government and the states and to rule on whether those actions are constitutional

judiciary–judicial authority, courts, judges, justices

Judiciary Act of 1789–expands on Article III with details about additional federal/national courts, court structure and operations

jurisdiction–the power of a court to hear a case on appeal or to hear a case for the first time

***Marbury v. Madison*–**the 1803 Supreme Court case that established the courts' power of judicial review and the first time the Supreme Court ruled an act of Congress to be unconstitutional

original jurisdiction–where federal cases involving national laws are tried, witnesses testify, and evidence and arguments are presented

Supreme Court–highest federal/national court; 8 justices and 1 chief justice; largely discretionary power to hear cases on appeal; limited original jurisdiction

writ of mandamus–paperwork compelling an action, court requires a specific action

1. Alexander Hamilton, Federalist #78, at http://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-78.
2. Alexander Hamilton, Federalist #78, at http://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-78.
3. "The U.S. Supreme Court." *The Judicial Learning Center*. http://judiciallearningcenter.org/the-us-supreme-court/ (March 1, 2016).
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5. Associated Press. "What You Should Know About Forgotten Founding Father John Jay," *PBS Newshour*. July 4, 2015. http://www.pbs.org/newshour/rundown/forgotten-founding-father.
6. *Marbury v. Madison*, 5 U.S. 137 (1803).
7. Stephen Hass. "Judicial Review." *National Juris University*. http://juris.nationalparalegal.edu/(X(1)S(wwbvsi5iswopllt1bfpzfkjd))/JudicialReview.aspx (March 1, 2016).
8. *Marbury v. Madison*, 5 U.S. 137 (1803).
9. *Marbury v. Madison*, 5 U.S. 137 (1803).
10. Ibid.
11. *National Federation of Independent Business v. Sebelius*, 567 U.S.__(2012).
12. *Burwell v. Hobby Lobby*, 573 U.S.__(2014).
13. *King v. Burwell*, 576 U.S.__(2015).

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14.2 U. S. Courts: Structure and Procedure



Image 14.4 Interior Photo of 5th Circuit Court's Courtroom

Inside the United States Court of Appeals for the Fifth Circuit (Credit: United States Courts at http://www.ca5.uscourts.gov/).

Learning Objectives

- Describe the court system's basic structure.
- Explain how you are protected by different U.S. court systems.
- Describe the differences between the U.S. district courts, circuit courts, and the Supreme Court.
- Explain the significance of precedent in the courts' operations.
- Describe how judges are selected for their positions.
- Analyze the structure and important features of the Supreme Court.
- Explain how the judiciary is checked by the other branches of government.

Chart 14.6 Learning Objectives on How Courts Function

The judiciary is multi-layered with courts at both the national, state, county, and local levels. Adding complexity, the court systems sometimes intersect and overlap each other, and no two states are exactly alike in court structure. The organization of state courts does not perfectly mirror the more clear-cut system found at the federal level.[11]

Cases heard by the U.S. **Supreme Court** come from two primary pathways: (1) the **circuit courts**, or U.S. courts of appeal (after the cases have originated in the federal **district courts**), and (2) state supreme courts (when there is a substantive constitutional qustion in the case).

Precedent set by each ruling (decision of the judges or justices), particularly by the Supreme Court, builds on principles set by earlier cases and frames the ongoing decisions of the courts. Reliance on precedent has enabled the federal courts to operate for the most part with logic and consistency helping validate their role as the key interpreters of the *Constitution* and the law—a legitimacy particularly vital in the United States where citizens do not elect federal judges and justices but are subject to their rulings.

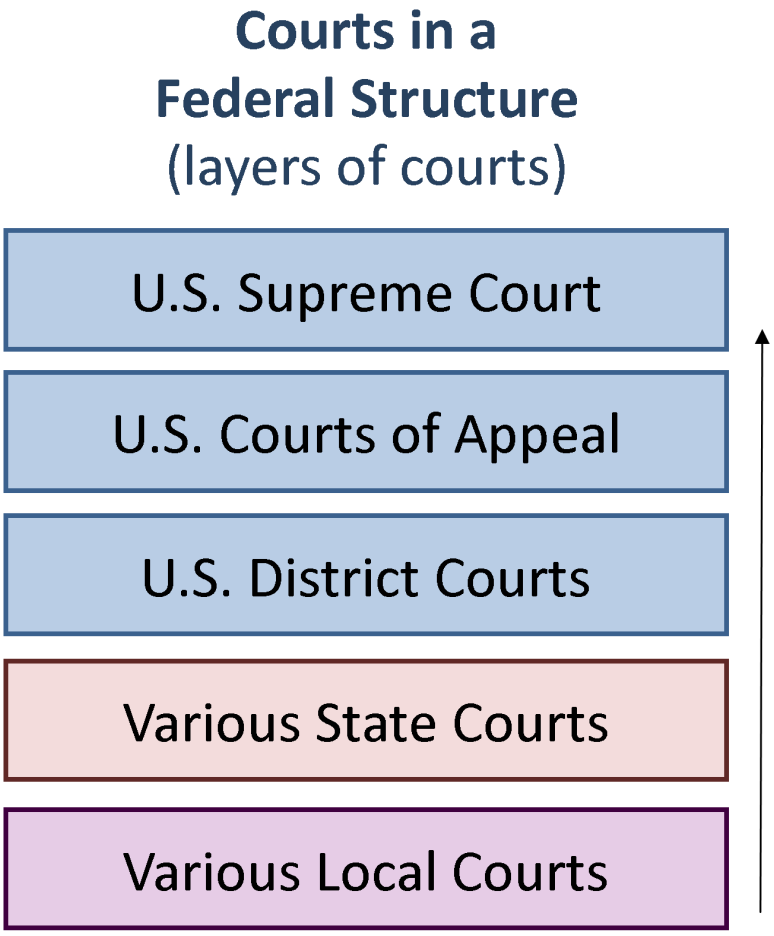


Chart 14.7 Diagram Illustrating Structure of U.S. Courts

The U.S. court system operates on the principle of **stare decisis** (let the decision stand) meaning today's decisions are based largely on rulings from the past, and tomorrow's rulings rely on what is decided today. Consistency of precedent ensures greater stability in law and constitutional interpretation contributing to the court system's legitimacy. As former Supreme Court justice Benjamin Cardozo summarized it years ago, "Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts."[2]

The Supreme Court decides based upon numerous factors. If the justices **affirm** a lower court's decision, they declare it valid and allow it to stand (stare decisis).[3]

When an appellate court sends a case back to a lower court for further proceedings the decision is to **remand**.

The lower court is often required to do something differently, but that does not always mean the court's final decision will change.[4] When an appellate court **reverses** (sets aside) the decision of a lower court because of an error, it is a **reversal**, which is often followed by a remand. For example, if the defendant argued on appeal that certain evidence should not have been used at trial, and the appeals court agrees, the case will be remanded in order for the trial court to reconsider the case without that evidence.[5]

There are ninety-four U.S. **district courts** in the fifty states and U.S. territories, of which eighty-nine are in the states (at least one in each state).

The others are in Washington, DC; Puerto Rico; Guam; the U.S. Virgin Islands; and the Northern Mariana Islands. These are the **original jurisdiction** trial courts of the national system. No district court crosses state lines, and a single judge oversees each one. Some cases are heard by a **petit jury** (jury of peers

deciding on the credibility of evidence presented at trial) and some are **bench trials** (judge acts as both judge and jury based on both law and fact).

There are thirteen **U.S. Courts of Appeal**, or circuit courts of **appellate jurisdiction**, eleven across the nation and two in Washington, DC (the DC circuit and the federal circuit). Each court is overseen by a rotating panel of three judges who review the rulings of the trial (district) courts within their geographic circuit. These courts, established under Article III, provide for life-time appointments for judges.

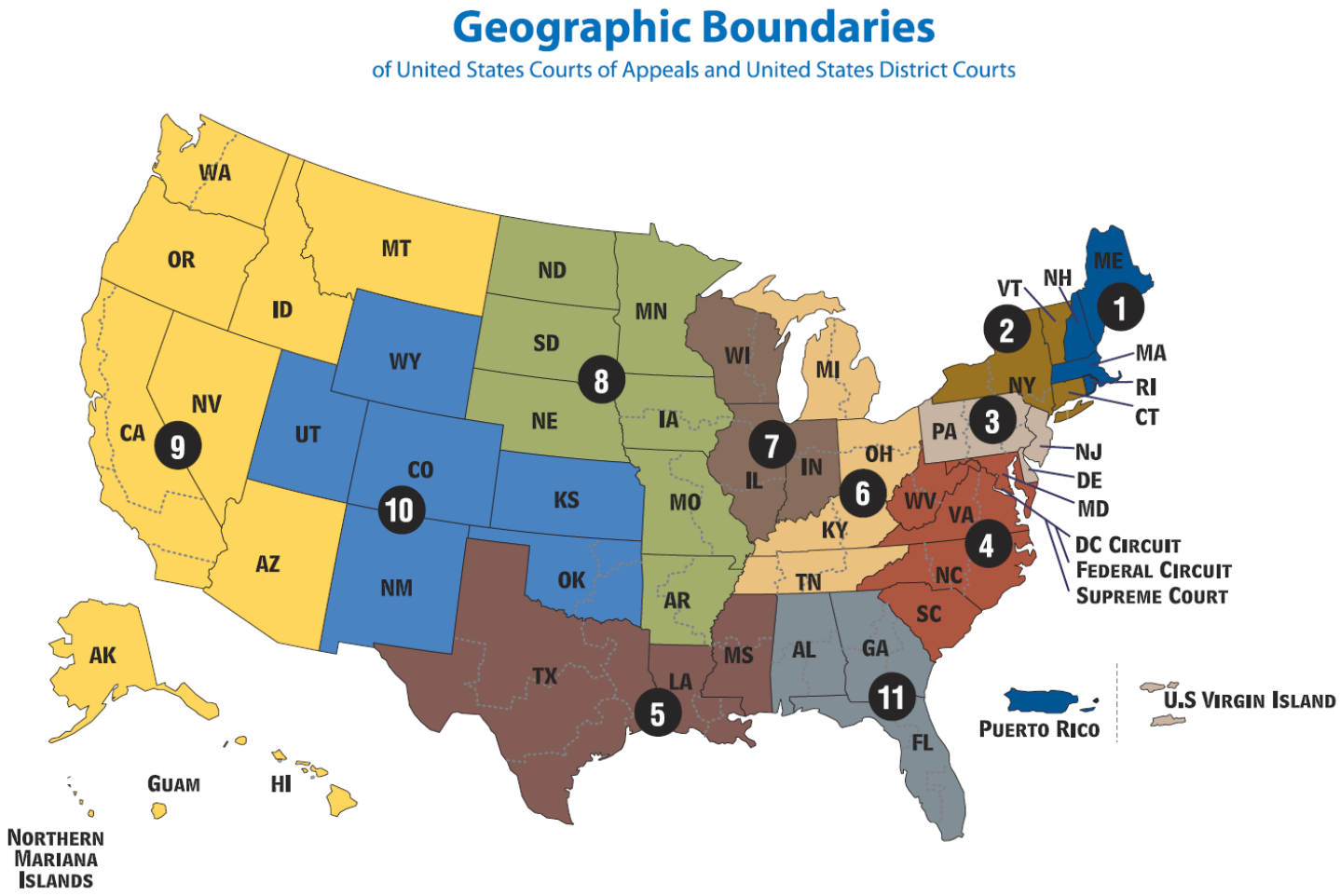


Chart 14.8 Map of U.S. Circuit Courts of Appeals and District Courts

There are thirteen judicial circuits: eleven in the geographical areas marked on the map and two in Washington, DC. (Credit: U S Courts; http://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf)

Other federal trial courts exist with specialized jurisdictions–Court of International Trade, Court of Federal Claims, and U.S. Tax Court. Specialized federal appeals courts include the Court of Appeals for the Armed Forces and the Court of Appeals for Veterans Claims. Cases from any of these courts may also be appealed to the Supreme Court, although that result is very rare; and, judges do not serve for life.

The Supreme Court of the United States, sometimes abbreviated SCOTUS, is a one-of-a-kind institution. While a look at the Supreme Court typically focuses on the nine justices themselves, they represent only the top layer of an entire branch of government that includes many administrators, lawyers, and assistants who contribute to and help run the overall judicial system. The Court has its own set of rules for choosing cases, and it follows a unique set of procedures for hearing them. The Court's decisions not only affect the outcome of the individual case before the justices, but also creates lasting impacts on legal and constitutional interpretation for the future.



Image 14.5 Interior Photo of Supreme Court

Photo of the interior of the Supreme Court (Credit: Supreme Court at https://www.supremecourt.gov/about/photos.aspx).

Supreme Court Structure & Procedure

The original court in 1789 had six justices, but Congress set the number at nine in 1869, and it has remained there ever since. There is one **chief justice**, who is the lead or highest-ranking judge on the Court, and eight **associate justices**. All nine serve lifetime terms, after successful nomination by the president and confirmation by the Senate.

While not formally connected with the public the way elected leaders are, the **Supreme Court** nonetheless offers visitors a great deal of information at its official website. For unofficial summaries of recent Supreme Court cases or news about the Court, visit the **Oyez website** or **SCOTUS**blog.

The **Supreme Court** begins its annual session on the first Monday in October and ends the following June. Every year, there are literally thousands of people who would like to have their case heard before the Supreme Court, but the justices will select only a handful to be placed on the **docket**, which is the list of cases scheduled on the Court's calendar. The Court typically accepts fewer than 2 percent of the cases it is asked to review every year.[6] Case names, written in italics, list the name of a petitioner versus a respondent, as in *Roe v. Wade*, for example.[7]

For a case on appeal, the case name indicates which party lost at the lower level of court: The party unhappy with the lower court's decision, as it relates to a legal or procedural error, brings the appeal and is the **petitioner**, or the first-named party in the case. For example, in *Brown v. Board of Education* (1954), Oliver Brown was one of the thirteen parents who brought suit against the Topeka public schools for discrimination based on racial segregation.

Most often, the petitioner is asking the Supreme Court to grant a **writ of certiorari**, a request that the lower court send up its record of the case for review. Once a writ of certiorari (*cert*. for short) has been granted, the case is scheduled on the Court's docket. The Supreme Court exercises discretion in the cases it chooses to hear, but four of the nine Justices must vote to accept a case. This is called the **Rule of Four**.

For decisions about *cert*., the Court's Rule 10 (Considerations Governing Review on Writ of *Certiorari*) takes precedence.[8] The Court is more likely to grant certiorari when there is a conflict on an issue between or among the lower courts. Examples of conflicts include (1) conflicting decisions among different courts of appeals on the same matter, (2) decisions by an appeals court or a state court conflicting with precedent, and (3) state court decisions that conflict with federal decisions. Occasionally, the courts will fast-track a case that has special urgency, such as *Bush v. Gore* in the wake of the 2000 election.[9]

The **solicitor general** is the lawyer who represents the federal government before the Supreme Court: he/she decides which cases (in which the United States is a party) should be appealed from the lower courts. About two-thirds of all Supreme Court cases involve the federal government.[10]

The solicitor general determines the position the government will take on a case. The attorneys of his/her office prepare and file the petitions and briefs, and the solicitor general (or an assistant) presents the oral arguments before the Court. Once a case has been placed on the docket, **briefs** (short written arguments explaining each party's view of the case) must be submitted. People and groups that are not party to the case but are interested in its outcome may file an **amicus curiae** ("friend of the court") brief giving their opinion, analysis, and recommendations.

How are decisions made and opinions written?

With briefs filed, the Court hears **oral arguments** in cases from October through April. The proceedings are quite ceremonial. When the Court is in session, the robed justices make a formal entrance into the courtroom to a standing audience and the sound of a banging gavel.

The Court's marshal (head of the Court's police force/position like bailiff) presents them with a traditional chant: "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! [Hear ye!] All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"[11]

During oral arguments, each side's lawyers have thirty minutes to make their legal case, though the justices often interrupt the presentations with questions. The justices consider oral arguments not as a forum for a lawyer to restate the merits of his or her case as written in the briefs, but as an opportunity to get answers to any questions they may have.[12]

When oral arguments have been concluded, the justices have to decide the case, and they do so in conference, which is held in private twice a week when the Court is in session and once a week when it is not.[13] The judges take an initial vote in private before the official announcement of their decisions is

made public. Oral arguments are open to the public. Cameras are not allowed in the courtroom; however, an artist's illustration or rendering (drawing) is often available.[14]

Though they lack their own mechanism for enforcement of their rulings and power remains checked and balanced by the other branches, the effect of the justices' opinions on the workings of government, politics, and society in the United States is much more significant than the attention they attract might indicate.

Every Court opinion sets precedent for the future. The Supreme Court's decisions are not always unanimous, however; the published **majority opinion**, or explanation of the justices' decision, is the one with which a majority of the nine justices agree. It can represent a vote as narrow as five in favor to four against. A tied vote is rare but can occur at a time of vacancy, absence, or abstention from a case, perhaps where there is a conflict of interest. In the event of a tied vote, the decision of the lower court stands. If he/she is in the majority, the chief justice decides who will write the opinion. If not, the most senior justice ruling with the majority chooses the writer.

Likewise, the most senior justice in the dissenting group can assign a member to write the **dissenting opinion**; however, any justice who disagrees with the majority may write a separate dissenting opinion.

If a justice agrees with the outcome of the case but not with the majority's reasoning in it, that justice may write a **concurring opinion**. Dissenting opinions can also be instructive. If the Court's decision, expressed in the written majority opinion, significantly changed precedent or the role/processes of government, dissenting opinions may also garner significant attention.

By the 1930s, the practice of racial segregation was widespread and vigorously maintained. When devastating floods hit Arkansas in 1937, for example, white refugees and black refugees were cared for in separate relief facilities.

A series of Farm Security Administration photographs documenting the flood demonstrates the pervasive nature of segregation. After hearing arguments by NAACP lawyer Thurgood Marshall, the Supreme Court overruled the Plessy decision on May 17, 1954.

Dissents can also become the basis for future Supreme Court rulings. In *Brown v. the Board of Education*, an unanimous Court adopted Justice Harlan's dissent in Plessy v. Ferguson that segregation violated the Thirteenth and Fourteenth Amendments to the Constitution."[15]

The "Consider the Original" below contains key elements of his dissent. Appendix U provides a fuller text of *Plessy v. Ferguson* 163 U.S. 537 (1986).

Consider the Original

U.S. Supreme Court//PLESSY v. FERGUSON, 163 U.S. 537 (1896)
May 18, 1896. Mr. Justice HARLAN dissenting.

"In respect of civil rights, common to all citizens, the constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances, when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation as that here in question in inconsistent not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by everyone within the United States.

[…] But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment of citizens of their civil rights solely upon the basis of race."

Chart 14.9 Text Excerpt from *Plessy v. Ferguson*

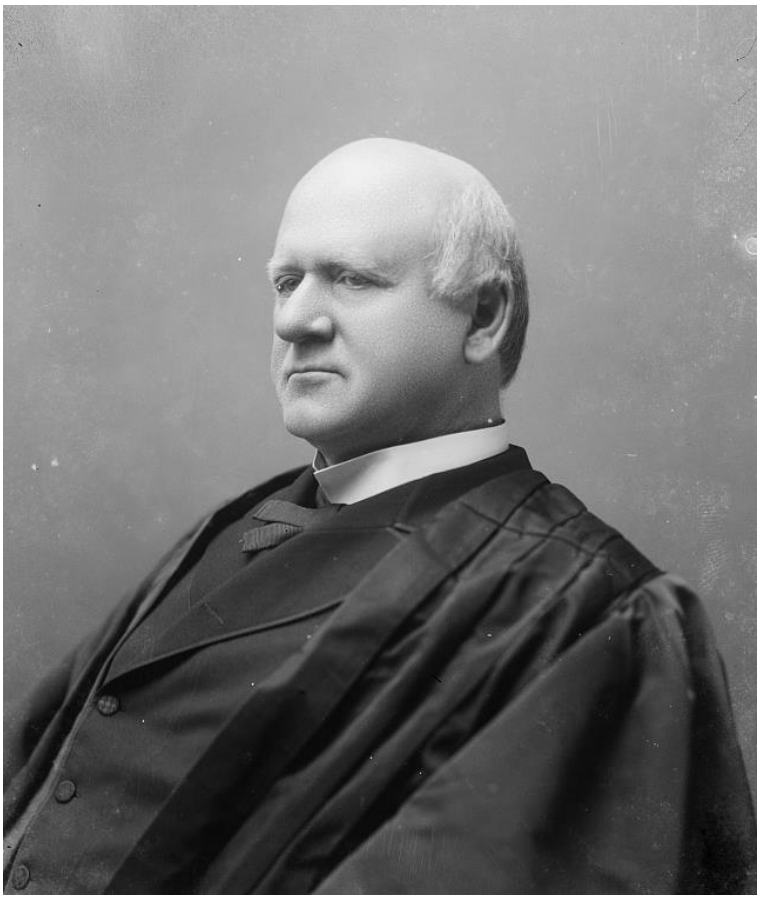


Image 14.6 Photo of Justice Harlan by C.M. Bell, Library of Congress Archive

Judicial Philosophy: Judicial Activism and Judicial Self-Restraint

A justice's decisions are influenced by how he/she defines his/her role as a jurist. Some justices believe strongly in **judicial activism**, which aims to interpret the Constitution as a dynamic document adjusting to society's changing needs. As stated by Supreme Court Justice Oliver Wendell Holmes, "Provisions of the Constitution of the United States are not mathematical formulas… but are organic living institutions.[16] Judicial activism may bypass the legislative process in policy making without public opinion or debate. Under the activist view, constitutional requirements should be read regarding current standards of equality rather than those of past decades or centuries. Activist judges cite cases such as *Brown v. Board of Education of Topeka, Kansas* as proof that activist interpretation in the courts is sometimes necessary. In *Brown*, the majority opinion stated, "[…] we cannot turn the clock back to 1868, when the [14th] Amendment was adopted, or even to 1896, when Plessy v. Ferguson was written. We must

consider public education in the light of its full development and its present place in American life.[17] Justice Homes said about a case, "The case before us must be considered in the light of our whole experience and not merely […] what was said a hundred years ago."[18] Enthusiastic activists try to advocate for judicial activism citing desegregation achieved in two of the cases which employed equal protection clause as an example.

An Opinion on the Issue

Cesar Hernandez, Austin Community College…

Judicial activism is similar to judicial review in the sense that both allow the declaration of laws as unconstitutional. These two procedures can lead the Supreme Court to ultimately cancel laws and acts considered unconstitutional. However, judicial review and judicial activism are motivated by distinct reasons. The Supreme Court will engage in judicial review if the constitutionality of some legislation is in question. In judicial activism, the reasons for reviewing legislation are more personal—aiming to create laws based on ideology and a desired outcome. Past Justice Antonin Scalia points out that "[…] judges are selected precisely for their skill as lawyers; whether they reflect the policy views of a particular constituency is not (or should not be) relevant" (see *Obergefell v. Hodges* at the Supreme Court's website). Judicial activism is questionable since it is guided by the personal beliefs of judges. Judges are not supposed to be influenced by any personal beliefs and their only objective should be to uphold the Constitution.

[Used with permission 06/25/2019 from Cesar Hernandez]

Chart 14.10 Opinion of Student on Judicial Activism

Other judges advocate for **judicial restraint**, leading them to defer decisions (and thus policymaking) to the elected branches of government staying focused on a stricter interpretation of the Constitution and the Bill of Rights. Judicial restraint encourages the judiciary to limit the exercise of a justice's power, where judicial activists are seen as seeking to substitute personal judgement on the validity, meaning, or scope of a law for that of the democratically elected legislators. They reject that judges should be constantly reassessing and reinterpreting the meaning of the words of the Constitution. Rather, most judicial restraint advocates focus on the original meaning of the written text of the U.S. Constitution or an adopted law based on what "reasonable persons" living at the time of the adoption would have understood as the meaning.[19]

The dissenting opinion of Justice Antonin Scalia in "Consider the Original" expresses this concern. See additional information in Appendix E. Regardless of opinions on activism or restraint, courts should require the government to prove the reasonableness of the law–to analyze and rigorously scrutinize the government's reasons to intervene.

Consider the Original

Past Justice Antonin Scalia offered a dissenting opinion in the recent court decision on same-sex marriage illustrating his opinion on the role of the Supreme Court.

Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact— and the furthest extension one can even imagine—of the Court's claimed power to create "liberties" that the Constitution and its Amendments neglect to mention. ***This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves.*** (emphasis added)

This is a naked judicial claim to legislative—indeed, super-legislative—power; a claim fundamentally at odds with our system of government. Except as limited by a constitutional prohibition agreed to by the People, the States are free to adopt whatever laws they like, even those that offend the esteemed Justices' "reasoned judgment." A system of government that makes that the People subordinate to a committee of nine unelected lawyers does not deserve to be called a democracy. (emphasis added)

Chart 14.11 Excerpt from *Obergefell v. Hodges*

Congress has the ability under the *Constitution* to curtail the judiciary. The legal system is bound to the belief in stare decisis—following legal precedent—deferring to legislative process where laws are made, and then not entering into a position where they make law for popularly elected representatives.[20]

Justice Anthony Kennedy has said, "An activist court is a court that makes a decision you don't like."[21] Justices' personal beliefs and political attitudes also matter in their decision-making. Although we may prefer to believe a justice can leave political ideology or party identification outside the doors of the courtroom, the reality is that a more liberal-thinking judge may tend to make more liberal decisions and a more conservative-leaning judge may tend toward more conservative ones. The influence of ideology is real; and, at a minimum, it often guides presidents to aim for nominees who mirror their own political or ideological image.

The courts themselves are affected by another "court"—the court of public opinion. Though somewhat isolated from politics and the volatility of the electorate, justices may still be swayed by special-interest pressure, the leverage of elected or other public officials, the mass media, and the general public.

Court decisions are released at different times throughout the Court's term, but all opinions are announced publicly before the Court adjourns for the summer. Some of the most controversial and hotly debated rulings are released near or on the last day of the term and thus are avidly anticipated.

An Opinion on the Issue

Raymond Jamieson, Austin Community College…

The most evil word in politics is "necessary." The word necessary comes with the connotation that if not for some extraneous force, an action would not normally be taken. Politicians use the word necessary to connive people into disregarding the means to focus on the end. I believe the Supreme Court acted on the notion that abusing their power was necessary in the Obergefell case. They personally believed in gay marriage and believed the will of the people supported gay marriage; therefore, they deemed it necessary to go outside of the law to enforce their power and be the heroes of America. They did this despite Scalia's dissent that the "public debate over same-sex marriage displayed American democracy at its best." I believe the Court side-stepped the democratic process and imposed their will on the public like a parent standing between squabbling children. By using the Fourteenth Amendment that states, "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States," they have pronounced that THEY may define privileges and immunities as anything they please. In this case, they expanded same-sex marriage to that category. Their actions may have resounding consequences—possibly to be seen in future cases as un-American by the same people that celebrated this ruling as evidence of democracy and freedom.

[Used with permission 06/25/2019 from Raymond Jamieson; credit to the Supreme Court of the United States, *Obergefell v. Hodges* case, 26 June 2015 and the *U.S. Constitution*, Amendment XIV, Section 1, National Archives]

Chart 14.12 Student Opinion on *Obergefell v. Hodges*

Although the courts' role is interpretive, judges and justices are still constrained by the facts of the case, the *Constitution*, the relevant laws, and the courts' own precedent.

How do checks and balances work with the judicial branch?

Both the executive and legislative branches check and balance the judiciary in many ways. The president can leave a lasting imprint on the bench through his or her nominations, even long after leaving office.

The president may also influence the Court through the solicitor general's involvement or through the submission of *amicus curiae* briefs in cases in which the United States is not a party.

Congress has checks on the judiciary, retaining power to modify the court structure and appellate jurisdiction, and the Senate may accept or reject presidential nominees to the federal courts. Faced with a court ruling that overturns one of its laws, Congress may rewrite the law or even begin a constitutional amendment process.

The most significant check on the Supreme Court is executive and legislative leverage over the implementation and enforcement of its rulings. This process is called **judicial implementation**.

While it is true that courts play a major role in policymaking, they have no mechanism to make their rulings a reality. Remember it was Alexander Hamilton in *Federalist* No. 78 who remarked that the courts

had “neither force nor will, but merely judgment.” And even years later, when the 1832 Supreme Court ruled the State of Georgia’s seizing of Native American lands unconstitutional,[22] President Andrew Jackson is reported to have said, “John Marshall has made his decision, now let him enforce it,” and the Court’s ruling was basically ignored.[23]

Abraham Lincoln famously ignored Chief Justice Roger B. Taney’s order finding Lincoln’s early Civil War suspension of habeas corpus rights unconstitutional. Thus, court rulings matter only to the extent they are heeded and followed.

The Court relies on the executive to implement or enforce its decisions and on the legislature to fund them. For example, in 1957, President Dwight D. Eisenhower called out the military by executive order to enforce the Supreme Court’s order to racially integrate the public schools in Little Rock, Arkansas.

Eisenhower told the nation: “Whenever normal agencies prove inadequate to the task and it becomes necessary for the executive branch of the federal government to use its powers and authority to uphold federal courts, the president’s responsibility is inescapable.”[24]

Executive Order 10730 nationalized the Arkansas National Guard to enforce desegregation because the governor refused to use the state National Guard troops to protect the black students trying to enter the school.



Image 14.7 Photo of Black Students Integrating Central High School

President Eisenhower sent federal troops to escort nine black students (the “Little Rock Nine”) into an Arkansas high school in 1957 to enforce the Supreme Court’s order outlawing racial segregation in public schools. (Credit: OpenStax included image)

The fate of court decisions rests on their credibility, their viability, and the assistance given by the other branches of government. It also relies on tradition and precedent.

Although not everyone agrees with the decisions made by the Court, rulings are generally accepted and followed, and the Court is respected as the key interpreter of the laws and the *Constitution*. Over time, its rulings have become yet another way policy is legitimately made, and justice more adequately served in the United States.

First Time	Supreme Court Famous Firsts
Catholic	Roger B. Taney (1836)
Jewish	Louis J. Brandeis (1916)
Former President	William Howard Taft (1921)
African American	Thurgood Marshall (1967)
Woman	Sandra Day O'Connor (1981)
Hispanic	Sonia Sotomayor (2009)

Chart 14.13 Information on Supreme Court "Firsts"

How are judges & justices selected?

On the U.S. Supreme Court, there are nine justices—one chief justice and eight associate justices. Circuit courts each contain three justices, whereas federal district courts have just one judge each. At the federal level, the president nominates a candidate to a judgeship or justice position. The nominee must be confirmed by a majority vote in the U.S. Senate–checks and balances, a function of the Senate's "advice and consent" role. All judges and justices in the national courts serve life terms (Article III regular courts).

The president's nominee is then discussed (and sometimes hotly debated) in the Senate Judiciary Committee. After a committee vote, the candidate must be confirmed by a majority vote of the full Senate. He/she is then sworn in, taking an oath of office to uphold the *Constitution* and the laws of the United States.

When a vacancy occurs in a lower federal court, by custom, the president consults with that state's U.S. senators (usually if they are of the same party as the president) before making a nomination. Through such **senatorial courtesy**, senators exert considerable influence on the selection of judges in their state, especially those senators who share a party affiliation with the president. In many cases, a senator can block a proposed nominee just by voicing his or her opposition. Thus, a presidential nominee typically does not get far without the support of the senators from the nominee's home state.

Most presidential appointments to the federal judiciary go unnoticed by the public, but when a president has the rarer opportunity to make a Supreme Court appointment, it draws more attention. That is particularly true now, when many people get their news primarily from the Internet and social media. Presidential nominees for the courts typically reflect the chief executive's own ideological position.

With a confirmed nominee serving a lifetime appointment, a president's ideological legacy has the potential to live on long after the end of his or her term.[25]

The lower courts are more diverse today. The U.S. judiciary has expanded to include women and minorities at both the federal and state levels.[26] However, the number of women and people of color on the courts still lag behind the overall number of white men. As of 2021, the federal judiciary consists of

67 percent men and 33 percent women. In terms of race and ethnicity, 74 percent of federal judges are White, 12 percent African American, 8 Hispanic American, and 4 percent Asian American.[27]



Image 14.8 Photo of 2023 Supreme Court Justices

The justices of the U.S. Supreme Court at the Supreme Court Building in Washington, D. C. left to right front row: Associate Justices Sonia Sotomayor, Clarence Thomas, with Chief Justice John G. Roberts, Jr. and Associate Justices Samuel A. Alito, Jr. and Elena Kagan; back row: Associate Justices Amy Coney Barrett, Neil M. Gorsuch, Brett M. Kavanaugh, and Ketanji Brown Jackson. Credit: Fred Schilling, Collection of the Supreme Court of the United States, 2023)

QUESTIONS TO CONSIDER

1. Is a multi-layered courts system within the federal structure a positive for individuals? Why/why not?

   Show Answer
   there is potentially more access in a multi-layered system

2. When it comes to filling judicial positions in the federal courts, do you believe race, gender, religion, and ethnicity should matter? Why or why not?

   Show Answer
   personal opinion, open for debate

3. In what ways is the court system better suited to protect the individual than are the elected branches of the government?

   Show Answer

courts can force a hearing for individuals where Congress or the Executive may not listen until they believe a sufficient number of individuals are impacted/complaining

TERMS TO REMEMBER

affirm–decision of the court to agree with or uphold a lower court decision

amicus curiae—literally a "friend of the court" and used for a brief filed by someone who is interested in but not party to a case

appellate court–reviews cases already decided by a lower or trial court and that may change the lower court's decision

appellate jurisdiction–function of the court is to hear appeals on procedural or legal error occurring at lower court or court of original jurisdiction

associate justice—any justice sitting on the Supreme Court of the United States that is not the Chief Justice

bench trials--judge acts as both judge and jury based on both law and fact

brief–written legal argument presented to a court by one of the parties in a case

chief justice–highest-ranking justice on the Supreme Court

circuit courts the appeals (appellate) courts of the federal court system that review decisions of the lower (district) courts; courts of appeal

concurring opinion–written decision by a justice who agrees with the Court's majority opinion but has different reasons for doing so

courts of appeals–the appellate courts of the federal court system that review decisions of the lower (district) courts; also called circuit courts

dissenting opinion–written decision by a justice who disagrees with the majority opinion of the Court

district court–the trial courts of the federal court system where cases are tried, evidence is presented, and witness testimony is heard

docket–the list of cases pending on a court's calendar

judicial activism–judicial philosophy in which a justice is more likely to actively intervene, overturn, or alter actions of the other branches of government

judicial implementation–a check on the Supreme Court; executive and legislative leverage over the implementation and enforcement of rulings

judicial restraint–judicial philosophy in which a justice is more likely to let stand the decisions or actions of the other branches of government

majority opinion–written decision of the Court with which more than half the nine justices agree

oral argument– words spoken before the Supreme Court (usually by lawyers) explaining the legal reasons behind their position in a case and why it should prevail

original jurisdiction–function of court to hear original testimony, cross-examination, viewing of evidence, etc.

petit jury--jury of peers deciding on the credibility of evidence presented at trial

petitioner–party unhappy with the lower court's decision bringing the appeal or the first-named party in the case

precedent–the principles or guidelines established by courts in earlier cases that frame the ongoing operation of the courts, steering the direction of the entire system

remand–decision to send a case back to the lower court for further proceedings

reverse–decision to overturn a lower court ruling/decision

Rule of Four–Supreme Court custom in which a case will be heard when four justices decide to do so

senatorial courtesy–an unwritten custom by which the president consults the senators in the state before nominating a candidate for a federal vacancy there, particularly for court position at the District Court Level

solicitor general–lawyer who represents the federal government and argues some cases before the Supreme Court

stare decisis–the principle by which courts rely on past decisions and their precedents when making decisions in new cases

Supreme Court–highest federal/national court; original and appellate jurisdiction

writ of certiorari–order calling up the records of the lower court so a case may be reviewed; sometimes abbreviated cert.

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- UPREME COURT OF THE UNITED STATES Syllabus OBERGEFELL ET AL. v. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT No. 14u2013556. Argued April 28, 2015u2014Decided June 26, 2015. **Authored by**: Associate Justice Antonin Scalia. **Provided by**: Supreme Court of the United States. **Located at**: https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf. **License**: *Public Domain: No Known Copyright*

14.3 U.S. Courts: Due Process and Equality Under the Law



Image 14.9 Photo of Court Gavel

(Credit: United States Courts at http://www.uscourts.gov/about-federal-courts/federal-courts-public)

Learning Objectives

- Understand the difference between civil and criminal procedure in the U.S. judicial system.
- Describe the types of litigants involved in a court case.
- Explain the various types of trial available to individuals within the justice system.
- Describe the basics of jury selection and the importance of juries.

Chart 14.14 Learning Objectives on Civil and Criminal Procedure

Consider the Original

From Thomas Jefferson to Isaac H. Tiffany, 4 April 1819…

"Liberty […] is unobstructed action according to our will: but rightful liberty is unobstructed action according to our will, within the limits drawn around us by the equal rights of others. I do not add 'within the limits of the law'; because law is often but the tyrant's will, and always so when it violates the right of an individual."

National Archives: Founders Online at http://founders.archives.gov/documents/Jefferson/98-01-02-0303

Chart 14.15 Excerpt from Letter Between Jefferson and Tiffany

Courts interpret contractual agreements between parties. Sometimes the parties' dispute over the meaning of the contract, and sometimes the dispute concerns an infraction against the rules that hold people accountable to the contract. No matter whether the dispute is about a criminal activity or a civil

action, each individual party to the process, **litigant**, is guaranteed a protected right to **due process**. The *Constitution*, the people's contract with the government, enumerates this protection no matter the race, gender, age, socioeconomic status, or personal ability of any individual involved in a legal dispute. Not only is everyone to receive due process (equity and standardization of procedure), they are also to be treated equally by the judicial system despite any factor of birth, situation, or circumstance.

Two Types of Procedural Dispute: Civil and Criminal

Courts hear two different types of disputes: criminal and civil. Under **criminal procedure**, governments establish rules and punishments. Laws define conduct that is prohibited because it can harm others, and laws also impose punishment. Crimes are usually labeled based on their nature and seriousness; felonies are the more serious crimes. When someone commits a criminal act, the government (state or national, depending on which law has been broken) charges that person with a crime, and the case brought to court contains the name of the charging government, as in *Miranda v. Arizona* discussed below.[1]

Criminal procedure involves processing (**prosecuting/prosecution**) cases against individuals (**defendant/defense**) accused of harming others and includes the decision about punishment for criminal actions. A **verdict** (opinion or judgement) of guilt or innocence is sought in criminal cases.

Civil procedure involves two or more private (usually non-government) parties, at least one of whom (**plaintiff**) alleges harm or civil injury (**tort**) committed by the other (**defendant/respondent**). A decision in favor of one of the parties is sought in civil cases based upon a level of proof called **preponderance of evidence**.

The plaintiff makes a choice of basic trial procedure. The choice is between a **bench trial** (judge determines both fact and law) or a **petit jury** trial (random citizens called to serve to determine the facts).

The basic steps in both civil and criminal procedure vary according to individual cases and case complexities. The chart on the following page is a basic selection of procedural steps generally associated with the constitutional protection of due process.

In both criminal and civil matters, the judges and juries decide the remedy and resolution of the case, and in all cases, the U.S. Supreme Court is the final court of appeal. Although the Supreme Court tends to draw the most public attention, it typically hears fewer than one hundred cases every year. About 90 percent of all cases in the U.S. court system are heard at the state level.[2] The federal/national courts handle approximately 2-3 thousand cases a year while state courts adjudicate several million. State courts handle criminal and civil matters (personal injury, malpractice, divorce, family, juvenile, probate, contract disputes, and real estate cases).

The federal courts hear cases involving foreign governments, patents, copyright infringement, Native American rights, maritime law, bankruptcy, or controversies between two or more states. Cases arising from activities across state lines (interstate commerce) are also subject to federal court jurisdiction, as are cases in which the United States is a party. A dispute between two parties not from the same state or

nation and in which damages of at least $75,000 are claimed is handled at the federal level. Such a case is known as a diversity of citizenship case.[3]



Chart 14.16 Outlining Criminal and Civil Procedure in the Courts

Original Chart by Deborah S. Hoag and Rachel Brooks, Austin Community College

It is possible that issues of federal law may start in the state courts before making their way to the federal side. Any case starting at the state and/or local level may make it into the federal system on appeal—but only on points that involve a federal law or question, and usually after all avenues of appeal in the state courts have been exhausted.

Consider the case ***Miranda v. Arizona***.[4]

Ernesto Miranda, arrested for kidnapping and rape (violations of state law), was convicted and sentenced to prison after a key piece of evidence—his own signed confession—was presented at trial in the Arizona court. On appeal to the Arizona Supreme Court and then the U.S. Supreme Court, the case requested to exclude Miranda's confession on the grounds that its admission was a violation of his constitutional rights.

By a slim 5–4 margin, the justices ruled that the confession should be excluded from evidence. In obtaining it, the police had violated Miranda's Fifth Amendment right against self-incrimination and his Sixth Amendment right to an attorney. Miranda's original conviction was overturned.



Image 14.10 Photo of Jury

Photo of jurors in a jury box inside a courtroom. (Credit: OpenStax indluded image; moodboard/Brand X Pictures/Getty Images)

The Supreme Court considered only the violation of Miranda's constitutional rights, not whether he was guilty of the crimes with which he was charged. He was retried in state court in 1967, the second time without the confession as evidence. Miranda was found guilty again based on witness testimony and other evidence and sent to prison. Miranda's story is a good example of the tandem operation of the state and federal court systems. His guilt or innocence of the crimes was a matter for the state courts, whereas the constitutional questions raised by his trial were a matter for the federal courts.

HAVE YOU EVER SERVED ON A JURY?

Since judges and justices are not elected, we sometimes consider the courts removed from the public; however, this is not always the case. Average citizens may get involved with the courts firsthand as part of their decision-making process. If you have not already been called, you may receive a summons for jury duty from your local court system. You may also be asked to serve federal **jury duty**, such as U.S. district court duty or federal grand jury duty. Local or state jury service is more common.

While your first reaction may be to start planning a way to get out of it, participating in jury service is vital to the operation of the judicial system. It provides individuals in court the chance to be heard and to be tried fairly by a group of their peers. Jury duty has benefits for those who serve as well. You will no doubt come away better informed about how the judicial system works. Who knows? You might even get an unexpected surprise, as some citizens in Dallas, Texas did recently when former President George W. Bush showed up to serve jury duty with them. Prospective jurors participate in the jury selection process called **voir dire**.

Voir dire consists of the judge informing court administrators of how many prospective jurors may be needed for the situation of a case. Jurors are brought from a waiting area to the courtroom, where both the prosecution and defense are allowed to ask them questions. If you listen carefully, you may be able to ascertain, from the questions asked, what the trial is likely to involve. You may be dismissed based upon an answer you provide or because there are, in the end, too many prospective jurors from which to choose. If you are selected, you will be empaneled on the jury for the duration of the trial.

MARIJUANA LAWS AND THE COURTS

There are so many differences in marijuana laws between states, and between the states and the national government. What is legal in one state may be illegal in another, and state laws do not cross state

geographic boundary lines—but people do, and a person residing in any of the fifty states is still subject to federal law.

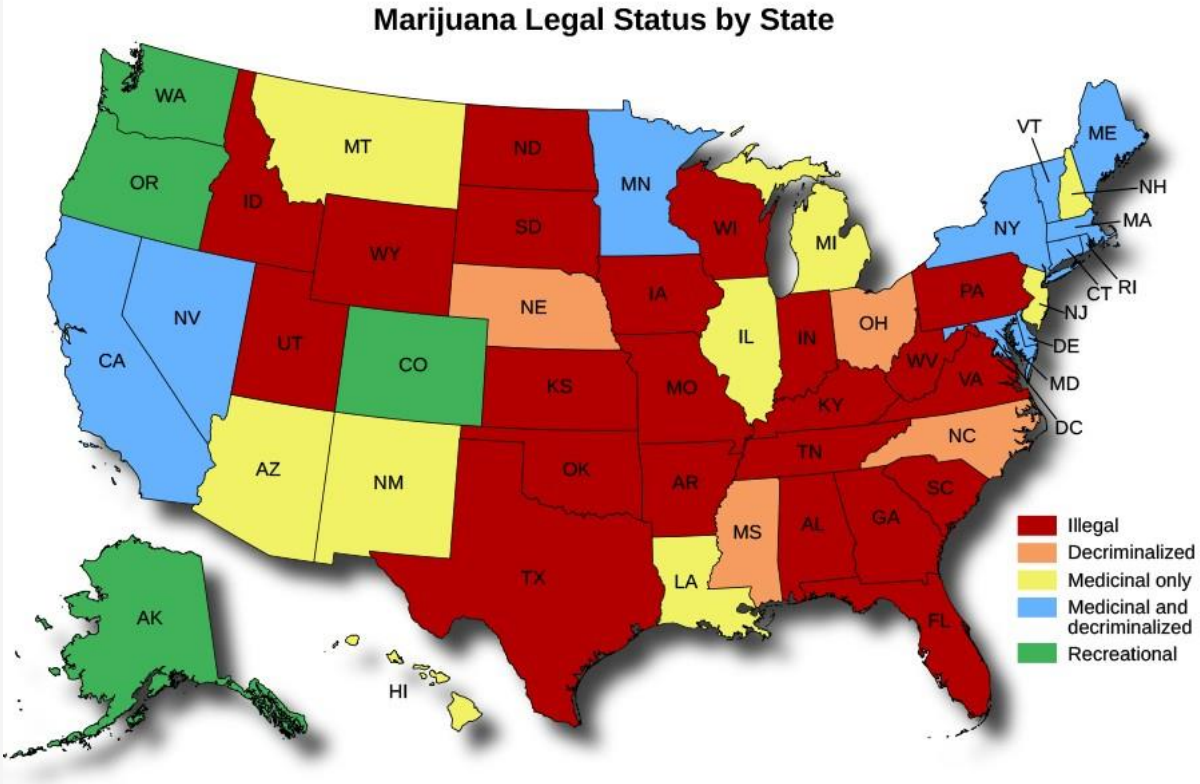


Chart 14.17 Map of US Showing Marijuana Status

Marijuana laws vary remarkably across the fifty states. In most states, marijuana use is illegal, as it is under federal law, but some states have decriminalized it, some allow it for medicinal use, and some have done both. Marijuana is currently legal for recreational use in four states, per state law. (Credit: OpenStax included image)

Differences can lead, somewhat ironically, to arrests and federal criminal charges for people who have marijuana in states where it is legal, or to federal raids on growers and dispensaries that would otherwise be operating legally under their state's law.

Differences among the states have also prompted a number of lawsuits against states with legalized marijuana. People opposed to state laws seek relief from the courts. They want courts to resolve the contradictions and conflicts between states as well as between states and the national government. Citing concerns over cross-border trafficking, difficulties with law enforcement, and violations of the Constitution's supremacy clause, Nebraska and Oklahoma have petitioned the U.S. Supreme Court to intervene and rule on the legality of Colorado's marijuana law, hoping to get it overturned.[5]

Each state court system operates with its own individual set of biases. People with varying interests, ideologies, behaviors, and attitudes run the disparate legal systems, so the results they produce are not always the same. Moreover, the selection method for judges at the state and local level varies–elected or appointed.

Just as the laws vary across the states, so do judicial rulings and interpretations, and the judges who make them. That means there may not be uniform application of the law—even of the same law—

nationwide. We are somewhat bound by geography and do not always have the luxury of picking and choosing the venue for our case. So, while having such a decentralized and varied set of judicial operations affects the kinds of cases that make it to the courts and gives citizens alternate locations to get their case heard, it may also lead to disparities in the way they are treated once they get there.

QUESTIONS TO CONSIDER

1. What is the difference between a bench and petit jury trial?

   Show Answer
   In a bench trial, the judge acts as both judge and jury. In a petit jury trial, citizens form the jury.

2. What is the essential point to remember from the decision in *Miranda v. Arizona*?
   Show Answer
   Every accused person should understand their basic protections of civil liberties, and they should be asked at the earliest point if they do understand.

TERMS TO REMEMBER

bench trial–judge acts as both judge and jury (no petit jury of peers)

civil procedure–processing cases between private individuals seeking resolution of disputes regarding non-criminal law private rights and remedies

criminal procedure–processing cases against individuals accused of harming others; punishment for those actions

defendant–individual accused of harming others and involved in the legal process

due process–consistent procedure within the justice system

jury duty–citizens called to hear civil disputes or criminal cases in the court system; tasked with determining outcome/verdict

litigant–each individual party to a court case; including defendant/respondent, prosecutor, plaintiff

Miranda v. Arizona–case involving criminal procedure, accused persons must be informed of their constitutional rights upon arrest

petit jury trial–12 member jury of citizens, determines verdict/decision

plaintiff–private (non-government) parties alleging harm or civil injury committed by the another (defendant/respondent)

preponderance of evidence–which side has the best argument and evidence

prosecution/prosecutor–Criminal procedure involves processing cases against individuals (defendant) accused of harming others

respondent–party to a court case (litigant) defending against a charge of civil injury

tort–civil injury

verdict–opinion or judgement of guilt or innocence sought in criminal cases

voir dire–jury selection process

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5. *States of Nebraska and Oklahoma v. State of Colorado*. Motion for Leave to File Complaint, Complaint and Brief in Support. December 2014. http://www.scribd.com/doc/250506006/Nebraska-Oklahoma-Lawsuit.

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15.1 Civil Liberties: What does the *Constitution* protect?



Image 15.1 Interned U.S. Citizens of Japanese Descent Work on a Farm

Japanese-American camp, war emergency evacuation at Tule Lake Relocation Center in Newell, California about 1942-1943. (Credit: Library of Congress)

Learning Objectives

- Define civil liberties.
- Explain the difference between civil liberties and civil rights.
- Identify the key positions on civil liberties taken at the Constitutional Convention.
- Explain the concern that states should respect civil liberties.

Chart 15.1 Learning Objectives on Civil Liberties and Civil Rights

The framers of the *Constitution* wanted a government that would respect rather than infringe upon individual **liberties** and individual **rights.** Actions by Britain's government previously caused them to declare independence of that government's rule, which they felt did not respect citizen's liberties or rights. Within its opening paragraphs, the *Declaration of Independence* proclaimed that it was "self-evident" that individuals were "endowed by their Creator with certain Unalienable Rights," which included "liberty" and that the protection and security of these rights and liberties was one of the purposes of government.

In everyday conversation, we often treat freedoms, liberties, and rights as effectively the same thing, when in fact they are distinct concepts. Political scientists and legal experts distinguish between civil liberties and civil rights, even though the *Constitution*, including our Bill of Rights, has been interpreted to protect both. **Civil liberties** are often seen as limitations on government power, intended to protect

freedoms from illegal government intrusion. Previously, it was noted that **civil rights** guarantee that government officials will treat people equally and base decisions on the law rather than race, ethnicity, gender, or other personal characteristics.

How do I determine the difference between a liberty and a right?	
Liberties	**Rights**
basic individual freedoms restricted/immune from government action	individual freedoms protected by government/protection obligated by law
freedoms all human beings intrinsically possess unalienable—unable to separate	freedoms protected equally by law for every person
arising from humanity, right reason, or a higher power per personal belief; also possessing procedural freedoms (if accused; presumption of innocence; etc.)	individuals treated in a correct, just, and honorable way without respect to any other factor outside that of human status non-discriminatory
individual freedoms opportunity to engage in "pursuit of happiness" in life goals; acting as one pleases	government protection of individual exercise of liberties restricted only in relation to maintaining the equal protection of others' liberties while respecting the liberties of others

Chart 15.2 Illustrating the Differences Between Liberties and Rights

The *U.S. Constitution* and especially the first ten amendments, known as the Bill of Rights, guarantee protection for the freedoms or civil liberties of individuals in the United States. These civil liberties' guarantees essentially define a private sphere of personal liberty free of governmental restrictions including freedom of expression (speech and press), religious liberty, and the right to join groups or political parties as well as including prohibitions against unreasonable searches and guarantees of due process of law.

Only a limited protection of civil liberties was contained in the original constitutional document. *Article I* guaranteed three specific civil liberties by limiting the power of Congress when prohibiting:

1. **bills of attainder**—laws that declare a person guilty of a crime without trial; or allowing a single act of the legislature to both accuse a person as well as impose a punishment, and all without benefit of a trial
2. **ex post facto laws**—laws making criminal an act that was legal when the act was committed; retroactive punishment
3. **habeas corpus** limitations—requiring legal grounds be shown for detaining a person; protection against illegal incarceration.

Therefore, civil liberties derive from our humanity and specific protections of civil liberties derive from the Bill of Rights. During debate over ratification of the *Constitution*, the absence of a more extensive protection of individual liberties was a major concern raised by those opposed to the proposed constitution.

Although initially opposed to adding a Bill of Rights, supporters of the proposed constitution—including James Madison—agreed to add these protections in the first Congress once the *Constitution* was ratified. These additions took the form of amendments, which were ratified by the states in 1791.

During the congressional debate over these amendments, James Madison unsuccessfully proposed that freedom of press and speech provisions be applicable to both Congress and the States; however, the final form of the amendments limited the Bill of Rights' impact solely to the national level of government. Application of the Bill of Rights to state and local government action would not occur until the 20th century.

A BILL OF RIGHTS AND THE CONCEPT OF NATURAL LAW

The philosophical argument on behalf of a bill of rights is closely related to the concept of **natural law**. The term "**natural law,**" especially as used in legal philosophy, refers to a set of universal principles and rules properly governing human conduct. Unlike a statute, natural law is not created by human beings in any social compact.

Rather, natural law is thought to be preexisting law, which human beings can discover through their capacity for rational analysis or which some human beings understand arises from a higher power.[1]

Natural law acknowledges **unalienable liberties** existing outside the laws of the government. Individuals retain the liberty/freedom to maintain their own life and obtain property by attaching their labor to the acquisition, and they do not receive or obtain such rights from the state. If individuals recognize the government as the grantor of rights, the government may remove rights at the will of those in power. If citizens acknowledge the government gives rights, they must also acknowledge the government has the power to remove these rights.

Laws of the government, those formed through legislative action or agreement between parties, are **positive laws**.[3] Generally the term **positive law** connotes statutes, i.e., law enacted by a duly authorized legislature. As used in this sense, **positive law** is distinguishable from **natural law**.

If citizens believe they consent to some restrictions on their unalienable/inseparable liberties/freedoms (possessed by them because they are human beings), they consent only to government restrictions on these liberties in order to obtain a benefit. Usually a portion of these liberties are surrendered to the **positive laws** enforced by government toward safety and security for the remaining liberties.

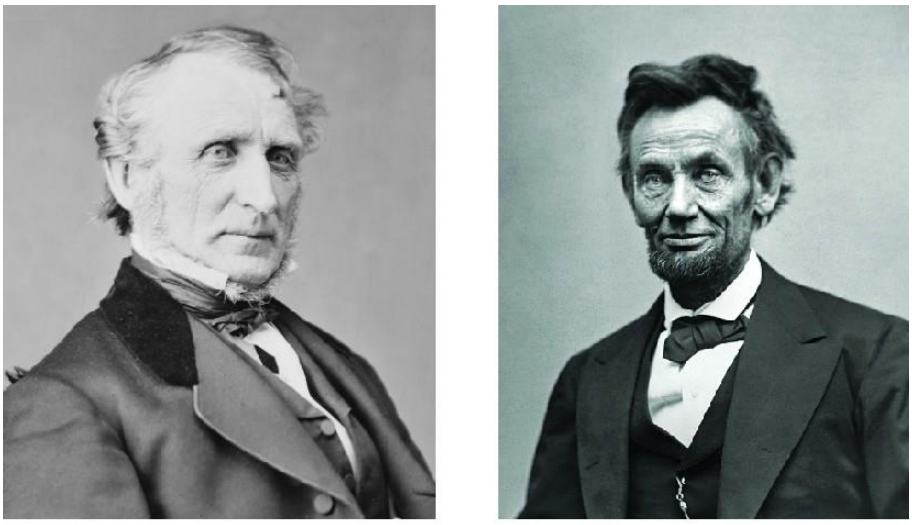
For example, freedom to self-determine driving destinations, times, speeds and methods are surrendered to positive laws established to protect the health and safety of all drivers and pedestrians. Individuals

who apply for a driver's license and operate a motor vehicle give up their individual freedom to drive at any speed they choose and in any manner they deem appropriate. This freedom is surrendered in order to protect the safety of other members of the public.

EXTENDING THE BILL OF RIGHTS TO THE STATES

In the decades following the *Constitution*'s ratification, the Supreme Court declined to expand the Bill of Rights to curb the power of the states, most notably in the 1833 case of *Barron v. Baltimore*.[2] In this case, which dealt with Fifth Amendment property rights, the Supreme Court unanimously decided that the Bill of Rights applied only to federal government actions.

Explaining the court's ruling, Chief Justice John Marshall wrote that it was incorrect to argue that "the Constitution was intended to secure the people of the several states against the undue exercise of power by their respective state governments; as well as against that which might be attempted by their [Federal] government."



(a) (b)

Image 15.2 John Bingham and Abraham Lincoln Photographs

Representative John Bingham (R-OH) (a) is considered the author of the Fourteenth Amendment, adopted on July 9, 1868. Influenced by his mentor, Salmon P. Chase, Bingham was a strong supporter of the antislavery cause; after Chase lost the Republican presidential nomination to Abraham Lincoln (b), Bingham became one of the president's most ardent supporters. (Credit: National Archives and Records Administration)

The prevailing view on the limited application of the Bill of Rights to the states changed in the wake of the Civil War. Soon after the Thirteenth Amendment abolished slavery, Democrat controlled state governments—particularly those in the former Confederacy—began to pass "black codes" restricting the rights of former slaves and effectively relegating them to second-class citizenship under their state laws and constitutions.

Angered by these actions, members of the Radical Republican faction in Congress demanded the laws be overturned. In the short term, they advocated suspending civilian government in most of the southern states and replacing politicians who had enacted the black codes.

Long-term they proposed two constitutional amendments to guarantee the rights of freed slaves on an equal standing with whites; these rights became the Fourteenth Amendment, dealing with civil liberties and rights in general, and the Fifteenth Amendment protecting the right to vote. But, the right to vote did not yet apply to women or to Native Americans.

Civil liberties were significantly clarified by the **Fourteenth Amendment** in 1868. First, it states that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" – a provision echoing the **privileges and immunities** clause in Article IV, Section 2 of the original *Constitution* ensuring that states treat citizens of other states the same as their own. (For example, the punishment for speeding by an out-of-state driver cannot be more severe than the punishment for an in-state driver).

Legal scholars and the courts have extensively debated the meaning of this privileges and immunities clause over the years; some have argued it was supposed to extend the entire Bill of Rights (or at least the first eight amendments) to the states while others have argued that only some rights are extended. In 1999, Justice John Paul Stevens, writing for a majority of the Supreme Court, argued in *Saenz v. Roe* that the clause protects the right to travel from one state to another.[3]

More recently, Justice Clarence Thomas argued in the 2010 *McDonald v. Chicago* ruling that this clause applied the individual right to bear arms to the states.[4]

The **due process clause** is the second provision of the Fourteenth Amendment applying the Bill of Rights to the states. It says, "nor shall any State deprive any person of life, liberty, or property, without due process of law." As in the Fifth Amendment this provision refers to "due process," a term that generally means people must be treated fairly and impartially by government officials (or with what is commonly referred to as substantive due process).

Although the provision's text does not mention rights specifically, the courts have held in a series of cases that it indicates certain fundamental liberties that cannot be denied by the states. For example, in *Sherbert v. Verner* (1963), the Supreme Court ruled that states could not deny unemployment benefits to an individual who turned down a job because it required working on the Sabbath.[5]

Beginning in 1897, the Supreme Court established that various Bill of Rights protections must be upheld by the states, even if their state constitutions and laws do not protect them as fully as the Bill of Rights does—or at all. This means there has been a process of selective incorporation of the Bill of Rights into state practices; in other words, the *Constitution* effectively inserts parts of the Bill of Rights into state laws and constitutions, even though it does not do so explicitly.

When cases arise to clarify particular issues and procedures, the United States Supreme Court decides whether state laws violate the Bill of Rights and are therefore unconstitutional.

In *Gitlow v. New York* (1925), the Court ruled, for the first time, that the Fourteenth Amendment incorporated the First Amendment's right to free speech into a protection applicable to the state governments as well as the national government. [6]

The court reasoned that protection of fundamental liberties at the state and local level existed under the Fourteenth Amendment's due process clause, which forbade a state from depriving "any person of life, liberty or property" without due process of law (reasonable and fair procedures to protect someone's freedoms).

During the 1930s most of the First Amendment requirements were incorporated and applied to the states following *Palko v. Connecticut* (1937).

In this case, the Court reasoned that some of the Bill of Rights, such as freedom of speech, were "fundamental rights and liberties" in that "neither liberty nor justice would exist if they were sacrificed."[7] Expansion of due process protection, especially in the area of the rights of criminal defendants, continued during the 1960s.

On the other hand, under the Fifth Amendment a person can be tried in federal court for a felony—a serious crime—only after a **grand jury** issues an indictment confirming it is reasonable to try the person for that crime. (A **grand jury** is a group of citizens charged with deciding if there is enough evidence of a crime to prosecute someone.) The Supreme Court has ruled however that states are not required to use grand juries if they ensure people accused of crimes are indicted using an equally fair process.

Selective incorporation is an ongoing process. When the Supreme Court initially decided in 2008 that the Second Amendment protects an individual's right to keep and bear arms, it did not then decide it was a fundamental liberty the states must also uphold.

It was only in the *McDonald v. Chicago* case two years later that the Supreme Court incorporated the Second Amendment into state law. The Supreme Court also gradually moved to extend the Bill of Rights to the states regarding censorship and the Fourteenth Amendment. In *Near v. Minnesota* (1931), the Court disagreed with state courts regarding censorship and ruled it unconstitutional except in rare cases.[8]

The Bill of Rights is designed to protect the freedoms of individuals from interference by government officials. Originally these protections were applied only to actions by the national government; different sets of rights and liberties were protected by state constitutions and laws, and even when the rights themselves were the same, the level of protection for them often differed by definition across the states.

Most of the Bill of Rights' protections of civil liberties have been expanded to cover actions by state governments since the Civil War, through the Fourteenth Amendment, a series of Supreme Court decisions and a process of **selective incorporation**.

Nonetheless there is still vigorous debate about what these rights entail and how they should be balanced against the interests of others and of society.

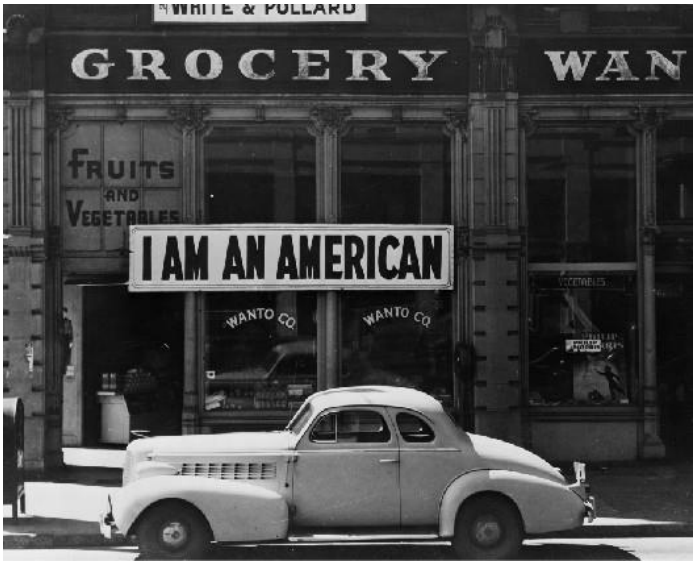


Image 15.3 American Citizen of Japanese Descent Places Sign in Front of Business

This sign appeared outside a store in Oakland, California, owned by a Japanese American after the bombing of Pearl Harbor in 1941. After the president's executive order, the store was closed and the owner evacuated to an internment camp for the duration of the war.
(Credit: Library of Congress)

As previously noted, the *Constitution*—in particular, the first ten amendments forming the Bill of Rights—protects the liberties of individuals. It does not limit this protection to citizens or adults; in most cases the *Constitution* simply refers to "persons;" which, over time, has grown to mean—through court interpretation--that even children, visitors from other countries, and immigrants—permanent or temporary, legal or undocumented—enjoy the same freedoms as adult citizens within the United States or its territories.

Neither tourists visiting Disney World nor visitors exceeding the limit of days allowed on their visas, sacrifice those liberties.

Civil Liberties & Civil Rights Infringed in the Name of Safety & Security

Individuals in the U.S. possess an unalienable liberty of movement and freedom of action, and they also retain the right to expect the government will not take this liberty away without reason and without some sort of process or procedure that applies equally to all individuals regardless of any personal characteristic, socio-economic status, etc.

The writ of **habeas corpus** (one personal liberty) demands that a neutral judge decide whether someone has been lawfully detained by government authority. Particularly in times of war, or in response to threats against national security, the government has held suspected enemy agents without access to civilian courts.

This incarceration is frequently without access to lawyers or a defense with the government seeking instead to try them before military tribunals or detain them indefinitely without trial. The question is one of priorities—individual liberty versus national security.

For example, during World War II, the Roosevelt administration interned Japanese Americans and had other suspected enemy agents—including U.S. citizens—tried by military courts rather than by the civilian justice system, a choice the Supreme Court upheld in *ex parte Quirin*.[91]

Following the attacks at Pearl Harbor in 1941, many in the United States feared that Japanese Americans on the West Coast might form a fifth column (a hostile group working from the inside) to aid a Japanese invasion. These fears mingled with existing anti-Japanese sentiment across the country and created paranoia over the West Coast. To calm fears and prevent any real fifth-column actions, President Franklin

D. Roosevelt signed *Executive Order 9066*, authorizing the removal of people to military areas as necessary. When the military dubbed the entire West Coast a military area, it effectively allowed for the removal of more than 110,000 Japanese Americans from their homes. For two and a half years, these people, many of them U.S. citizens, were moved to relocation or internment camps in the nation's interior.[10]

The overwhelming majority of Japanese Americans felt shamed by the actions of the Japanese empire and willingly went along with the policy to demonstrate their loyalty to the United States. But at least one Japanese American refused. His name was Fred Korematsu, and he went into hiding in California rather than be taken to the internment camp with his family. He was soon discovered, turned over to the military, and sent to the internment camp in Utah that held his family. His challenge to the internment system and the president's executive order continued. In 1944, Korematsu's case was heard by the Supreme Court. In a 6–3 decision, the Court ruled against him, arguing that the administration had the constitutional power to sign the order because of the need to protect U.S. interests against the threat of espionage.[11] Forty-four years after this decision, President Reagan issued an official apology for the internment and provided some compensation to the survivors. In 2011, the Justice Department went a step further by filing a notice officially recognizing that the solicitor general of the United States (the official who argues cases for the U.S. government before the Supreme Court) acted in error by arguing to uphold the executive order.[12]

Consider the Original

United States Commission on Civil Rights; The Decision to Prosecute Drug Offenses and Homicides in Marion County, Indiana; Chapter 2; Public Commentary;
Monica Foster, Attorney–Hammerle, Foster, Allen & Long-Sharp

"My practice focuses exclusively on representing persons charged with serious crimes or convicted of serious crimes on appeal. A large portion of my practice over the last 15 or 16 years has been devoted to representing persons charged with or sentenced to the death penalty. Those cases I accept on a public defender appointment basis because virtually none of the individuals who are charged with the death penalty throughout the state of Indiana have the funds to hire private counsel. There is a perception in [the minority] community that race has played a role in the death penalty charging decision for quite some time. So, one of the things that our firm did as part of its representation of [a particular person] was to look at the charging practices by this particular prosecutor to determine if, in fact, our perceptions were accurate."

"So we tracked cases [involving the death penalty] to see what the plea posture was. In other words, did the prosecutor at any point in time offer a plea bargain for something less than death? . . . There were six white defendants and eight African American defendants . . . Of the six white defendants charged with the death penalty, Prosecutor Newman offered a plea for life in five of those cases, . . . which computes out to 83.3 percent. Of the cases where an African American was the defendant, the statistics completely flip flop. There were eight African American defendants charged with the death penalty. Prosecutor Newman offered a plea for something less than death in only one of those cases. And in seven of the cases, the African American defendants have been required to go to trial with the death penalty hanging over their head. Only 12 percent of the African American defendants are offered life pleas" (Credit: United States Commission on Civil Rights).

Chart 15.3 Comments on Due Process by Attorney Monica Foster

Liberties & Rights of Accused Individuals

In many life situations, civil liberties and civil rights are both affected. The criminal justice system is one such situation. Accused individuals need protection of their civil liberties when their life (threat of death penalty) or liberty (threat of extended incarceration) is at risk.

Accused individuals need protection of their civil rights in that all accused individuals deserve to be treated equally by authorities as they move through the process of the justice system. Unfortunately, corrupt individuals within the system often abuse the civil liberties of individuals accused of a crime. For example, many examples exist of an accused individual being denied both liberties and rights when they receive assistance from a **public defender** (a licensed attorney/lawyer the

government has employed to represent defendants that are unable to afford to hire their own counsel) who is overworked and can offer no individual attention to their case.

In the situation described by Attorney Monica Foster (above), inequitable application of the practice of **plea bargaining** (when a prosecutor offers a defendant an expectation of leniency in charges or sentencing if the defendant relinquishes constitutionally protected liberties in order to gain this benefit) infringes on the equal rights of defendants based on race.[13]

Consider the Original

An earlier use of this quote, "Eternal vigilance is the price of liberty," is from a speech made by the American Abolitionist and liberal activist **Wendell Phillips** on **January 28, 1852**.

Speaking to members of the Massachusetts Anti-Slavery Society that day, Phillips said:

Eternal vigilance is the price of liberty; power is ever stealing from the many to the few. The manna of popular liberty must be gathered each day or it is rotten. The living sap of today outgrows the dead rind of yesterday. The hand entrusted with power becomes, either from human depravity or esprit de corps, the necessary enemy of the people. Only by continued oversight can the democrat in office be prevented from hardening into a despot; only by unintermitted agitation can a people be sufficiently awake to principle not to let liberty be smothered in material prosperity." (Credit: Library of Congress)

Chart 15.4 Quote on Anti-Slavery Position

In many discussions of the *Constitution*, the Bill of Rights is acknowledged to be designed to protect the freedoms of individuals from interference by over-reaching government as well as to provide equal protection to all individuals. There is still debate about how protection of individual liberty should be balanced against the interests of others and of society. Laws, constitutions and other "parchment barriers" (written documents) alone have not protected freedoms over the years; instead, citizens have learned the truth of the old saying "Eternal vigilance is the price of liberty" (often attributed to Thomas Jefferson but actually said by Irish politician John Philpot Curran). Ordinary citizens' actions are at the core of a vigilant effort to protect constitutional liberties.

Civil Liberties: Questions to Consider

1. What freedoms require vigilant protection?
2. How do we balance the protection of liberties while ensuring appropriate levels of safety and security?
3. Briefly explain the difference between civil liberties and civil rights.
4. Why is habeas corpus an important protection?

1. all personal freedoms or liberties require protection
2. balancing protection of individual liberties while providing adequate safety and security of life and property is a difficult process for government
3. liberties are personal freedoms maintained by every individual and rights are guarantees the government will not treat individuals unequally with respect to protection of liberties
4. habeas corpus prevents government from denying due process; it prevents government incarceration without benefit of trial

Civil Liberties: Terms to Remember

bill of attainder–trial by legislature rather than court system

civil liberties–limitations on the power of government, designed to ensure personal freedoms; basic freedoms possessed by all human beings; right to life, liberty, and property (pursuit of happiness); unalienable rights

civil rights–guarantees of equal treatment by government authorities; how much freedom ruling authority protects or denies individuals and whether that authority is exercised equitably

due process clause–provisions of the Fifth and Fourteenth Amendments that limit government power to deny people "life, liberty, or property" on an unfair basis

ex post facto law–after the fact; laws enacting retroactive punishment

habeas corpus–present the body; government may not suspend due process protections; government may not hold an individual indefinitely without acknowledging charges against the individual

natural law–a set of universal principles and rules that properly govern moral human conduct; the preexisting law of nature, which human beings can *discover* through their capacity for rational analysis

positive law–human made rules and regulations; human agreed upon contracts and constitutions

public defender–a licensed attorney/lawyer the government has employed to represent defendants that are unable to afford to hire their own counsel

selective incorporation—the process through which civil liberties granted in the Bill of Rights were applied to the states on a case-by-case basis by the Supreme Court through application of the due process clause of the 14th Amendment

unalienable rights–basic freedoms possessed by all human beings; right to life, liberty, and property (pursuit of happiness); inseparable

Works Consulted

1. See multiple discussions of natural and positive law within the National Archives selection of original documents including but not limited to a letter from Thomas Jefferson to Henry Lee, 8 May 1827 at http://founders.archives.gov/documents/Jefferson/98-01-02-5212
2. Office of the Law Revision Counsel, United States Code, THE TERM "POSITIVE LAW" at http://uscode.house.gov/codification/term_positive_law.htm
3. *Barron v. Baltimore*, 32 U.S. 243 (1883)
4. *Saenz v. Roe*, 526 U.S. 489 (1999)
5. *McDonald v. Chicago*, 561 U.S. 742 (2010)
6. *Sherbert v. Verner*, 374 U.S. 398 (1963)
7. Gitlow v. New York 268 U.S. 652 (1925)
8. *Near v. Minnesota*, 283 U.S. 697 (1931)
9. *Ex parte Quirin*, 317 U.S. 1 (1942); See William H. Rehnquist. 1998. *All the Laws but One: Civil Liberties in Wartime*. New York: William Morrow
10. Julie des Jardins, "From Citizen to Enemy: The Tragedy of Japanese Internment," http://www.gilderlehrman.org/history-by-era/world-war-ii/essays/from-citizen-enemy-tragedy-japanese-internment (May 1, 2016).
11. *Korematsu v. United States*, 323 U.S. 214 (1944)
12. Ilya Somin, "Justice Scalia on Kelo and Korematsu," *Washington Post*, 8 February 2014, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/02/08/justice-scalia-on-kelo-and-korematsu/.
13. United States Commission on Civil Rights, http://www.usccr.gov/pubs; "Homicides in Marion County, Indiana," Chapter 2, Public Commentary, Monica Foster, Attorney with Hammerle, Foster, Allen and Long-Sharp.

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15.2 Civil Liberties: Securing Basic Freedoms



Image 15.4 Students Wearing Black Armbands in Protest

Students wear black armbands as a form of non-verbal protest. (Credit: USCourts.gov at http://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks/tinker-v-des-moines-podcast)

Learning Objectives

- Identify the liberties & rights guaranteed by the first 4 amendments to the *Constitution*.
- Explain why these liberties & rights are limited in actual practice & government process.
- Explain why interpreting an amendment is often controversial.

Chart 15.5 Learning Objectives on Controversial Interpretations of Amendments over Rights

The case *Tinker v. Des Moines* (1969), depicted above, involved a public school in Des Moines, Iowa, where students organized a silent protest against the Vietnam War.[1] Students planned to wear black armbands to school to protest the fighting, but the principal found out and told the students they would be suspended if they wore the armbands. Despite the warning, students wore the armbands and were suspended. During their suspension the students' parents sued the school for violating their children's right to free speech. A U.S. district court sided with the school, ruling that wearing armbands could disrupt learning. The students appealed the ruling to a U.S. Court of Appeals but lost and took their case to the United States Supreme Court. In 1969 the United States Supreme Court ruled in a 7-2 decision in favor of the students.[2] The high court agreed that students' free rights should be protected and said, "Students don't shed their constitutional rights at the school house gates."[3]

The Bill of Rights' provisions can be broadly divided into three categories. The First, Second, Third, and Fourth Amendments protect basic individual freedoms; the Fourth (partly), Fifth, Sixth, Seventh, and Eighth protect people suspected or accused of criminal activity; the Ninth and Tenth are consistent with

the framers' view that the Bill of Rights is not necessarily an exhaustive list of all the rights people have and guarantees a role for state as well as national government.

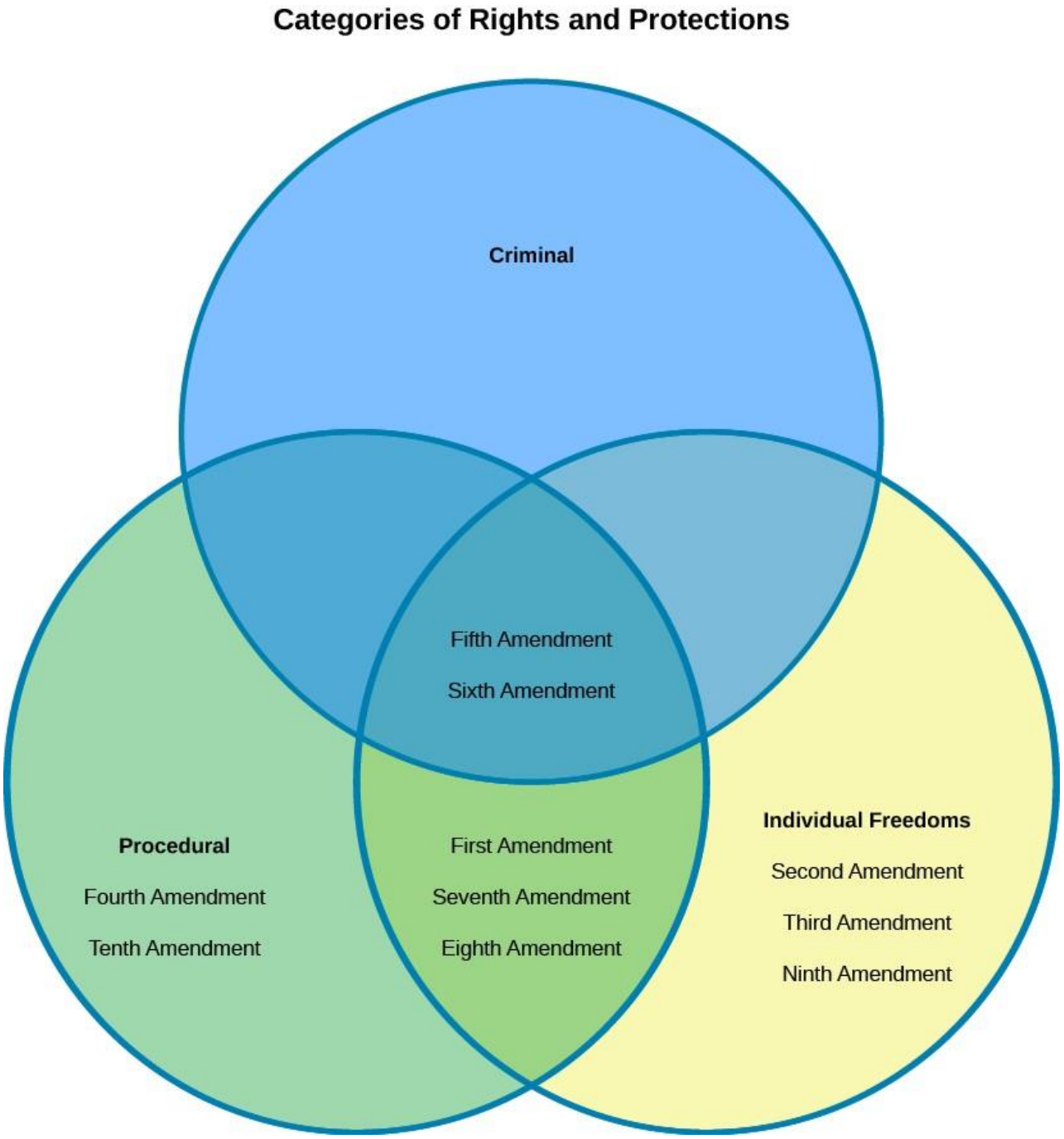


Chart 15.6 Illustration of Overlapping Constitutional Protection of Rights

Individual Freedoms

The First Amendment protects five different liberties retained by the people… religion, speech, press, assembly and petition.

Consider the Original: The 1st Amendment

The First Amendment guarantees both religious freedoms and the right to express your views in public. Specifically, the First Amendment says: "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."

Chart 15.7 Quote of the First Amendment

Given the broad scope of this amendment, it is helpful to break it into its two major parts. The first part, referenced in the text of the amendment, protects two related aspects of religious freedom, and the remaining second part contains freedoms that can be grouped under the concept of free expression. It is this concept of freedom of expression that creates the critical environment for citizen participation in a representative republic.


LUSITANIA EXTRA—No. 3

LUSITANIA IS SUNK

LATEST GIANT LINER BLOWN UP—REPORT ALL SAVED

BOSTON AMERICAN FINAL

London, May 7---The Cunard Liner Lusitania was torpedoed by a German submarine at 2:33 o'clock this afternoon in the Atlantic Ocean eight miles off the head of Kinsale on the south coast of Ireland.

Practically all reports received here state that the Lusitania sank, but a Lloyd's report received at 5:28 p. m. said that she had been beached. The Lusitania was bound for Liverpool from New York.

The Lusitania had nearly 1,800 passengers, including many prominent Americans, on board.

Many Ships to the Rescue.

LINER LUSITANIA, WHICH SAILED IN SPITE OF GERMAN WARNING, AND WAS SUNK OFF IRISH COAST

Image 15.5 Copy of Newspaper with Story of Lusitania

Credit: Library of Congress; World War I American Experience, Images; wwi0002-standard

Freedom of Expression

Although the remainder of the First Amendment protects four distinct rights—free speech, press, assembly, and petition—today we view them as encompassing a right to freedom of expression, particularly as technological advances blur the lines between oral and written communication (i.e., speech and press).

Controversies over freedom of expression were rare until the 1900s, even amidst common government censorship.

Censorship reached its height during World War I. The United States was swept up in two waves of hysteria. Germany's actions leading up to United States involvement, including the sinking of the RMS *Lusitania* and the Zimmerman Telegram (an effort to ally with Mexico against the United States) provoked significant anti-German feelings.

Further, the Bolshevik revolution of 1917 overthrowing the Russian government called for communist revolutionaries to overthrow the capitalist, democratic governments in Western Europe and North America.

Americans vocally supporting the communist cause or opposing the war often found themselves in jail.

In *Schenck v. United States*, the Supreme Court ruled that people encouraging young men to dodge the draft could be imprisoned; arguing that recommending people disobey the law was tantamount to "falsely shouting fire in a theatre and causing a panic" and thus presented a "clear and present danger" to public order.[4]

However, in the 1960s the Supreme Court's rulings on free expression became more liberal, in response to the Vietnam War and the growing antiwar movement. In a 1969 case involving the Ku Klux Klan, *Brandenburg v. Ohio*, the Supreme Court ruled that only speech or writing that constituted a *direct call or plan to imminent lawless action*, an illegal act in the immediate future, could be suppressed; the mere advocacy of a hypothetical revolution was not enough.[5]

The Supreme Court also ruled that various forms of **symbolic speech**—wearing clothing like an armband that carried a political symbol or raising a fist in the air, for example—were subject to the same protections as written and spoken communication.



Image 15.6 Women Protesters Burning the Flag

A group of women carrying signs against America's support of the English against the Irish, burning a flag on the sidewalk, June 3, 1920. (Credit: Library of Congress)

Perhaps no act of symbolic speech has been as controversial in U.S. history as the burning of the flag.

Citizens tend to revere the flag as a unifying symbol of the country in much the same way most people in Britain would treat the reigning queen (or king).

States and the federal government have long had laws protecting the flag from desecration—defacing, damaging, or otherwise treating it with disrespect. Perhaps in part because of these laws, people wanting to publicize opposition to U.S. government policies have used desecrating the flag a useful way to gain public and press attention to their cause.



Image 15.7 Burning the American Flag in Protest

On the eve of the 2008 election, a U.S. flag was burned in protest in New Hampshire.
(Credit: OpenStax; modification of work by Jennifer Parr)

Note the case of Gregory Lee Johnson, a member of various pro-communist and antiwar groups. As part of a protest near the Republican National Convention in Dallas, Texas in 1984 Johnson set fire to a U.S. flag that another protestor had torn from a flagpole. He was arrested, charged with "desecration of a venerated object" (among other offenses), and eventually convicted. However, in 1989 the Supreme Court decided in *Texas v. Johnson* that burning the flag was a form of symbolic speech protected by the First Amendment and found the law, as applied to flag desecration, to be unconstitutional.[6] This court decision was strongly criticized, and Congress responded with a new federal law, the Flag Protection Act, intended to overrule it; this Act was also struck down as unconstitutional in 1990.[7]

Commercial speech does not retain the same protections as individual free speech and expression. Commercial speech or advertising is subject to more scrutiny by the government because it involves companies or individuals seeking to make a profit.[8] The government protects consumers from business or individuals who would lie to customers in order to make a profit.

Freedom of the press is another important component of the right to free expression. In *Near v. Minnesota*, a 1931 case regarding press freedoms, the Supreme Court ruled that the government generally could not engage in **prior restraint**; that is, states and the federal government could not prohibit someone from publishing something in advance without a very compelling reason.[9] This standard, reinforced in 1971 by the Pentagon Papers case, saw the Supreme Court rule the government could not permit publishing of materials compiled by the military regarding information concealed from the American public regarding political and military involvement in the Vietnam War. Although people who leak secret information to the media can still be prosecuted and punished, this does not generally extend to reporters and news outlets that pass that information on to the public. The Edward Snowden case is a good example. Snowden himself, rather than those involved in promoting the information that he shared, became the object of criminal prosecution.

The courts have further recognized that government officials and other public figures might try to silence press criticism and avoid unfavorable news coverage by threatening a lawsuit for defamation of character. In the 1964 *New York Times v. Sullivan* case, the Supreme Court decided that public figures must demonstrate not only the falsehood of a negative press statement about them, but also that the statement was conveyed with either malicious intent or "reckless disregard" for the truth.[10] This ruling made it much harder for politicians to silence potential critics or to bankrupt their political opponents through the courts. The liberty of **free expression** is not absolute; several key restrictions limit our ability to speak or publish opinions under certain circumstances. We have seen that the *Constitution*

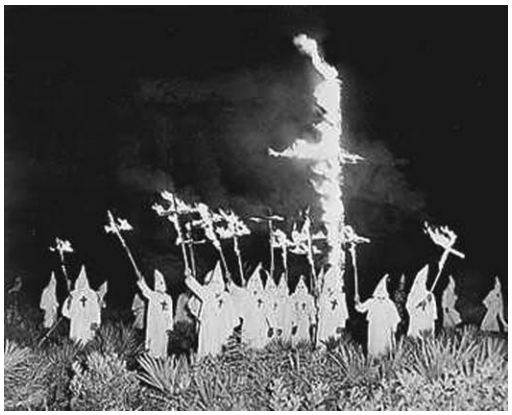


Image 15.8 Ku Klux Klan Burning a Cross

The Supreme Court has allowed laws that ban threatening symbolic speech, such as burning crosses on the lawns of African American families, an intimidation tactic used by the Ku Klux Klan, pictured here at a meeting in Gainesville, Florida, on December 31, 1922. (Credit: OpenStax included image)

protects most forms of offensive and unpopular expression, particularly political speech; however, *incitement* of a criminal act, "fighting words," and genuine threats are not protected. So, for example, you cannot point at someone in front of an angry crowd and shout, "Let's beat up that guy!"

And the Supreme Court has allowed laws that ban threatening symbolic speech, such as burning a cross on the lawn of an African American family's home.[11] Finally, defamation of character—whether in written form (**libel**) or spoken form (**slander**)—is not protected by the First Amendment. People subject to false accusations can sue to recover damages although criminal prosecutions of libel and slander are rare.

Obscenity is another exception to the right to freedom of expression. These are acts or statements considered extremely offensive under the *current* societal standards. The courts are understandably challenged to define obscenity; Supreme Court Justice Potter Stewart famously said of obscenity, having watched pornography in the Supreme Court building, "I know it when I see it." Today it is rare for the courts to uphold obscenity charges for written material alone.

In 1973, the Supreme Court established the Miller test (*Miller v. California*, 413 U.S. 15 (1973) for deciding whether something is obscene: "(a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."[12]

Applying this standard has often been problematic. The concept of "contemporary community standards" asserts that obscenity can vary geographically; many people in New York or San Francisco might be unconcerned with something that offends people in Memphis or Salt Lake City. The one form of obscenity that has been banned almost without challenge is child pornography, although the courts have found exceptions even here.

Efforts to protect children from pornography on the internet have largely been struck down as unconstitutional. This demonstrates that technology has created new avenues for disseminate obscene material. The Children's Internet Protection Act, however, requires K–12 schools and public libraries receiving Internet access using special E-rate discounts to filter or block access to material deemed harmful to minors.

The courts have also allowed laws forbidding or compelling certain forms of expression by businesses. Examples are laws requiring nutritional information disclosure on food and beverage containers and warning labels on tobacco products. The federal government requires that prices advertised for airline tickets include all taxes and fees. Many states regulate advertising by lawyers. False or misleading statements made in connection with a commercial transaction can be illegal if they constitute fraud.

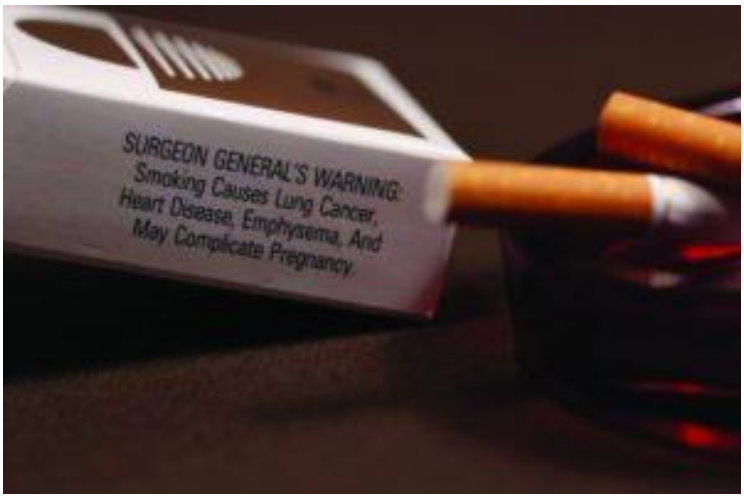


Image 15.9 Pack of Cigarettes

The surgeon general's warning label on a box of cigarettes is mandated by the Food and Drug Administration. The United States was the first nation to require a health warning on cigarette packages.
(Credit: Debora Cartagena, Centers for Disease Control and Prevention)

The courts have also ruled that, although public school officials are government actors, the First Amendment freedom of expression rights of children attending public schools are somewhat limited. In particular, in *Tinker v. Des Moines* (1969) and *Hazelwood v. Kuhlmeier* (1988), the Supreme Court has upheld restrictions on speech that create "substantial interference with school discipline or the rights of others"[13] or is "reasonably related to legitimate pedagogical concerns."[14]

For example, the content of school-sponsored activities like school newspapers and speeches delivered by students can be controlled, either for student instruction in proper adult behavior or to deter student conflict.

Free expression includes the right to assemble peaceably and the right to petition government officials. This right even extends to members of groups whose views most people find abhorrent.

Examples are American Nazis and the activist Westboro Baptist Church, whose members are known for protesting at the funerals of U.S. soldiers who have died fighting in the war on terror.[15]

The Supreme Court in *National Association for the Advancement of Colored People (NAACP) v. Alabama* (1958) considered the rights of organizations of freely assembled persons to keep membership records confidential. In 1956, Alabama ordered the review of the organization's documents, including membership lists. The NAACP refused to disclose its members. In a unanimous decision, the Supreme Court sided with the NAACP and formally recognized a constitutional right to freedom of association. The forced disclosure of membership lists violated NAACP members' right 'to pursue their lawful private interests privately and to associate freely with others.'

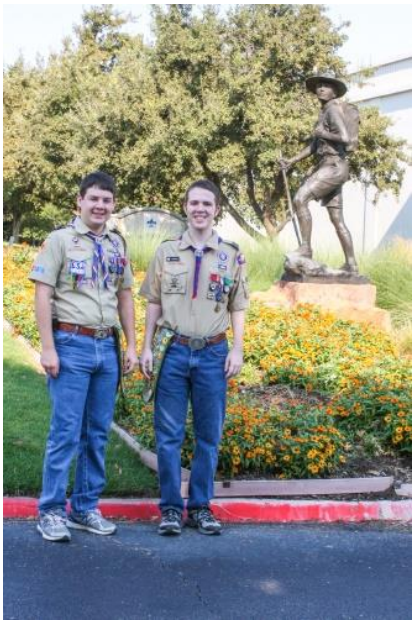


Image 15.10 Boy Scouts in Uniform at Irving, Texas Headquarters

Two eagle scouts at the Scouting National Headquarters and museum in Irving, Texas. (Credit: 290 Photo)

By recognizing the importance of confidential membership data, especially among unpopular groups, the *NAACP* v. *Alabama* decision furthered informational privacy rights."[16]

Relying on precedent, the court considered arguments in 2006 involving the Boy Scouts of America. In *Boy Scouts of America et al. v. Dale* (2000), the court examined competing rights–the rights of an openly gay leader in the BSA, James Dale, who was removed from his position as a scoutmaster (discrimination based on sexual orientation in public accommodation) and the rights of the BSA (1st Amendment protected freedom of assembly), where the Court held: Applying New Jersey's public accommodations law to require the Boy Scouts to readmit Dale violates the Boy Scouts' First Amendment right of expressive association. Government actions that unconstitutionally burden that right may take many forms, one of which is intrusion into a group's internal affairs by forcing it to accept a member it does not desire.[17] Free expression—although a broad right—is subject to certain constraints to balance it against the interests of public order. In particular, the nature, place, and timing of protests—but not their substantive content—are subject to reasonable limits.



Image 15.11 Black Protesters March in St. Louis

The courts have ruled that while people may peaceably assemble in a place that is a public forum, not all public property is a public forum. For example, the inside of a government office building or a college classroom—particularly while someone is teaching—is not generally considered a public forum.

"At the break of summer 1917, racial tension simmered across the nation. In East St. Louis, […] dozens of black residents were killed and thousands more were left homeless after their neighborhood was burned to ashes. The NAACP wasted no time […] and soon issued a call for a Silent Protest Parade. On July 28, nearly 10,000 black men, women, and children wordlessly paraded down New York's Fifth Avenue. Silently marching to the beat of a drum, the throngs of protesters clutched picket signs declaring their purpose and demanding justice. 'Make America safe for democracy.' 'We march because we deem it a crime to be silent in the face of such barbaric acts.' 'We march because we want our children to live in a better land.' Their tactic was silence, but their message resounded: anti-black violence is unjust and un-American." In July 2017, at their 108th Annual Convention in Baltimore, the NAACP marked the Silent Parade's centennial. (Credit: NAACP at http://www.naacp.org/silent-protest-parade-centennial/)

Rallies and protests on land that has other dedicated uses such as roads and highways can be limited to groups that have secured a permit in advance, and those organizing large gatherings may be required to give sufficient notice so government authorities can ensure there is enough security available.

However, any such regulation must be viewpoint-neutral; the government may not treat one group differently than another because of its opinions or beliefs.

RELIGIOUS LIBERTY

The first liberty protected by the First Amendment involves two related aspects of religious freedom:

1. it prevents the government from imposing a specific religion on the people
2. it prevents the government from restricting the people from recognition and exercise of their own specific religious belief, with exceptions only for the safety and security of other individuals should any religious practice infringe on another's unalienable liberties.

The Establishment Clause

The **establishment clause** is the first of these parts. Congress cannot create or promote a state-sponsored religion. When the United States was founded, most countries' governments had an established church or religion, an officially sponsored set of religious beliefs and values. Direct alliances between a state and church leaders frequently led to religiously aligned wars and state sponsored tyranny against anyone with religious beliefs outside of the official church.

The **establishment clause** today is interpreted more broadly; it forbids the creation of a "Church of the United States" or "Church of Ohio" and forbids the government from favoring one set of religious beliefs over others.

In a 1971 case known as *Lemon v. Kurtzman*, the Supreme Court established the Lemon test for deciding whether a law or other government action that might promote a particular religious practice should be allowed to stand.[18]

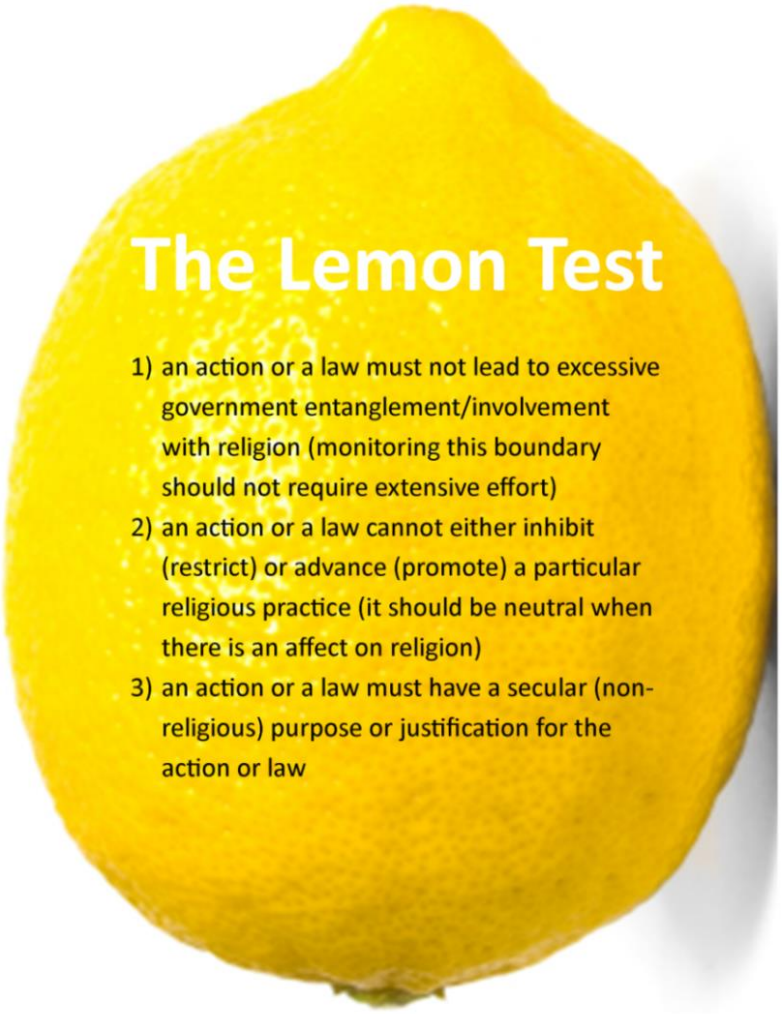


Chart 15.8 Lemon Test Information

The Lemon Test has three criteria that must be satisfied for such a law or action to be found constitutional and remain in effect.
(Credit: Image at http://www.lemon-buy-back.com/)

A school cannot prohibit students from voluntary, non-disruptive prayer because that would impair the free exercise of religion. The general statement that prayer in schools is illegal or unconstitutional is incorrect. In *Kennedy v. Bremerton School District*, the high court ruled 6-3 that a school district in the state of Washington violated the First Amendment rights of high school football coach by disciplining g him for kneeling at midfield after games, where he prayed. The majority advised schools not to treat everything teachers and coaches say in the workplace as governmental speech subject to government limitation. While not directly overturning the *Lemon* decision, the majority opinion by Justice Neil Gorsuch called the Lemon test too "abstract" to be of practical use."[19]

The line between what is promoted by school authorities and what is student instigated activity is, at times, disputed. For example, *Matthews v. Kountze I*SD involved cheerleaders being banned for painting scripture verses on cheer banners for football games. [20]

Wisconsin-based Freedom from Religion Foundation complained about the banners, the case was reviewed by the Texas Supreme Court as "private religious expression protected under Texas law, and not government speech, subject to the school district's censorship."[21] An "8-0 decision" favoring the cheerleaders was handed down in 2016.[22]

Disputes often arise over how much the government can acknowledge widespread religious belief. The courts have allowed for an acknowledgement of God or a creator. For example, the national motto "In God We Trust," appearing on our coins and paper money, is seen as more of an acknowledgment that most citizens believe in God than of any effort by government officials to promote religious belief and practice. This reasoning applies to the inclusion of the phrase "under God" in the Pledge of Allegiance—a change originating during the early years of the Cold War.

The courts have also allowed some religiously motivated actions by government agencies, such as clergy delivering prayers to open city council meetings and legislative sessions, on the presumption that—unlike school children—adult participants can distinguish between the government's *allowing someone to speak and endorsing that person's speech*.

Yet, while some displays of religious codes (e.g., Ten Commandments) are permitted in the context of showing the evolution of law over the centuries, in other cases, these displays have been removed after state Supreme Court rulings. In Oklahoma, the courts ordered the removal of a Ten Commandments sculpture at the state capitol when other groups, including Satanists and the Church of the Flying Spaghetti Monster, attempted to get their own sculptures allowed there on an equal footing.



Image 15.12 Photo of "IN GOD WE TRUST" on a Coin and a Granite Tablet with the 10 Commandments

The motto "In God We Trust" has appeared intermittently on U.S. coins since the 1860s (a), yet it was not mandated on paper currency until 1957. The Ten Commandments are prominently displayed on the grounds of the Texas State Capitol in Austin (b), though a similar sculpture was ordered to be removed in Oklahoma. (Credit to OpenStax included image; modification of work by Kevin Dooley)

The Free Exercise Clause

The **free exercise clause** limits the government's ability to control or restrict specific group or individual religious practices. It does not regulate the government's promotion of religion, but rather government suppression of religious belief and practice. Jehovah's Witness cases demonstrate the difficulty of striking the right balance. Their church teaches that they should refuse to participate in displays of patriotism, including saluting the flag and reciting the Pledge of Allegiance. They also regularly recruit converts through door-to-door evangelism. Members attempting to evangelize were arrested for violating laws prohibiting door-to-door solicitation.



Image 15.13 Amish School

Amish parents can homeschool their children without harassment from local school authorities as a result of the decision in *Wisconsin v. Yoder* (1972). (Credit: Amish Country Byway—One Room Schoolhouse, National Archives 7716961, Department of Transportation, Federal Highway Administration, Office of Planning, Environment, and Realty, Office of Natural and Human Environment, National Scenic Byways Program, 1991.)

In early legal challenges, the Supreme Court was reluctant to overturn state and local laws that burdened their religious beliefs.[23]

In later cases, the court upheld the rights of Jehovah's Witnesses to proselytize and refuse to salute the flag or recite the Pledge.[24]

The rights of conscientious objectors—individuals who refuse to perform military service on the grounds of freedom of thought, conscience, or religion—have also been controversial. The Supreme Court ruled in *Gillette v. United States* that to claim to be a conscientious objector, a person must be opposed to serving in *any* war, not just some wars.[25]

The Supreme Court is sometimes challenged to establish a framework for deciding if religious belief may override laws and policies. In the 1960s and 1970s, the court established a general test for deciding similar cases. In *Sherbert v. Verner* (dealing with unemployment compensation) and *Wisconsin v. Yoder* (dealing with the right of Amish parents to homeschool their children), the court said that for a law to be allowed to limit or burden a religious practice, the government must meet two criteria.[26] It must demonstrate both a "**compelling interest**" in limiting that practice and that restriction must be "narrowly tailored." In other words, it must show a very good reason for that law and demonstrate that the law was the only feasible way of achieving that goal.



Image 15.14 Woman Wearing a Headscarf

Samantha Elauf won her case before the US Supreme Court in *EEOC v. Abercrombie* (Credit: Gordon Donovan, Yahoo News, and Equal Employment Opportunity Commission at https://www.eeoc.gov/eeoc/faces/elauf.cfm).

Precedent now allowed more government regulation of religious practices and followers of other religions grew concerned that state and local laws, even ones neutral on their face, might be used to curtail their own religious practices.

Congress responded to this decision in 1993 with a law known as the **Religious Freedom Restoration Act (RFRA)**, followed in 2000 by the **Religious Land Use and Institutionalized Persons Act** after part of the RFRA was struck down by the Supreme Court. According to the Department of Justice, RFRA mandates **strict scrutiny** before government may violate religious freedoms/free exercise of religious beliefs.

RLUIPA designates the *government may not impose a "substantial burden" on individual exercise of beliefs or religious freedoms and government must use "the least restrictive means" of carrying out policy while furthering "a compelling interest" on the part of the government.*[27]

Land zoning issues, eminent domain, and the rights of prisoners exercising their religious beliefs drove the perceived need for this legislation.[28]

In *EEOC v. Abercrombie & Fitch Stores, Inc.* (2015), the Equal Employment Opportunity Commission on behalf of Samantha Elauf, argued before the Supreme Court against discrimination because of the

religious practice of wearing a headscarf, which conflicted with the company's dress policy. [29] The claim was based on "disparate-treatment" and the need for an "accommodation," with the Court ruling, "An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions under Title VII of the Civil Rights Act of 1964.[30]

Conversely, the application of the RFRA has become more problematic in businesses and non-profit organizations whose owners or organizers may share a religious belief while the organization has some secular, non-religious purpose.

Such a conflict emerged in the 2014 Supreme Court case known as *Burwell v. Hobby Lobby*.[31] The Hobby Lobby chain sells arts and crafts merchandise at hundreds of stores; its founder David Green is a devout Christian whose beliefs include opposition to abortion. Consistent with these beliefs, he objected to a provision of the Patient Protection and Affordable Care Act (ACA or Obamacare) requiring employer-backed insurance plans to include no-charge access to the morning-after pill, a form of emergency contraception, arguing that this requirement infringed on his protected First Amendment right to exercise his religious beliefs.

Based in part on the federal RFRA, the Supreme Court agreed 5–4 with Green and Hobby Lobby's position and said that Hobby Lobby and other closely held businesses did not have to provide employees free access to emergency contraception or other birth control if doing so would violate the religious beliefs of the business' owners, because there were other less restrictive ways the government could ensure access to these services for Hobby Lobby's employees (e.g., paying for them directly).

In 2015, state RFRAs became controversial when individuals and businesses providing wedding services (e.g., catering and photography) were compelled to provide services for same-sex weddings in states where the practice had been newly legalized.

Proponents of state RFRA laws argued that people and businesses should not be compelled to endorse practices counter to their religious beliefs and feared clergy might be compelled to officiate same-sex marriages against their religion's specific teachings. Opponents of RFRA laws argued that individuals and businesses should be required, per *Obergefell v. Hodges*, to serve same-sex marriages on an equal basis as a matter of ensuring the rights of gays and lesbians.[32]

Despite ongoing controversy, the courts have consistently found some public interests sufficiently compelling to override the free exercise clause.

For example, since the late nineteenth century the courts have consistently held that people's religious beliefs do not exempt them from the general laws against polygamy. Other potential acts in the name of religion that are also out of the question are drug use and human sacrifice.

Consider the Original: The 2nd Amendment

For such a highly charged political issue, the text of the Second Amendment is among the shortest:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Chart 15.9 Text of 2nd Amendment

The text's relative simplicity has not spared it from controversy; arguably, the Second Amendment has become controversial *because* of its text. Does it merely protect the right of the states to organize and arm a "well regulated militia" for civil defense, or is it a protection of a "right of the people" to individually bear arms?



Image 15.15 Art Installation Supporting Gun Buy Back

"Gun Totem" by artist, Boris Bally, in Providence, Rhode Island, constructed from guns obtained in a government buy-back program in 2001 called "Guns for Goods." (Credit: Library of Congress, 7-27-18 by Carol M. Highsmith, photographer)

States gradually began to introduce laws to regulate gun ownership. Federal gun control laws were introduced in the 1930s in response to organized crime, and stricter laws regulating most gun commerce stemming from the street protests of the 1960s. Laws requiring background checks for prospective gun buyers were passed in the early 1980s following an assassination attempt on President Ronald Reagan. During this period, the Supreme Court's decisions regarding the meaning of the Second Amendment were ambiguous at best. In *United States v. Miller*, the Supreme Court upheld the 1934 National Firearms Act's prohibition of sawed-off shotguns, largely because such weapons did not support the goal of promoting a "well regulated militia."[33] This ruling was interpreted to support the view that the Second Amendment protected the right of the states to organize a militia, rather than an individual right. Consequently, the lower courts ruled most firearm regulations—including some city and state laws virtually outlawing private ownership of firearms—to be constitutional.

In 2008, in a narrow 5–4 decision on *District of Columbia v. Heller*, the Supreme Court ruled that at least some gun control laws *did* violate the Second Amendment and that this amendment *does* protect an individual's right to keep and bear arms, at least in some circumstances—in particular, "for traditionally lawful purposes, such as self-defense within the home."[34] Because the District of Columbia is not a state, this decision immediately confirmed the right only to the federal government and territorial governments. Two years later, in *McDonald v. Chicago*, the Supreme Court ruled that the right to bear arms was a fundamental right incorporated against the states, meaning that state regulation of firearms might, in some circumstances, be unconstitutional. In 2015, however, the Supreme Court allowed several of San Francisco's strict gun control laws to remain in place. This suggested that—as in the case of rights protected by the First Amendment—the courts will not treat gun rights as absolute.[35]



Image 15.16 Photo of Playground with No Firearms Sign

A "No Firearms" sign is posted at Binghamton Park in Memphis, Tennessee, demonstrating that the right to possess a gun is not absolute. (Credit: OpenStax; modification of work by Thomas R Machnitzki)

Consider the Original: The 3rd Amendment
"No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

Chart 15.10 Text of 3rd Amendment

Many consider this *Constitution*al provision obsolete and unimportant. However, it is worthwhile to note its relevance in the context of the time: colonial citizens were routinely required to quarter soldiers during training maneuvers, redeployments and occupations, even in peacetime and irrespective of their circumstances. They viewed the British laws requiring them to house these soldiers as particularly offensive and disrespectful, so much so that it had been among the grievances listed in the *Declaration of Independence*. Today it seems unlikely the federal government would need to house military forces in civilian lodgings against the will of property owners or tenants; however, perhaps in the same way we consider the Second and Fourth Amendments, we can think of the Third Amendment as reflecting a broader idea that our homes lie within a "zone of privacy" that government officials should not violate unless absolutely necessary.

Consider the Original: The 4th Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Chart 15.11 Text of 4th Amendment

The Fourth Amendment sits at the boundary between general individual freedoms and the rights of those suspected of crimes. It may reflect James Madison's broader concern to establish an expectation of privacy from government intrusion at home. The Fourth Amendment protects us from overzealous law enforcement by ensuring investigating authorities have good reason to intrude on people's privacy and property. The amendment places limits on both *searches* and *seizures.* Searches are efforts to locate evidence and contraband. Seizures are the taking of these items by the government for investigations and as evidence in a criminal prosecution (or, in the case of a person, the detention or taking of the person into custody).

It confirms that officials must apply for and receive a **search warrant** prior to a search or seizure; this warrant is a legal document, signed by a judge, allowing police to search and/or seize persons or property. Since the 1960s, however, the Supreme Court has issued a series of rulings limiting the warrant requirement in situations where a person lacks a "reasonable expectation of privacy" outside the home. Police can also search and/or seize people or property without a warrant if the owner or renter consents to the search, if there is a reasonable expectation that evidence may be destroyed or tampered with before a warrant can be issued (i.e., exigent circumstances), or if the items in question are in **plain view** of government officials.

Furthermore, the courts have found that police do not generally need a warrant to search the passenger compartment of a car, or to search people entering the United States from another country.[36]

When a warrant is needed, law enforcement officers do not need enough evidence to secure a conviction, but they must demonstrate to a judge that there is **probable cause** to believe a crime has been committed or evidence will be found. **Probable cause** is the legal standard for determining whether a search or seizure is constitutional, or a crime has been committed; it is a lower threshold than the standard of proof required for a criminal conviction.



Image 15.17 Photo of Police Traffic Stop

A state police officer conducting a traffic stop near Walla Walla, Washington. (Credit: OpenStax; modification of work by Richard Bauer)

What happens when police conduct an illegal search or seizure without a warrant and still find evidence of a crime? In the 1961 Supreme Court case *Mapp v. Ohio*, the court ruled that evidence obtained without a warrant and not under one of the above exceptions could not be used as evidence in a state criminal trial, leading to the broad application of the **exclusionary rule** established in 1914 on a federal level in *Weeks v. United States*.[37]

The exclusionary rule does not just apply to evidence found or to items or people seized without a warrant (or falling under an exception noted above); it also applies to any evidence developed or discovered as a result of the illegal search or seizure. For example, if police search your home without a warrant, find bank statements showing large cash deposits on a regular basis, and discover evidence of some other unexpected crime (e.g., blackmail, drugs, or prostitution), they cannot use the bank statements as evidence of criminal activity—nor can they prosecute you for other evidence discovered during that illegal search.

This extension of the exclusionary rule is sometimes called the "fruit of the poisonous tree," because just as the metaphorical tree (i.e., the original search or seizure) is poisoned, so is anything that grows out of it.[38] However, like the requirement for a **search warrant**, the **exclusionary rule** does have exceptions. The courts have allowed evidence obtained without the necessary legal procedures in circumstances where police executed warrants they believed were correctly granted but in fact were not ("good faith" exception), and when the evidence would have been found anyway had they followed the law ("inevitable discovery"). The requirement of **probable cause** also applies to arrest warrants. A person cannot generally be detained by police or taken into custody without a warrant. However, most states allow arrests of a suspected felon without a warrant when probable cause exists, and police can arrest people for minor crimes or misdemeanors they have witnessed themselves.

The first four amendments of the Bill of Rights protect citizens' key freedoms from governmental intrusion. The First Amendment restricts the government from imposing a specific religion on the people or limiting the practice of one's own religion. The First Amendment also protects freedom of expression by the public, the media, and organized groups via rallies, protests, and the petition of grievances. The Second Amendment today protects an individual's right to keep and bear arms, while the Third Amendment prevents the military occupation of civilians' homes except under extraordinary

circumstances. Finally, the Fourth Amendment protects our persons and property from unreasonable searches and seizures and protects people from unlawful arrests. However, all these provisions are subject to limitations, often to protect the interests of public order and the good of society.

Civil Liberties: Questions to Consider

1. Explain the difference between the *establishment clause* and the *free exercise clause?*
2. What is commercial speech?
3. What is the difference between slander and libel?
4. Why is a search warrant important in preserving personal liberty?

1. with one the government is not allowed to establish a state sponsored religion or to show preference for one religious view versus another; free exercise involves individual rights not being curtailed by the government without a compelling interest to do so
2. truth in advertising; free speech is not unlimited with the public safety at possible risk
3. slander is spoken false/untrue information about another person in order to defame their character/with the intent to cause them harm; libel is written false information used to harm another person's character
4. search warrants preserve the privacy of individuals in their homes and vehicles against random searches or seizures of private property or person/s without proof of probable cause based upon evidence presented to a judge

Civil Liberties: Terms to Remember

commercial speech–does not receive the same level of free speech protection because companies or individuals are seeking to make a profit; in order to accomplish this goal, they may not mislead the public or make untrue claims about their product(s)

common-law right–a right of the people rooted in legal tradition and past court rulings, rather than the *Constitution*

compelling interest–before a right may be curtailed by law the government must provide a compelling interest or very good reason for doing so

establishment clause–the provision of the First Amendment that prohibits the government from endorsing a state-sponsored religion; interpreted as preventing government from favoring some religious beliefs over others or religion over non-religion

exclusionary rule–a requirement, from Supreme Court case *Mapp v. Ohio*, that evidence obtained as a result of an illegal search or seizure cannot be used to try someone for a crime

free exercise clause–the provision of the First Amendment that prohibits the government from regulating religious beliefs and practices

libel–written defamation of character; written false information with intent to harm another person

prior restraint–a government action that stops someone from doing something before they are able to do it (e.g., forbidding someone to publish a book he or she plans to release)

probable cause–legal standard for determining whether a search or seizure is constitutional or a crime has been committed; a lower threshold than the standard of proof needed at a criminal trial

search warrant–a legal document, signed by a judge, allowing police to search and/or seize persons or property

slander–spoken defamation of character; spoken false information with an intention to harm another individual

symbolic speech–a form of expression that does not use writing or speech but nonetheless communicates an idea (e.g., wearing an article of clothing to show solidarity with a group)

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Two Eagle Scouts at the BSA National Headquarters and Museum in Irving, Texas.. **Authored by**: Deborah Hoag. **Provided by**: Austin Community College. **Project**: Achieving the Dream Grant. **License**: *CC BY: Attribution*

15.3 Civil Liberties: Protecting the Rights of Accused Persons



Image 15.18 Photo of Destruction Following Oklahoma City Bombing

On the morning of April 19, 1995, Timothy McVeigh parked a rented Ryder truck in front of the Alfred P. Murrah Federal Building in downtown Oklahoma City. He was about to commit mass murder. The bombing was quickly solved, but the investigation turned out to be one of the most exhaustive in FBI history. In the end, the government that McVeigh hated and hoped to topple swiftly captured him and convincingly convicted both him and his co-conspirators by following the procedural rules for accused individuals and acknowledging the protections of **due process**.
(Credit: Federal Bureau of Investigation at https://www.fbi.gov/history/famous-cases/oklahoma-city-bombing).

Learning Objectives

- Identify the rights of those suspected or accused of criminal activity.
- Explain how Supreme Court decisions transformed the rights of the accused.
- Explain why the Eighth Amendment is controversial regarding capital punishment.

Chart 15.12 Learning Objectives on Rights of Accused Persons

In addition to protecting the personal freedoms of individuals, the Bill of Rights protects those suspected or accused of crimes from unfair or unjust treatment by government entities.

In addition to the protections outlined in the Fourth Amendment (pertaining to investigations prior to criminal charges), the next four amendments pertain to those suspected, accused, or convicted of crimes, and people engaged in other legal disputes. At every stage of the legal process, the Bill of Rights incorporates protections for the people.

Consider the Original: The 5th Amendment

The Fifth Amendment includes many of the provisions dealing with the rights of the accused; accordingly, it is one of the longest in the Bill of Rights. The Fifth Amendment states in full:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Chart 15.13 Text of 5th Amendment

The first clause requires that serious crimes be prosecuted only after a **grand jury** issues an **indictment**. The courts require this only for felonies; less serious crimes can be tried without a grand jury. This provision does *not* apply to the states because it has not been incorporated; many states alternatively require a preliminary hearing where a judge decides if there is enough evidence to hold a full trial. Active armed forces members accused of crimes are not entitled to a grand jury. This protection is crucial because it inserts "the people" into a "government" process, as an added assurance that an accused person will have other input beyond any official government position or evidence.

The Fifth Amendment also protects individuals against **double jeopardy**, which is prosecuting a person twice for the same criminal charges. No one who has been **acquitted** (found not guilty) of a crime can be prosecuted again for that same crime. The prohibition against double jeopardy has its own exceptions. It prohibits a second prosecution only at the same level of government (federal or state) as the first; the federal government can try you for violating federal law, even if a state or local court finds you not guilty of the same charges. The double jeopardy rule does not prevent someone from recovering damages in a civil case—a legal dispute between individuals over a contract or compensation for an injury—that results from a criminal act, even if the person accused of that act is acquitted of criminal charges.

Perhaps the most famous provision of the Fifth Amendment is its protection against **self-incrimination**, or the right to remain silent. This provision is so well known that we have a phrase for it: "taking the Fifth." People are not forced to give evidence in court or to law enforcement officers that might constitute an admission of guilt or responsibility for a crime. Moreover, in a criminal trial, if someone does not testify in his or her own defense, the prosecution cannot use that silence as evidence of guilt or imply that an innocent person would testify. This provision became embedded in the public consciousness following

the Supreme Court's 1966 ruling in *Miranda v. Arizona*, whereby suspects were required to be informed of their most important rights, including the right against self-incrimination, before being interrogated in police custody.[1]

However, contrary to some media depictions of the **Miranda warning**, law enforcement officials do not necessarily have to inform suspects of their rights before they are questioned in situations where the suspect is free to leave.

Like the Fourteenth Amendment's **due process** clause, the Fifth Amendment prohibits the federal government from depriving people of their "life, liberty, or property, without due process of law." Recall that due process is a guarantee that people will be treated fairly and impartially by government officials when the government seeks to fine or imprison them or take their personal property away from them. The courts have interpreted this provision to mean that government officials must establish consistent and fair procedures to decide when to limit people's freedoms; in other words, citizens cannot be detained, their freedom limited, or their property taken arbitrarily or on a whim by police or other government officials. As a result, an entire body of procedural safeguards is applied to the legal prosecution of crimes.

The final provision of the Fifth Amendment has little to do with crime at all. The *takings clause* says that "private property [cannot] be taken for public use, without just compensation." This provision, along with the due process clause's provisions limiting the taking of property, can be viewed as a protection of individuals' **economic liberty**: their right to obtain, use, and trade tangible and intangible property for their own benefit. For example, you have the right to trade your knowledge, skills, and labor for money through work or the use of your property, or trade money or goods for other things of value, such as clothing, housing, education, or food.

The greatest recent controversy over economic liberty results from the use of the power of **eminent domain** to take property for redevelopment. Traditionally eminent domain was primarily used to obtain property for transportation corridors like railroads, highways, canals and reservoirs, and pipelines, which require specific geographic routes. As any single property owner could effectively block a route or extract an unfair price for land if it was the last piece needed for a route, there are reasonable arguments for using eminent domain as a last resort. This is particularly true for projects that convey substantial benefits to the public at large. Increasingly though, eminent domain has been used to enable economic development for both government and private interests. Beneficiaries range from politically connected big businesses such as car manufacturers building new factories to highly profitable sports teams seeking ever-more-luxurious stadiums.

While we traditionally think of property owners as well-off people whose rights are inherently more secure, frequently these cases pit lower- and middle-class homeowners against multinational corporations or multimillionaires with the ear of city and state officials. In a notorious 2005 case, *Kelo v. City of New London*, the Supreme Court sided with municipal officials taking homes in a middle-class neighborhood to obtain land for another private entity seeking to develop the property for an alternate private purpose.[2] The case led to a public backlash against eminent domain and subsequent legal

changes in many states making it harder for cities to take property from one private party and give it to another for economic redevelopment.

Some disputes over economic liberty have gone beyond the idea of eminent domain. Recently the emergence of on-demand ride-sharing services like Lyft and Uber, direct sales by electric car manufacturer Tesla Motors, and short-term property rentals through companies like Airbnb have led to conflicts between people seeking to offer profitable services online, states and cities trying to regulate these businesses, and the incumbent service providers that compete with these new business models.

In the absence of new public policies to clarify rights, the path forward is often determined through norms established in practice, by governments, or by court cases.

Consider the Original: The 6th Amendment

Once someone has been charged with a crime and indicted, the next stage in a criminal case is the trial. The Sixth Amendment governs these criminal trials; in full, it states:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence [sic]."

Chart 15.14 Text of 6th Amendment

The first guarantee is the right to a speedy, public trial by an impartial jury. Although the time allowed between an indictment and the trial is not specified, the Supreme Court notes that excessively lengthy delays must be justified and balanced against the potential harm to the defendant.[3] In effect, the **speedy trial** requirement prevents the government from detaining people indefinitely. The courts *have* ruled that there are exceptions to the public trial requirement; if a public trial would undermine the defendant's right to a *fair* trial, it can be held behind closed doors. Prosecutors can request closed proceedings only in certain, narrow circumstances (i.e., to protect witnesses from retaliation or to guard classified information). The prosecution must also be made in the "state and district" where the crime was committed; however, if the accused believe pre-trial publicity or other factors compromise their right to a *fair* trial where the crime occurred, they may ask for a **change of venue** (location) for that trial.



Although the Supreme Court's proceedings are not televised and there is no video of the courtroom, audio recordings of the oral arguments and decisions announced in cases have been made since 1955. A complete collection of these recordings can be found at the **Oyez Project** website along with full information about each case.

Most accused persons decline this right to a jury trial. A **plea bargain** is an agreement with the prosecutor in which the defendant pleads guilty to the charge(s) in question or to less serious charges in

exchange for more lenient punishment, placing an unconstitutional condition on this individual—they are required to surrender protection of individual liberties in order to gain this benefit.

There are a number of motivations for this. The evidence against the accused may be so overwhelming that conviction is a near-certainty and avoiding the more serious penalty (perhaps even the death penalty) is better than taking the small chance of acquittal. Someone accused of being part of a larger criminal organization might agree to testify against others in exchange for lighter punishment. Prosecutors facing a difficult trial can seek quick closure and a win by securing convictions for offenses they know they can prove, while avoiding a lengthy trial on other charges they might lose. In general, they use **prosecutorial discretion** to manage cases and use plea bargaining to bring efficiency and streamlining to the process.

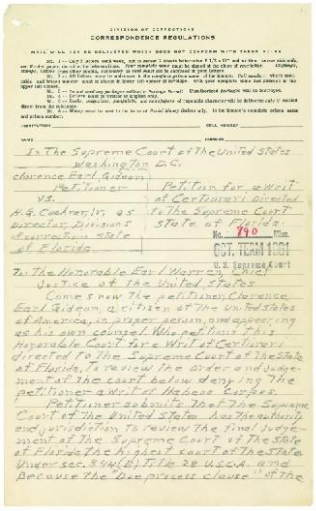
The promise of an impartial jury is a critical component. The prosecution and the defense can reject potential jurors they believe cannot fairly decide that case without prejudice. The courts have also ruled that the composition of the jury as a whole may itself be prejudicial; potential jurors may not be excluded simply because of their race or sex, for example.[4]

The accused also have the right to present witnesses in their own defense (if necessary, compelling them to testify) and to confront and cross-examine witnesses presented by the prosecution. In general, the only testimony acceptable in a criminal trial must be given in a courtroom and be subject to cross-examination; hearsay, or testimony by one person about what another person has said, is generally inadmissible. Hearsay may be presented as evidence when it is an admission of guilt by the defendant or a "dying declaration" by a person who has passed away.

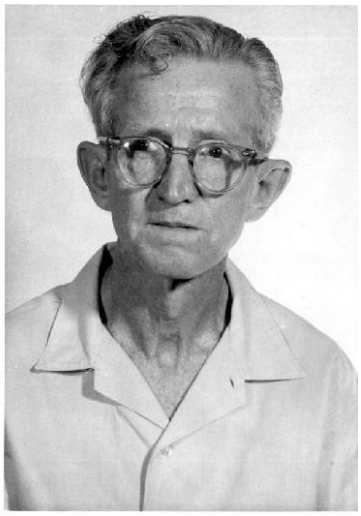
Although both sides in a trial can examine and cross-examine witnesses, the judge may exclude testimony deemed irrelevant or prejudicial.

Finally, the Sixth Amendment guarantees the right of the accused to the assistance of an attorney in their defense. Historically, for most crimes many states did not provide attorneys to the accused when could not afford one themselves; even when provided, their assistance was often inadequate. This situation changed as a result of the Supreme Court's decision in *Gideon v. Wainwright* (1963).[5]

A poor drifter named Clarence Gideon was accused of breaking into and stealing money and other items from a pool hall in Panama City, Florida. Denied a lawyer, Gideon was tried, convicted and sentenced to a five-year prison term. While in prison—still without legal assistance—he drafted a handwritten appeal and sent it to the Supreme Court, which agreed to hear his case. The justices unanimously ruled that Gideon, and anyone else accused of a serious crime, was entitled to the assistance of a lawyer even if they could not afford one, as part of the general due process right to a fair trial.



(a)



(b)

Image 15.19 Clarence Gideon Photo

The handwritten petition for appeal (a) sent to the Supreme Court by Clarence Gideon, shown here circa 1961 (b), the year of his Florida arrest for breaking and entering. (Credit: OpenStax included images)

The Supreme Court later extended the *Gideon v. Wainwright* ruling to apply to any case in which the accused faced the possibility of "loss of liberty," even for one day. The courts have also overturned convictions in which people had incompetent or ineffective lawyers through no fault of their own. The *Gideon* ruling has increased the demand for professional public defenders, paid by the government to represent those who cannot afford an attorney themselves. Alternatively, some states require practicing lawyers to represent poor defendants on a pro bono basis (essentially, donating their time and energy to the case).

The **National Association for Public Defense** represents public defenders, lobbying for better funding for public defense and improvements in the justice system in general.

Normally a person charged with a serious crime will have a brief hearing before a judge to be informed of the charges against him/her/they, to be made aware of the right to counsel, and to enter a plea. Other hearings may be held to decide on the admissibility of evidence seized or otherwise obtained by prosecutors. If the two sides cannot agree on a plea bargain, the next stage is jury selection (**voir dire**). A pool of potential jurors is summoned to the court and screened for impartiality, with the goal of seating twelve (in most states) and one or two alternate jurors. All hear the evidence in the trial; unless an alternate must serve, the original twelve decide whether the evidence determines guilt or innocence beyond a **reasonable doubt**. In the trial itself, the lawyers for the prosecution and defense make opening arguments, followed by testimony of witnesses for the prosecution (and any cross-examination), and then testimony of witnesses for the defense, including the defendant if he or she chooses. Additional prosecution witnesses may be called to rebut testimony by the defense. Finally, both sides make closing arguments. The judge then issues **instructions** to the jury, including an admonition not to discuss the case with anyone outside the jury room. The jury members leave the courtroom to enter the jury room and begin their **deliberations.**



Image 15.20 Photo of Courtroom (Credit: US Courts)

The jurors pick a foreperson to coordinate their deliberations. They may ask to review evidence or to hear transcripts of testimony. They deliberate in secret and their decision must be unanimous; if they are unable to agree on a verdict after

extensive deliberation, a mistrial (**hung jury**) may be declared, which effectively requires the prosecution to try the case all over again with a new jury.

A defendant found not guilty of all charges will be immediately released unless other charges are pending (e.g., the defendant is wanted for a crime in another jurisdiction).

If the defendant is found guilty of one or more offenses, the judge will choose an appropriate sentence based on the law and the circumstances; in the federal system, this sentence will apply guidelines that assign point values to various offenses and facts in the case. If the prosecution is pursuing the death penalty, the jury will decide whether the defendant should be subject to capital punishment or life imprisonment.

Consider the Original: The 7th Amendment
The Seventh Amendment deals with the rights of those engaged in civil disputes. These are disagreements between individuals or businesses typically seeking compensation for some harm. For example, in an automobile accident, the person responsible is compelled to compensate any others (either directly or through their insurance company). Much of the legal system's work consists of efforts to resolve civil disputes. The Seventh Amendment, in full, reads: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Chart 15.20 Text of 7th Amendment

Because of this provision, all trials in civil cases must take place before a jury unless both sides waive their right to a jury trial. However, this right is not always incorporated; in many states, civil disputes—particularly those involving small sums of money which may be heard by a dedicated small claims court—need not be tried in front of a jury and may instead be decided by a judge working alone (a **bench trial**).

The Seventh Amendment limits the ability of judges to reconsider questions of fact, rather than of law, that were originally decided by a jury. For example, if a jury decides a person was responsible for an action and the case is appealed, the appeals judge cannot decide someone else was responsible. This preserves the traditional common-law distinction that judges are responsible for deciding questions of law while jurors are responsible for determining the facts of a particular case.

Consider the Original: The 8th Amendment
The Eighth Amendment says, in full: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Chart 15.21 Text of 8th Amendment

Bail is a payment of money allowing the accused to be freed pending trial; if you "make bail" in a case and do not show up for your trial, you will forfeit the money you paid. Since many cannot afford bail directly, they may get a *bail bond*, which allows them to pay a fee (typically 10 percent) to a bond seller, who in turn pays the full bail amount to the court. (In most states, the bond seller makes money because the defendant does not get back the money for the bond, and most people show up for their trials.)

However, the court may identify the accused as a flight risk or a risk to the community if freed before trial and may deny bail and hold the accused in jail while awaiting trial. Bail amounts are sometimes challenged as excessive, but such challenges are rarely successful. The Supreme Court has defined an excessive fine as one "so grossly excessive as to amount to deprivation of property without due process of law" or "grossly disproportional to the gravity of a defendant's offense."[6] In practice the courts have rarely struck down fines as excessive either.

The ban on "cruel and unusual punishments" is the most controversial Eighth Amendment provision. Various torturous forms of execution common in the past—drawing and quartering, burning people alive, and the like—are prohibited.[7] Recent controversies over lethal injections and firing squads suggest the topic is still salient. While the Supreme Court has never established a definitive test to define a cruel and unusual punishment, it has generally allowed most penalties short of death for adults, even when some outside observers may reasonably see that punishment as disproportionate or excessive.[8]

In recent years the Supreme Court has issued a series of rulings substantially

Death Penalty Statistics for 2018*

Country	Confirmed Executions 2018	Confirmed Death Sentences 2018
North Korea	unknown	unknown
Syria	unconfirmed	unconfirmed
China	1,000 "termed state secret"	1,000s "termed state secret"
Iran	253+	unknown
Saudi Arabia	149	4+
Vietnam	85+	122+
Iraq	52+	271+
Egypt	43+	717+
United States	25	45
Japan	15	4
Pakistan	14	250+
Belarus	4+	2+
Somalia	13	15+
Yemen	4+	13+
South Sudan	7+	8+
Botswana	2	5
Bangladesh	0	229+
India	0	162
Malaysia	0	190

*Amnesty International Global Report: Death Sentences and Executions 2018, April 2019, Index: ACT 50/9870/2019, Amnesty International opposes the

Chart 15.16 2018 Death Penalty Statistics

narrowing death penalty application. As a result, defendants with mental disabilities may not be executed.[9] Defendants under eighteen years of age when they committed an offense otherwise subject to the death penalty may not be executed.[10] The court has generally rejected the use of the death penalty for crimes that did not result in the death of another human being, most notably in the case of rape.[11]

The United States is among ten countries with the most executions worldwide.

The reexamination of past cases through DNA evidence has revealed dozens in which people were wrongfully executed.[12] For example, Claude Jones was executed for murder based on 1990-era DNA testing of a single hair that was determined at that time to be his; however, with better DNA testing technology, it was later found to be that of the victim.[13] Perhaps as a result of this and other cases, seven additional states have abolished capital punishment since 2007. As of 2015, nineteen states and the District of Columbia no longer apply the death penalty in new cases, and several other states do not carry out executions despite sentencing people to death.[14] It remains to be seen whether this gradual state trend to eliminate the death penalty will continue, or whether the Supreme Court will eventually decide to follow former Justice Harry Blackmun's decision to "no longer… tinker with the machinery of death" and abolish it completely.

Civil Liberties: Questions to Consider

1. Explain why someone accused of a crime might negotiate a plea bargain rather than exercising the right to a trial by jury.
2. Explain the difference between a criminal case and a civil case.

1. if they understand the strength of the evidence against them; on advice of counsel; personal choice
2. criminal cases involve non-compliance with codes of behavior; civil cases involve contractual and personal disputes

Civil Liberties: Terms to Remember

bail–a payment of money allowing the accused to be freed pending trial

double jeopardy–a prosecution pursued twice at the same level of government for the same criminal action

due process–legal procedures followed equitably for all accused individuals before they are deprived of life, liberty or property

economic liberty–the right of individuals to obtain, use, and trade things of value for their own benefit

eminent domain–the power of government to take or use property for a public purpose after compensating its owner; also known as the takings clause of the Fifth Amendment

indictment–official charges against an accused individual

grand jury–group of citizens who must decide if there is a link between evidence and a particular individual; issuing either true bill (indictment) or no bill (free to go); deciding whether to proceed with a trial or not

Miranda warning–a statement by law enforcement officers informing a person arrested or subject to interrogation of his or her rights

plea bargain–an agreement between the defendant and the prosecutor in which the defendant pleads guilty to the charge(s) in question or perhaps to less serious charges, in exchange for more lenient punishment than if convicted after a full trial

prosecutorial discretion–the government may prosecute but chooses not to for various reasons

self-incrimination–an action or statement that admits guilt or responsibility for a crime

Civil Liberties: Works Consulted

1. *Miranda v. Arizona*, 384 U.S. 436 (1966).
2. *Kelo et al. v. City of New London et al.*, 545 U.S. 469 (2005).
3. See, for example, *Barker v. Wingo*, 407 U.S. 514 (1972).
4. See, for example, *Batson v. Kentucky*, 476 U.S. 79 (1986); *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127 (1994).
5. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
6. *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86 (1909); *United States v. Bajakajian*, 524 U.S. 321 (1998).
7. See, for example, the discussion in *Wilkerson v. Utah*, 99 U.S. 130 (1879).
8. Perhaps the most notorious example, *Harmelin v. Michigan*, 501 U.S. 957 (1991), upheld a life sentence where the defendant was convicted of possessing just over one pound of cocaine (and no other crime).
9. *Atkins v. Virginia*, 536 U.S. 304 (2002).
10. *Roper v. Simmons*, 543 U.S. 551 (2005).
11. *Kennedy v. Louisiana*, 554 U.S. 407 (2008).
12. Elizabeth Lopatto, "How Many Innocent People Are Sentenced To Death?," *Forbes*, 29 April 2014. http://www.forbes.com/sites/elizabethlopatto/2014/04/29/how-many-innocent-people-are-sentenced-to-death/#6e9ae5175cc1 (March 1, 2016).
13. Dave Mann, "DNA Tests Undermine Evidence in Texas Execution: New Results Show Claude Jones was Put to Death on Flawed Evidence," *Texas Observer*, 11 November 2010. http://www.texasobserver.org/texas-observer-exclusive-dna-tests-undermine-evidence-in-texas-execution/ (March 4, 2016).
14. See, for example, "States With and Without the Death Penalty," Death Penalty Information Center, http://www.deathpenaltyinfo.org/states-and-without-death-penalty (March 4, 2016).

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15.4 Civil Liberties: Protecting Privacy of Person and Property

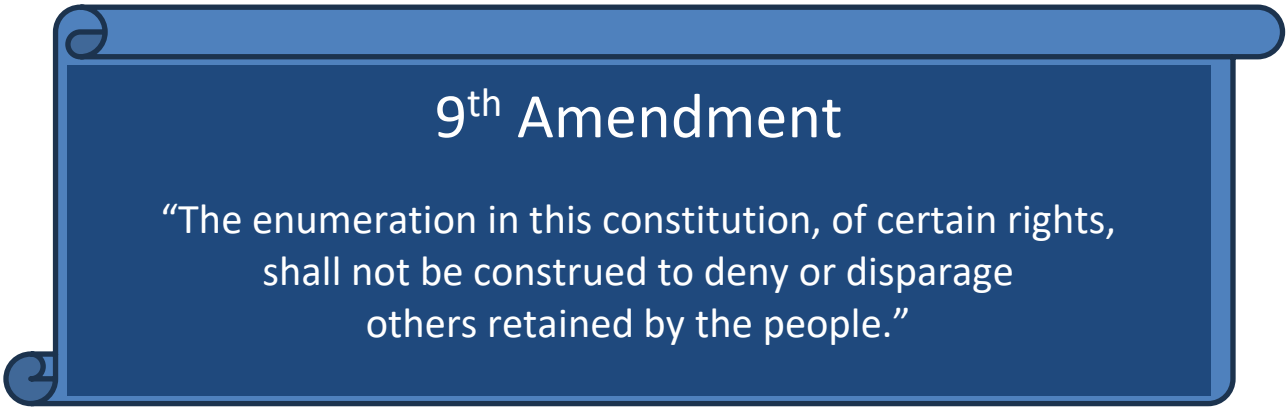


Image 15.22 9th Amendment of the U.S. Constitution, Bill of Rights

Learning Objectives

- Describe how the Ninth Amendment reflects on our other rights.
- Identify the two senses of "right to privacy" embodied in the *Constitution.*
- Explain the controversy over privacy when applied to abortion and same-sex relationships.

Chart 15.17 Learning Objectives on Privacy

The protections in the Bill of Rights have been interpreted and reinterpreted repeatedly over the past two centuries. Previous discussion centered on enumerated/written guarantees of personal liberty; however, the courts have determined that implied protections may also be guaranteed. Privacy rights, an area the Bill of Rights does not address directly demonstrates how the Ninth Amendment has been interpreted to expand the scope of liberties protected by the *Constitution.*

Consider the Original: The 9th Amendment

We noted previously that James Madison and other framers were aware they might endanger some rights if they listed some in the *Constitution* and omitted others. To ensure that constitutional interpreters would recognize that the listing of freedoms and rights in the Bill of Rights was *not* exhaustive, the Ninth Amendment states:

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

Chart 15.18 Text of 9th Amendment

These rights "retained by the people" include the common-law and natural liberties inherited from laws, traditions, and past court decisions. To this day, we regularly exercise and take for granted rights that are not written down, like the right to marry, the right to seek opportunities for employment and education, and the right to have children and raise a family, etc. Supreme Court justices over the years have interpreted the Ninth Amendment differently; some have argued it was intended to extend the liberties protected by the *Constitution* to those natural and common-law rights, while others have argued it does not prohibit states from changing their constitutions and laws to modify or limit those rights as they see fit.

Critics of a broad interpretation assert the *Constitution* provides ways to protect newly formalized rights through the amendment process. For example, in the nineteenth and twentieth centuries the right to vote was gradually expanded by constitutional amendments (the Fifteenth and Nineteenth) even though publicly controversial. However, supporters of a broad interpretation assert the rights of the people—particularly of political or demographic minorities—should not be subject to the whims of popular majorities (as would be the case with a direct democracy and majority rule). A general right to privacy is one the courts have said may be at least partially based on the Ninth Amendment.

The Right to Privacy

Although the specific term *privacy* does not appear in the *Constitution* or Bill of Rights, scholars have interpreted several Bill of Rights' provisions as an indication that James Madison and Congress sought to protect a common-law **right to privacy** as they understood it: a freedom from government intrusion into personal lives, particularly at home. For example, we could view the Second Amendment as reinforcing the common-law right to self-defense in the home; the Third Amendment confirming that soldiers should not be housed in anyone's home; the Fourth Amendment as constraining the state's ability to intrude on someone's home; and the due process and takings clauses of the Fifth Amendment as applying an equally high legal standard to the government's taking a home or property (reinforced after the Civil War by the Fourteenth Amendment).

Alternatively, we could argue that the Ninth Amendment anticipated the existence of a common-law right to privacy when it acknowledged the existence of basic natural liberties not listed in the Bill of Rights or the body of the *Constitution* itself.[1]

Although several state constitutions do list the right to privacy as a protected right, the explicit constitutional recognition by the Supreme Court emerged in 1965 when the court spelled out the right to privacy for the first time in *Griswold v. Connecticut*, a case that struck down a state law forbidding even married individuals to use any form of contraception.[2] Although the *Griswold* case originally pertained only to married couples, in 1972 it was extended to apply the right to obtain contraception to unmarried people as well.[3]

Although neither decision was without controversy, the "sexual revolution" at the time may have contributed to a sense that anti-contraception laws were at the very least dated, if not in violation of people's rights. In Griswold, the Court's majority based its concept of the right of privacy on several

provisions of the Bill of Rights stating that these "[…] various guarantees create zones of privacy." The Court reasoned that the right to marital privacy was "older than the Bill of Rights" and ended the opinion with an impassioned appeal to the sanctity of marriage in the common law tradition. In a concurring opinion with the majority, the 9th Amendment was directly mentioned as lending "[…] strong support to the view that the "liberty" protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned […]." By contrast, the dissenting opinion in this case stated the 9th Amendment was not intended to "broaden the powers of the Court." The reasoning in the dissent we see echoed in other cases, such as abortion or single-sex marriages.[4]

The Right to Privacy and Abortion

The Supreme Court's application of the right to privacy doctrine to abortion rights was legally and politically problematic. In 1972 four states permitted abortions without restrictions, while thirteen allowed abortions "if the pregnant woman's life or physical or mental health were endangered, if the fetus would be born with a severe physical or mental defect, or if the pregnancy had resulted from rape or incest;" and, abortions were completely illegal in Pennsylvania and heavily restricted in the remaining states.[5]

A fundamental question concerning abortion is the proper balance between the individual's unalienable right to life as stated in the *Declaration of Independence* as "[…] life, Liberty and the pursuit of happiness" and the right to privacy as expressed in *Griswold*, where the exercise of the right of privacy impacts the unalienable right to life. Another central question in this debate hinges on the proper role of government in determining which individuals may live and when unalienable rights are conveyed to the individual. The *Dobbs* (24 June 2022) decision overturning *Roe* (22 January 1973) centers on the question regarding which level (national v. state) of government will be involved in the limitations on rights if any.

Some questions, in the public arena, relating to abortion are…

- Does one life take precedence over another?
- Does the age of an individual matter when it comes to government's protection of life?
- When does a human being begin to possess unalienable liberties?
- Does abortion for rape and incest hold an innocent human being accountable for the crime of another?
- Does life begin and end legally with a heartbeat?
- Is abortion government sanctioned murder?

The government had traditionally erred on the side of life prior to *Roe v. Wade*. The legal landscape changed dramatically as a result of the 1973 ruling in *Roe v. Wade*, when the Supreme Court decided under certain situations, the "[…] right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action , as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether to terminate her pregnancy."[6]

The justices ruled that while the government did have an interest in protecting the "potentiality of human life," nonetheless this had to be balanced against the interests of both women's health and women's right to decide whether to have an abortion. Accordingly, the court established a framework to decide whether abortions could be regulated based on the fetus's viability (i.e., potential to survive outside the womb) and the stage of pregnancy, with no restrictions permissible during the first three months of pregnancy (i.e., the first trimester), during which abortions were deemed safer for women than childbirth itself.[7]

The dissenting opinion in Roe stated that the Supreme Court had announced "a new constitutional right" that was not supported by the "[…] language or history of the Constitution" and described it as an unjustified "exercise of raw judicial power […]."[8]

Starting in the 1980s, Supreme Court justices began to readjust and modify the *Roe* decision.

A key turning point was the court's ruling in *Planned Parenthood v. Casey* in 1992, in which a plurality of the court rejected *Roe's* framework based on trimesters of pregnancy and replaced it with the **undue burden test**, which allows restrictions prior to viability that are not "substantial obstacle[s]" (undue burdens) to women seeking an abortion.[9] Rather than relying on the 9th Amendment, this decision based the abortion right entirely on the 14th Amendment's due process clause.

Thus, the court upheld some state restrictions, including a required waiting period between arranging and having an abortion, parental consent (or, if not possible for some reason such as incest, authorization of a judge) for minors, and the requirement that women be informed of abortion health consequences. Other restrictions such as a requirement that a married woman notify her spouse in advance were struck down as an undue burden. Since the *Casey* decision, many states have passed other restrictions, banning certain procedures, requiring women to have and view an ultrasound before an abortion, and implementing more stringent licensing and inspection requirements for facilities where abortions are performed, and late-term abortions in the third trimester.



Image 15.23 Pro-Life and Pro-Choice Protesters

A "March for Life" in Knoxville, Tennessee, on January 20, 2013 (a), marks the anniversary of the *Roe v. Wade* decision. On November 15, 2014, protestors in Chicago demonstrate against a crisis pregnancy center (b), a type of organization that counsels against abortion.
(Credit to OpenStax; a: modification of work by Brian Stansberry; Credit b: modification of work by Samuel Henderson)

In 2023 in *Dobbs v. Jackson Women's Health Organization*, which overturned both *Roe* and *Casey*, the majority opinion ruled against any constitutional right to an abortion whether based upon the 9th or the 14th Amendments' due process clause or equal protection clauses. The dissent reaffirmed the concept of a right to privacy and cautioned that the majority opinion could threaten other accepted privacy rights.[10]

For example, beyond the issue of contraception and abortion, the right to privacy has been interpreted to encompass a more general right for adults to have noncommercial, consensual sexual relationships in private. However, this legal development is relatively new; as recently as 1986, the Supreme Court ruled that states could still criminalize sex acts between two people of the same sex. That decision was overturned in 2003 in *Lawrence v. Texas*, which invalidated state laws that criminalized sodomy.[11]

The state and national governments still have leeway to regulate sexual morality to some degree; "anything goes" is not the law of the land, even for actions that are consensual. Prostitution remains illegal in every state except in certain rural counties in Nevada; both polygamy (marriage to more than one other person) and bestiality (sex with animals) are illegal everywhere. And, as we saw earlier, the states may regulate obscene materials and, in certain situations, material that may be harmful to minors or otherwise indecent; to this end, states and localities have sought to ban or regulate the production, distribution, and sale of pornography.

Privacy in a Society Under Surveillance

Another example of heightened modern era privacy concerns is the recognition that society is under pervasive surveillance. Technology has now made it much easier to track and monitor people. Police cars and roadways are equipped with cameras that can photograph the license plate of every passing car or truck and record it in a database; while allowing police to recover stolen vehicles and catch fleeing suspects, this data can also be used to track the movements of law-abiding citizens.

The pervasive use of GPS (Global Positioning System) raises similar issues.



Image 15.24 Electronic Surveillance via Tollway Passes

One form of technology that has made it easier to potentially monitor people's movements is electronic toll collection, such as the E-ZPass system in the Midwest and Northeast, FasTrak in California, and I-Pass in Illinois. (Credit: OpenStax; modification of work by Kerry Ceszyk)

Even pedestrians and cyclists are relatively easy to track today. Cameras pointed at sidewalks and roadways can employ facial recognition software to identify people. Most people carry smartphones that constantly report their location to the nearest cell phone tower and broadcast a beacon signal to nearby wireless hotspots and Bluetooth devices. With the right software, law enforcement and criminals can remotely activate a phone's microphone and camera, effectively planting a bug in someone's pocket without the person even knowing it.

These are not just gimmicks in a bad science fiction movie; businesses and governments have openly admitted they are using these methods.

Research shows that even metadata—information about the messages we send and the calls we make and receive, such as time, location, sender, and recipient but excluding their content—can reveal much to governments and businesses. Even when information is collected anonymously it can often be traced back to individuals, since people travel and communicate in largely predictable patterns.

Drones (small preprogrammed or remotely piloted aircraft) are becoming the next frontier of privacy issues. Drones can fly virtually undetected and monitor events from overhead. They can peek into fenced backyards and monitor activity inside houses and other buildings using infrared cameras.

The Fourth Amendment was written in an era when finding out what was going on in someone's home meant either going inside or peeking through a window. Applying Fourth Amendment protections today, when seeing into someone's house can be as easy as viewing a remote computer screen, is no longer simple.

In the United States, many civil liberties advocates are concerned that laws such as the USA PATRIOT Act (i.e., Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act), passed weeks after the 9/11 attacks in 2001, have given the federal government too much power by making it easy for officials to seek and obtain search warrants or in some cases to bypass warrant requirements altogether. Critics argue that the Patriot Act has largely been used to prosecute ordinary criminals, mainly drug dealers, rather than the intended terrorists.



Several groups lobby the government, such as **The Electronic Frontier Foundation** and **The Electronic Privacy Information Center**, on issues related to privacy in the information age, particularly on the Internet.

All this is not to say that technological surveillance tools do not have value or are inherently bad. They can be used for many purposes that would benefit society and, perhaps, even enhance our freedoms. Spending less time stuck in traffic because we know there's been an accident—detected automatically because the cell phones that normally whiz by at the speed limit are now crawling along—gives us time to spend on more valuable activities.

Capturing criminals and terrorists by recognizing them or their vehicles before they can continue their agendas will protect the life, liberty, and property of the public at large. At the same time, however, the emergence of these technologies means calls for vigilance and limits on what businesses and governments can do with the information they collect and the length of time they may retain it.

We might also be concerned about how this technology could be used by more oppressive regimes. If the technological resources employed by today's governments had been available to the East German Stasi and the Romanian Securitate, would those repressive regimes have fallen? How much privacy and freedom should citizens sacrifice in order to feel safe?

The courts continue to define the interrelationship of constitutional amendments over time. Because it was not explicitly laid out in the *Constitution*, privacy rights required clarification through public laws and court precedents.

Important cases addressing the right to privacy relate to abortion, sexual behavior, internet activity, and the privacy of personal texts and cell phone calls. Where we draw the line between privacy and public safety is an ongoing discussion and the courts are a significant player.

Civil Liberties: Questions to Consider

1. Which rights and freedoms for citizens do you think our government does a good job of protecting? Why?
2. Which rights and freedoms could it better protect, and how?
3. In which areas do you think people's rights and liberties are at risk of government intrusion? Why? Which solutions would you propose?
1. There is an old saying that it is better for 100 guilty people to go free than for an innocent person to be unjustly punished. Do you agree? Why or why not? What do you think is the right balance for our society to strike?

1. this question is open for debate
2. this question is open to personal opinion and debate
3. this question is open to personal opinion and debate
4. this question is open to personal opinion and debate

Civil Liberties: Terms to Remember

right to privacy–the right to be free of government intrusion

undue burden test–a means of deciding whether a law that makes it harder for women to seek abortions is constitutional

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1. See *Griswold v. Connecticut*, 381 U.S. 479 (1965). This discussion parallels the debate among the members of the Supreme Court in the *Griswold* case.
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16.1 Civil Rights: How are rights identified?



Image 16.1 Photo of Washington Mall and Washington Monument with Crowd of Civil Rights Protesters

Photograph, Civil Rights March on Washington, D.C., August 28, 1963; Credit: National Archives, Records of the U.S. Information Agency, Record Group 306, Identifier 542045

Learning Objectives

- Define the concept of civil rights.
- Describe the standards that courts use when deciding whether a discriminatory law or regulation is unconstitutional.

Chart 16.1 Learning Objectives on Civil Rights and Court Standards for Discrimination

The United States' founding principles are liberty, equality, and justice. However, not all its citizens have enjoyed equal opportunities, the same treatment under the law, or all the liberties extended to others.

Well into the twentieth century, many were routinely legally discriminated against because of sex, race, ethnicity or country of origin, religion, age, sexual orientation, or physical or mental abilities–deprivation of basic rights and opportunities.

The fight to secure equal rights for all continues today. While changes must still be made, the past one hundred years, have brought significant gains for people long legally discriminated against. Yet, people still encounter prejudice and negative stereotypes that lead to legal discrimination and even exclusion from civic life.



Image 16.2 Rev. Dr. Martin Luther King Jr. in Washington D.C.

Civil Rights March on Washington, D.C. [Dr. Martin Luther King, Jr. speaking.] Credit: National Archives Identifier 542069, U.S. Information Agency, 8/28/1963; Access Unrestricted

While prejudice arises with people's opinions, attitudes and behavior, legalized discrimination and injustice are made official governmental policy through rules, regulations, and laws.

The belief that people should be treated equally under the law is one of the cornerstones of political thought in the United States. Yet not all citizens have been treated equally throughout the nation's history, and some are treated differently even today. For example, until 1920, nearly all women in the United States lacked the right to vote. Black men received the right to vote in 1870, but as late as 1940 only 3 percent of African American adults living in the South were registered to vote, largely due to laws designed to keep them from the polls.[11]

Americans were not allowed to enter legal marriage with a member of the same sex in many U.S. states until 2015. Some types of unequal treatment are considered acceptable, while others are not. No one would consider it acceptable to allow a ten-year-old to vote, because a child lacks the ability to understand important political issues, but all reasonable people would agree that it is wrong to mandate racial segregation or to deny someone the right to vote on the basis of race. It is important to understand which types of inequality are unacceptable and why.

In addition to two types of discrimination against individuals or groups, there are two types of law involved in as well. Maintaining a basic understanding of these two types of law is essential to continued progress in expanding civil rights as well as expansion of basic civil liberties.

Defining Civil Rights

Civil rights are, at the most fundamental level, guarantees by the government that it will treat people equally, particularly people belonging to groups that have historically been denied the same rights and opportunities as others.

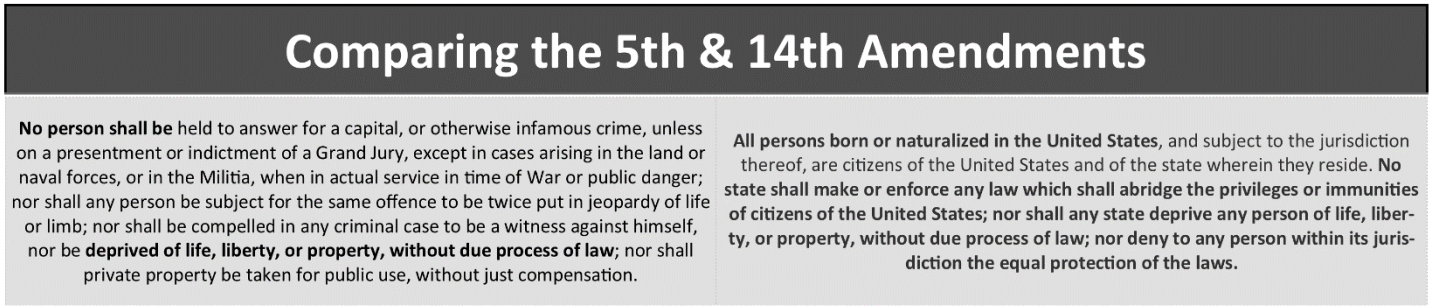


Chart 16.2 Comparison of 5th and 14th Amendments

While the proclamation that "all men are created equal" appears in the *Declaration of Independence*, it was the due process clause of the Fifth Amendment to the *U.S. Constitution* that actually added the initial requirement that the federal government treat people equally. According to Chief Justice Earl Warren in the Supreme Court case of *Bolling v. Sharpe* (1954), "discrimination may be so unjustifiable as to be violative of due process."[2]

Additional guarantees of equality are strengthened by the **equal protection clause and due process clause** of the Fourteenth Amendment, ratified in 1868, which states in part that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Thus, between the Fifth and Fourteenth Amendments, neither state governments nor the federal government may treat people unequally unless unequal treatment is necessary to maintain important governmental interests, like public safety.

We can contrast *civil rights* with *civil liberties*, which are limitations on government power designed to protect our fundamental freedoms. For example, the Eighth Amendment prohibits the application of "cruel and unusual punishments" to those convicted of crimes, a limitation on government power—protecting a civil liberty. As an example of civil rights, the guarantee of equal protection means the laws and the Constitution must be applied on an equal basis, limiting the government's ability to discriminate or treat some people differently, unless the unequal treatment is based on a valid reason, such as age. A law that imprisons Asian Americans twice as long as Latinos would treat some people differently from others for no valid reason and might well be unconstitutional—a civil rights violation. According to the Supreme Court's interpretation of the Equal Protection Clause, "all persons similarly circumstanced shall be treated alike."[3]

If people are not similarly circumstanced, however, they may be treated differently. Asian Americans and Latinos who have broken the same law are similarly circumstanced; however, a blind driver or a ten-year-old driver is differently circumstanced than a sighted, adult driver.

Identifying Discrimination

Laws that treat one group of people differently from others are not always unconstitutional. In fact, the government engages in legal discrimination quite often. In most states, you must be eighteen years old to smoke cigarettes and twenty-one to drink alcohol; these laws discriminate against the young. To get a driver's license so you can legally drive a car on public roads, you must be a minimum age and pass tests showing your knowledge, practical skills, and vision.

For example, if you are attending a publicly funded community college, the college you attend has an open admission policy, which means it admits all who apply. Not all publicly funded colleges and universities have an open admissions policy, however. These institutions may require that students have a score on the SAT or ACT or a GPA above a certain number to be admitted. In a sense, this is discrimination, because these requirements treat people unequally; people who do not have a high enough GPA or SAT score are not admitted.

Levels of Scrutiny

How can the federal, state, and local governments discriminate in all these ways even though the equal protection clause seems to suggest that everyone be treated the same?

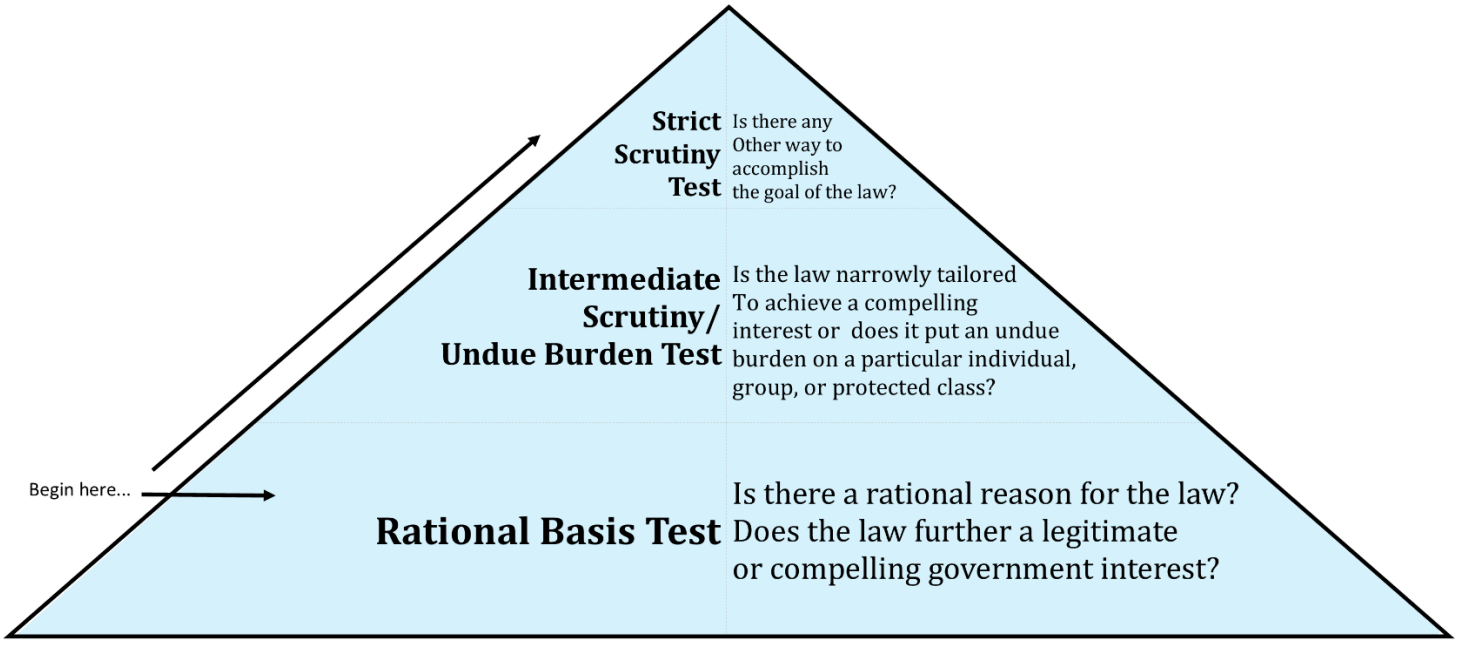


Chart 16.3 Various Tests Employed by the Supreme Court in Decision Making Process

The answer to this question lies in the *purpose* of the discriminatory practice. In most cases when the courts are deciding whether discrimination is unlawful, the government must demonstrate only that it has a good reason for engaging in it. Unless the person or group challenging the law can prove otherwise, the courts will generally decide the discriminatory practice is allowed. In these cases, the courts are applying the **rational basis test**. That is, as long as there's a reason for treating some people differently

that is "rationally related to a legitimate government interest," the discriminatory act or law or policy is acceptable.[4]

For example, since letting blind people operate cars would be dangerous to others on the road, the law forbidding them to drive is reasonably justified on the grounds of safety; thus, it is allowed even though it discriminates against the blind. Similarly, when universities and colleges refuse to admit students who fail to meet a certain test score or GPA, they can discriminate against students with weaker grades and test scores because these students most likely do not possess the knowledge or skills needed to do well in their classes and graduate from the institution. The universities and colleges have a legitimate reason for denying these students entrance.

The courts, however, are much more skeptical when it comes to certain other forms of discrimination. Because of the United States' history of discrimination against people of non-white ancestry, women, and members of ethnic and religious minorities, the courts apply more stringent rules to policies, laws, and actions that discriminate on the basis of race, ethnicity, gender, religion, or national origin.[5]

Discrimination based on gender or sex is generally examined with **intermediate scrutiny**. The standard of intermediate scrutiny was first applied by the Supreme Court in *Craig v. Boren* (1976) and again in *Clark v. Jeter* (1988).[6]

It requires the government to demonstrate that treating men and women differently is "substantially related to an important governmental objective." This puts the burden of proof on the *government* to demonstrate why the unequal treatment is justifiable, not on the individual who alleges unfair discrimination has taken place.

In practice, this means laws that treat men and women differently are sometimes upheld, although usually they are not. For example, in the 1980s and 1990s, the courts ruled that states could not operate single-sex institutions of higher education and that such schools, like South Carolina's military college The Citadel must admit both male and female students.[7]

Women in the military are now also allowed to serve in all combat roles.[8]



(a) (b)

While the first female cadets graduated from the U.S. Military Academy at West Point in 1980 (a), The Citadel, a military college in South Carolina (b), was an all-male institution until 1995 when a young woman named Shannon Faulkner enrolled in the school. (Credit: OpenStax included images)

Image 16.3 Photos of Female Cadet Graduates and The Citadel Military College

Discrimination against members of racial, ethnic, or religious groups or those of various national origins is reviewed to the greatest degree by the courts, which apply the **strict scrutiny** standard in these cases.

Under **strict scrutiny**, the burden of proof is on the government to demonstrate that there is a compelling governmental interest in treating people from one group differently from those who are not part of that group—the law or action can be "narrowly tailored" to achieve the goal in question, and that it is the "least restrictive means" available to achieve that goal.[9]

In other words, if there is a non-discriminatory way to accomplish the goal in question, discrimination should not take place. In the modern era, laws and actions that are challenged under strict scrutiny have rarely been upheld. Strict scrutiny, however, was the legal basis for the Supreme Court's 1944 upholding of the legality of the internment of Japanese Americans during World War II, discussed later in this chapter.[10]

Finally, **affirmative action** consists of government programs and policies designed to benefit members of groups historically subject to discrimination. Much of the controversy surrounding affirmative action is about whether strict scrutiny should be applied to these cases. In a 1995 Supreme Court decision, *Adarand Constructors v. Pena*, the Court stated that certain affirmative action programs must survive strict scrutiny and that the government must show that such programs serve a compelling governmental interest that is narrowly tailored as well as the least restrictive method available to achieve that particular governmental interest.[11] Some affirmative action programs have been struck down on the basis of strict scrutiny.

Two close decisions by the Supreme Court involving affirmative action admission policies at the University of Michigan (*Grutter v. Bollinger*, 2003) and University of Texas (*Fisher v. University of Texas*, 2016) were upheld under the strict scrutiny test.[12] The Supreme Court ruled (in *Students for Fair Admissions v. Harvard*, 2023) that race-conscious admission policies of Harvard College failed the strict scrutiny test and violated the Equal Protection Clause of the 14th Amendment. On the same day, the Court also ruled against a similar admissions program at the University of North Carolina. The Court stated, "Both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping."[13]

Putting Civil Rights in the *Constitution*

At the time of the nation's founding, of course, the treatment of many groups was unequal: hundreds of thousands of people of African descent were not free, the rights of women were decidedly fewer than those of men, and the native peoples of North America were generally not considered U.S. citizens at all. While the early United States was perhaps a more egalitarian society than most of the world at that time, equal legal treatment of all persons was at best still a radical idea.

The aftermath of the Civil War marked a turning point for civil rights. Many former Confederate Democrat politicians and their sympathizers returned to power and attempted to circumvent the freeing of slaves by passing laws known as the black codes. They passed laws designed to reduce former slaves to

the status of serfs or indentured servants; blacks were not just denied the right to vote but also could be arrested and jailed for vagrancy or idleness if they lacked jobs. Moreover, Blacks were excluded from public schools and state colleges and were subject to violence at the hands of whites.[14]

To override the southern states' actions, lawmakers in Congress proposed two amendments to the *Constitution* designed to give political equality and power to former slaves; once passed by Congress and ratified by the necessary number of states, these became the Fourteenth and Fifteenth Amendments. The Fourteenth Amendment, in addition to including the equal protection clause as noted above, also was designed to ensure that the states would respect the civil liberties of freed slaves.

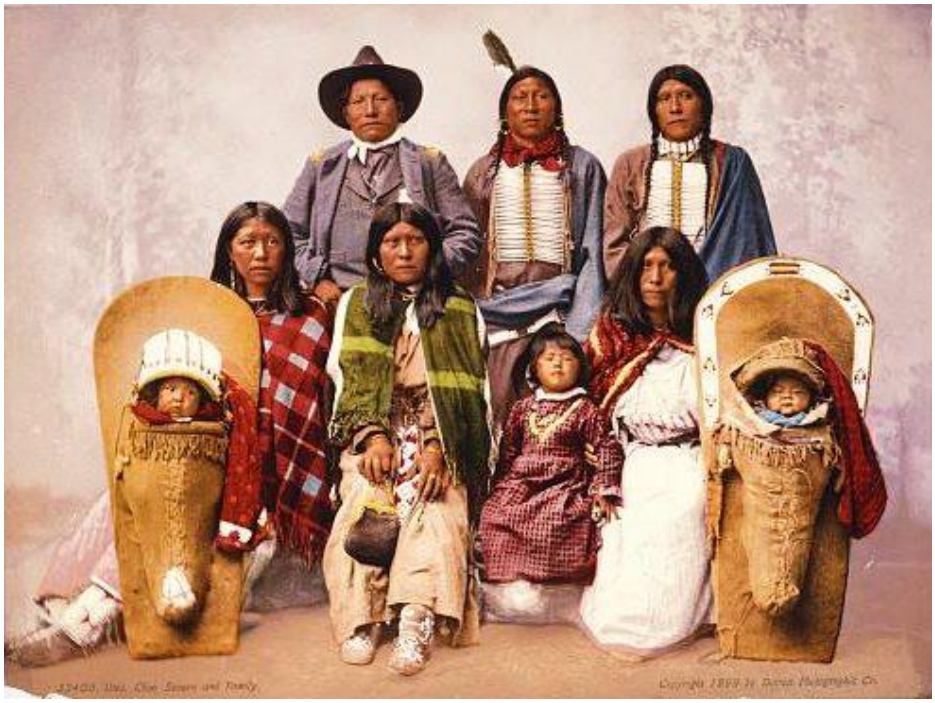


Image 16.4 Ute Indian Family Denver, Colorado

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The Fifteenth Amendment was proposed to ensure the right to vote for black men, which will be discussed in more detail later in this chapter.

Identifying Civil Rights Issues

When we look back at the past, it is relatively easy to identify civil rights issues that arose. But looking into the future is much harder. In past decades the rights of those with disabilities, particularly mental disabilities, were often ignored by the public at large. Many people with disabilities were institutionalized and given little further thought, and within the past century, it was common for those with mental disabilities to be subject to forced sterilization.[15]

The passage of the 14th Amendment provided the vehicle for identifying and addressing civil rights issues relating to many groups that have faced unjust legal discrimination in the past. Several of the following sections of this chapter focus on civil rights concerns of these other groups for which the passage of the 14th Amendment facilitated the expansion of rights for these groups.

QUESTIONS TO CONSIDER

1. How can the federal, state, or local government legally discriminate?

   Answer
   Only by demonstrating there is a legitimate compelling government interest in treating some people differently following the legal standard of 1) rational basis; 2) intermediate scrutiny or undue burden; and 3) strict scrutiny.

2. What is meant by the term equal protection?

   Answer
   no individual is treated differently than another under the law; it is a provision of the 14th Amendment that requires the states to treat all residents equally under the law

TERMS TO REMEMBER

affirmative action–the use of programs and policies designed to assist groups that have historically been subject to discrimination

equal protection clause–a provision of the Fourteenth Amendment that requires the states to treat all residents equally under the law

intermediate scrutiny–the standard used by the courts to decide cases of discrimination based on gender and sex; burden of proof is on the government to demonstrate an important governmental interest is at stake in treating men differently from women

rational basis test–the standard used by the courts to decide most forms of discrimination; the burden of proof is on those challenging the law or action to demonstrate there is no good reason for treating them differently from other citizens

strict scrutiny–the standard used by the courts to decide cases of discrimination based on race, ethnicity, national origin, or religion; burden of proof is on the government to demonstrate a compelling governmental interest is at stake and no alternative means are available to accomplish its goals

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16.2 Civil Rights: The Struggle for Equality



Image 16.5 Photo of Civil Rights March 1963

Photograph of "Civil Rights March on Washington, D.C." Credit: Library of Congress Identifier 2003688164; 28 August 1963 by Warren K. Leffler; no known restrictions on use

Learning Objectives

- Identify key events in the history of African American civil rights.
- Explain how the courts, Congress, and the executive branch supported the civil rights movement.
- Describe the role of grassroots efforts in the civil rights movement.

Chart 16.4 Learning Objectives on Civil Rights History

Many groups in U.S. history have sought recognition as equal citizens. Although each group's efforts have been notable and important, arguably the greatest, longest, and most violent struggle was that of African Americans, whose once-inferior legal status was supported by the text of the *Constitution*.

Their fight for freedom and equality provided the legal and moral foundation for others who sought recognition of their equality later, and they were not alone in this fight.

Slavery, the Civil War, and the Struggle for Equality

In the *Declaration of Independence*, Thomas Jefferson wrote that "all men are created equal" and "are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Yet, Jefferson owned dozens of other human beings as his personal property. He

recognized this contradiction and personally considered the institution of slavery to be a "hideous blot" on the nation.[1] However, in order to forge a stronger political union that would garner sufficient support to be enacted, the framers of the *Constitution*—chose not to postpone a decision on the issue. After the Revolution, while southern states continued to maintain slavery, many of the northern states did abolish slavery for a variety of reasons.[2]

Ultimately, of course, the slavery issue was decided by the Civil War (1861–1865), with the Democrat controlled southern states seceding from the Union to defend their legal right to own slaves.[3]

Consider the Original

No Compromise with Slavery.

AN ADDRESS DELIVERED IN THE BROADWAY TABERNACLE, NEW YORK, FEBRUARY 14, 1854, BY WILLIAM LLOYD GARRISON.

NEW YORK:
AMERICAN ANTI-SLAVERY SOCIETY, 142 NASSAU STREET, 1854.

"[…] I am a believer in that portion of the Declaration of American Independence in which it is set forth, as among self-evident truths, "that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." Hence, I am an Abolitionist. Hence, I cannot but regard oppression in every form–and most of all, that which turns a man into a thing–with indignation and abhorrence.

Not to cherish these feelings would be recreancy to principle. They who desire me to be dumb on the subject of Slavery, unless I will open my mouth in its defence, ask me to give the lie to my professions, to degrade my manhood, and to stain my soul. I will not be a liar, a poltroon, or a hypocrite, to accommodate any party, to gratify any sect, to escape any odium or peril, to save any interest, to preserve any institution, or to promote any object. Convince me that one man may rightfully make another man his slave, and I will no longer subscribe to the Declaration of Independence. Convince me that liberty is not the inalienable birthright of every human being, of whatever complexion or clime, and I will give that instrument to the consuming fire.

(William Lloyd Garrison did, in fact, burn a copy of the Constitution at a rally on July 4, 1854 in Framingham, Massachusetts calling it a "covenant with death" and an "agreement with hell.")

I do not know how to espouse freedom and slavery together.

[…] The Abolitionism which I advocate is as absolute as the law of God, and as unyielding as His throne. It admits of no compromise. Every slave is a stolen man; every slaveholder is a man-stealer. By no precedent, no example, no law, no compact, no purchase, no bequest, no inheritance, no combination of circumstances, is slaveholding right or justifiable. While a slave remains in his fetters, the land must have no rest. Whatever sanctions his doom must be pronounced accursed. The law that makes him a chattel is to be trampled under foot; the compact that is formed at his expense, and cemented with his blood, is null and void […]."[4]

Credit: Project Gutenberg, no restrictions, http://archive.org/stream/nocompromisewith24194gut/pg24194.txt

Chart 16.5 Excerpt from William Lloyd Garrison Speech on Anti-Slavery

Reconstruction

At the end of the Civil War, the South entered a period called Reconstruction (1865–1877) during which the state governments were reorganized before the rebellious states could be readmitted to the Union. As part of this process, the Republican Party pushed for a permanent end to slavery. A constitutional amendment to this effect was passed by the House of Representatives in January 1865, after having already been approved by the Senate in April 1864, and it was ratified in December 1865 as the **Thirteenth Amendment**. The amendment's first section states, "Neither slavery nor involuntary

servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." In effect, this amendment outlawed slavery in the United States.

The changes wrought by the **Fourteenth Amendment** were more extensive. In addition to introducing the equal protection clause to the *Constitution*, this amendment also extended the due process clause of the Fifth Amendment to the states, required the states to respect the privileges or immunities of all citizens, and, for the first time, defined citizenship at the national and state levels. People could no longer be excluded from citizenship based solely on their race. Although some of these provisions were rendered mostly toothless by the courts or the lack of political action to enforce them, others were pivotal in the expansion of civil rights. The **Fifteenth Amendment** stated that people could not be denied the right to vote based on "race, color, or previous condition of servitude." This construction allowed states to continue to decide the qualifications of voters if those qualifications were ostensibly race-neutral.

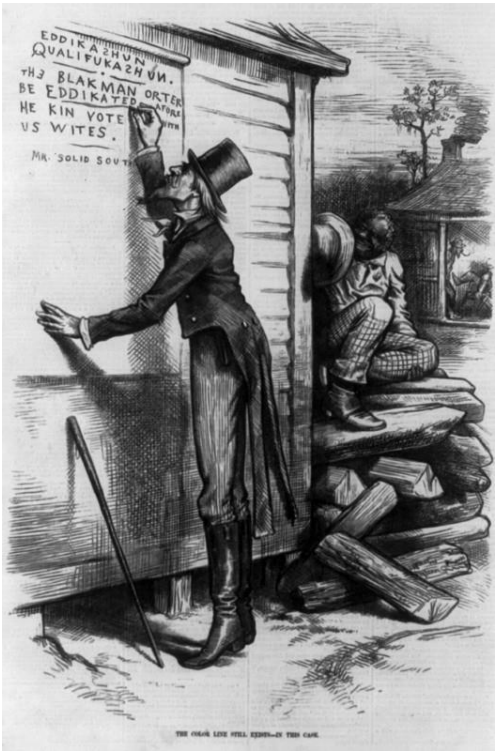


Image 16.6 Cartoon Related to the Grandfather Clause for Suffrage

A magazine cartoon from 1879 ridicules the practice of illiterate, southern whites requiring that a "blakman" be "eddikated" before he could vote. The grandfather clause made such a situation possible. (Credit: Library of Congress: OpenStax included image)

Although the immediate effect of these provisions was quite profound Reconstruction ended with the end of military rule in the South and the withdrawal of the Union army in 1877.[4]

Following the army's removal, political control of the South was once again in the hands of the Democrat Party and men willing to use violence to discourage blacks from exercising the rights they had been granted.[5]

The revocation of voting rights, or **disenfranchisement**, took a number of forms; not every southern state used the same methods, and some states used more than one, but they all disproportionately affected black voter registration and turnout.[6]

Perhaps the most famous of the tools of disenfranchisement were **literacy tests** and **understanding tests**. Literacy tests, which had been used in the North since the 1850s to disqualify naturalized European immigrants from voting, called on the prospective voter to demonstrate his (and later her) ability to read a passage of text. However, since voter registration officials had discretion to decide what text the voter was to read, they could give easy passages to voters they wanted to register and more difficult passages to those whose registration they wanted to deny. Understanding tests required the prospective voter to explain the *meaning* of a passage of text, often a provision of the U.S. *Constitution*, or answer a series of questions related to citizenship. Again, since the official examining the prospective voter could decide which passage or questions to choose, the difficulty of the test might vary dramatically between white and black applicants.[7]

Even had these tests been administered fairly and equitably, however, most blacks would have been at a huge disadvantage, because few could read.

Some Blacks were able to take advantage of educational opportunities after they were freed from slavery, but many were not able to gain effective literacy.

In some states, poorer, less literate white voters feared being disenfranchised by the literacy and understanding tests. Some states introduced a loophole, known as the **grandfather clause**, to allow illiterate whites to vote.

The grandfather clause exempted those who had been allowed to vote in that state prior to the Civil War–and their descendants–from literacy and understanding tests.[8]

Because blacks were not allowed to vote prior to the Civil War, but most white men had been voting at a time when there were no literacy tests, this loophole allowed most illiterate whites to vote while leaving obstacles in place for blacks who wanted to vote as well. Time limits were often placed on these provisions because state legislators realized that they might quickly be declared unconstitutional, but they lasted long enough to allow illiterate white men to register to vote.[9]

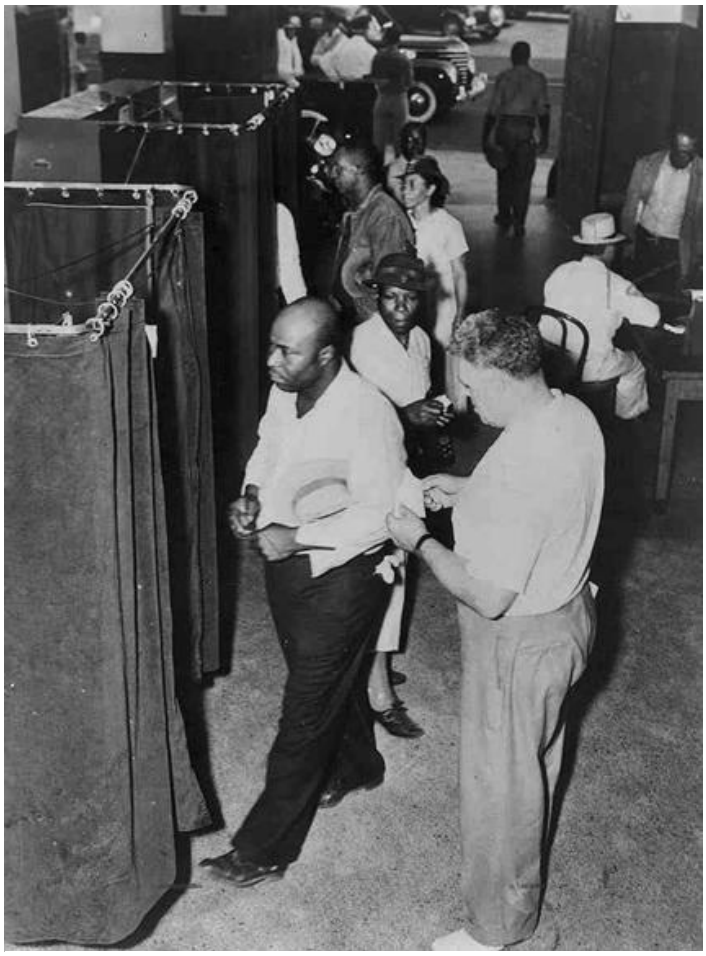
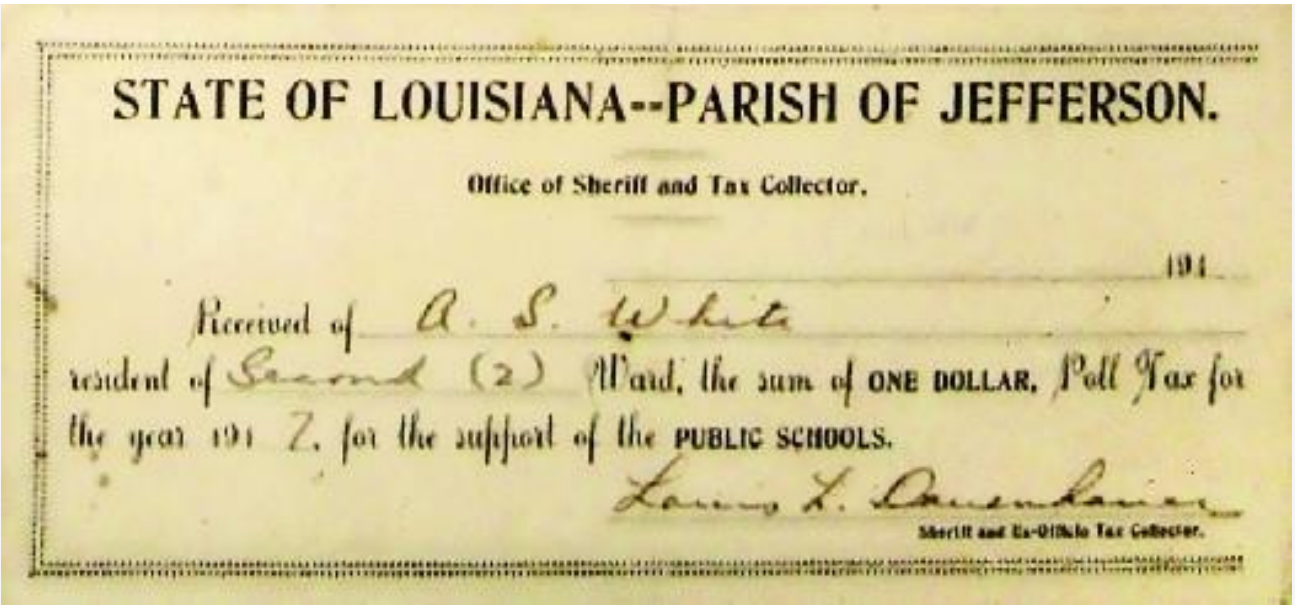


Image 16.7 Black Voters 1945

"Voters at the Voting Booths, ca. 1945." (Credit: Prints and Photographs Division, Library of Congress)

In states where the voting rights of poor whites were less of a concern, another tool for disenfranchisement was the **poll tax**. This was an annual per-person tax, typically one or two dollars (on the order of $20 to $50 today), that a person had to pay to register to vote.

People who did not want to vote did not have to pay, but in several states the poll tax was cumulative, so if you decided to vote you would have to pay not only the tax due for that year but any poll tax from previous years as well. Because former slaves were usually quite poor, they were less likely than white men to be able to pay poll taxes.[10]



STATE OF LOUISIANA--PARISH OF JEFFERSON.

Office of Sheriff and Tax Collector.

191

Received of A. S. White

resident of Second (2) Ward, the sum of ONE DOLLAR, Poll Tax for the year 191 7, for the support of the PUBLIC SCHOOLS.

Louis L. Dumas

Sheriff and Ex-Officio Tax Collector.

Image 16.8 Copy of Poll Tax Receipt

According to this receipt, a man named A. S. White paid his $1 poll tax in Jefferson Parish, Louisiana, in 1917. (Credit: Library of Congress)

Although these methods were usually enough to ensure that blacks were kept away from the polls, some dedicated African Americans did manage to register to vote despite the obstacles placed in their way. To ensure their vote was largely meaningless, the white elites used their control of the Democratic Party to create the **white primary**: primary elections in which only whites could vote. The state party organizations argued that as private groups, rather than part of the state government, they had no obligation to follow the Fifteenth Amendment's requirement not to deny the right to vote based on race. Furthermore, they contended, voting for nominees to run for office was not the same as electing those who would hold office. They held primary elections to choose the Democratic nominee in which only white citizens were allowed to vote.[11]

Once the nominee had been chosen, he or she might face token opposition from a Republican or minor-party candidate in the general election, but since white voters had agreed beforehand to support whoever won the Democrats' primary, the outcome of the general election was a foregone conclusion.

With blacks effectively disenfranchised, the restored southern state governments undermined guarantees of equal treatment in the Fourteenth Amendment. They passed laws that excluded African Americans from juries and allowed the imprisonment and forced labor of "idle" black citizens.

The laws also called for segregation of whites and blacks in public places under the doctrine known as "separate but equal." As long as nominally equal facilities were provided for both whites and blacks, it was legal to require members of each race to use the facilities designated for them. Similarly, state and local governments passed laws limiting what neighborhoods blacks and whites could live in. Collectively, these discriminatory laws came to be known as **Jim Crow laws**.

The Supreme Court upheld the separate but equal doctrine in 1896 in ***Plessy v. Ferguson***, consistent with the Fourteenth Amendment's equal protection clause, and allowed segregation to continue.[12]

Interesting Information

In a speech delivered in the Ohio House of Representatives in 1886 and later published as *The Black Laws*, legislator Benjamin W. Arnett described life in segregated Ohio: I have traveled in this free country for twenty hours without anything to eat; not because I had no money to pay for it, but because I was colored. Other passengers of a lighter hue had breakfast, dinner and supper. In traveling we are thrown in "Jim Crow" cars, denied the privilege of buying a berth in the sleeping coach. This foe of my race stands at the schoolhouse door and separates the children, by reason of 'color,' and denies to those who have a visible admixture of African blood in them the blessings of a graded school and equal privileges… We call upon all friends of 'Equal Rights' to assist in this struggle to secure the blessings of untrammeled liberty for ourselves and posterity.

B. W. Arnett, *The Black Laws*, March 10, 1886. *African American Perspectives*, 1818-1907



Credit: Library of Congress at https://www.loc.gov/item/today-in-history/may-18/

Chart 16.6 Excerpt on Jim Crow Laws

Civil Rights in the Courts

By the turn of the twentieth century, the position of African Americans was quite bleak. Even outside the South, racial inequality was a fact of everyday life. African American leaders and thinkers themselves disagreed on the right path forward.

Some, like Booker T. Washington, argued that acceptance of inequality and segregation over the short term would allow African Americans to focus their efforts on improving their educational and social status until whites were forced to acknowledge them as equals.

W. E. B. Du Bois, however, argued for a more confrontational approach and in 1909 founded the National Association for the Advancement of Colored People (NAACP) as a rallying point for securing equality. Liberal whites dominated the organization in its early years, but African Americans assumed control over its operations in the 1920s.[13]

The NAACP soon focused on a strategy of overturning Jim Crow laws through the courts. Perhaps its greatest series of legal successes consisted of its efforts to challenge segregation in education. Early cases brought by the NAACP dealt with racial discrimination in higher education.

In 1938, the Supreme Court essentially gave states a choice: they could either integrate institutions of higher education, or they could establish an equivalent university or college for African Americans.[14]



May 18, 1896, the Supreme Court ruled separate-but-equal facilities constitutional on intrastate railroads. For some fifty years, the *Plessy v. Ferguson* decision upheld the principle of racial segregation. Across the country, laws mandated separate accommodations on buses and trains, and in hotels, theaters, and schools. (Credit: Russell Lee, photographer, 1903-1986, published July 1939, Library of Congress at http://hdl.loc.gov/loc.pnp/pp.fsaowi)

Southern states chose to establish colleges for blacks rather than allow them into all-white state institutions. Although this ruling expanded opportunities for professional and graduate education in areas such as law and medicine for African Americans by requiring states to provide institutions for them to attend, it nevertheless allowed segregated colleges and universities to continue to exist.

The landmark court decision of the judicial phase of the civil rights movement settled the ***Brown v. Board of Education*** case in 1954.[15] In this case, the Supreme Court unanimously overturned its decision in *Plessy v. Ferguson* as it pertained to public education, stating that a separate but equal education was a logical impossibility.

Even with the same funding and equivalent facilities, a segregated school could not have the same teachers or environment as the equivalent school for another race. The court also rested its decision in part on social science studies suggesting that racial discrimination led to feelings of inferiority among African American children. The only way to dispel this sense of inferiority was to end segregation and integrate public schools.

It is safe to say this ruling was controversial. While integration of public schools took place without much incident in some areas of the South, particularly where there were few black students, elsewhere it was often confrontational—or nonexistent. In recognition of the fact that southern states would delay school integration for as long as possible, civil rights activists urged the federal government to enforce the Supreme Court's decision.

Organized by A. Philip Randolph and Bayard Rustin, approximately twenty-five thousand African Americans gathered in Washington, DC, on May 17, 1957, to participate in a Prayer Pilgrimage for Freedom.[16]

A few months later, in Little Rock, Arkansas, Governor Orval Faubus resisted court-ordered integration and mobilized National Guard troops to keep black students out of Central High School. President Eisenhower then called up the Arkansas National Guard for federal duty (essentially taking the troops out of Faubus's hands) and sent soldiers of the 101st Airborne Division to escort students to and from classes. To avoid integration, Faubus closed four high schools in Little Rock the following school year.[17]



Image 16.9 Photo of Black Students Escorted to School by 101st Airborne

Opposition to the 1957 integration of Little Rock's all-white Central High School led President Eisenhower to call in soldiers of the 101st Airborne Division. For a year, they escorted nine African American students to and from school and to and from classes within the school. (Credit: The U.S. Army)

In Virginia, state leaders employed a strategy of "massive resistance" to school integration, which led to the closure of a large number of public schools across the state, some for years.[18]

Although ***de jure* segregation**, segregation mandated by law, had ended on paper, in practice (***de facto* segregation**), few efforts were made to integrate schools in most school districts with substantial black student populations until the late 1960s. Many white southerners who objected to sending their children to school with blacks then established private academies that admitted only white students.[19]

Advances were made in the courts in areas other than public education. In many neighborhoods in northern cities, which technically were not segregated, residents were required to sign restrictive real estate covenants promising that if they moved, they would not sell their houses to African Americans and sometimes not to Chinese, Japanese, Mexicans, Filipinos, Jews, and other ethnic minorities as well.[20]

In the case of *Shelley v. Kraemer* (1948), the Supreme Court held that while such covenants did not violate the Fourteenth Amendment because they consisted of agreements between private citizens, their provisions could not be enforced by courts.[21]

Because state courts are government institutions and the Fourteenth Amendment prohibits the government from denying people equal protection of the law, the courts' enforcement of such covenants would be a violation of the amendment. Thus, if a white family chose to sell its house to a black family and the other homeowners in the neighborhood tried to sue the seller, the court would not hear the case. In 1967, the Supreme Court struck down a Virginia law that prohibited interracial marriage in ***Loving v. Virginia***.[22]

Legislating Civil Rights

Beyond these favorable court rulings, however, progress toward equality for African Americans remained slow in the 1950s. In 1962, Congress proposed what later became the Twenty-Fourth Amendment, which banned the poll tax in elections to federal (but not state or local) office; the amendment went into effect after being ratified in early 1964. Several southern states continued to require residents to pay poll taxes in order to vote in state elections until 1966 when, in the case of *Harper v. Virginia Board of Elections*, the Supreme Court declared that requiring payment of a poll tax in order to vote in an election at any level was unconstitutional.[23]

The slow rate of progress led to frustration within the Black community. Newer, grassroots organizations such as the Southern Christian Leadership Conference (SCLC), Congress of Racial Equality (CORE), and Student Non-Violent Coordinating Committee (SNCC) challenged the NAACP's position as the leading civil rights organization and questioned its legal-focused strategy. These newer groups tended to prefer more confrontational approaches, including the use of **direct action** campaigns relying on marches and demonstrations. The strategies of nonviolent resistance and **civil disobedience**, or the refusal to obey an unjust law, had been effective in the campaign led by Mahatma Gandhi to liberate colonial India from British rule in the 1930s and 1940s. Civil rights pioneers adopted these measures in the 1955–1956 Montgomery bus boycott. After Rosa Parks refused to give up her bus seat to a white person and was arrested, a group of black women carried out a day-long boycott of Montgomery's public transit system. This boycott was then extended for over a year and overseen by union organizer E. D. Nixon. The effort desegregated public transportation in that city.[24]

Direct action also took such forms as the sit-in campaigns to desegregate lunch counters that began in Greensboro, North Carolina, in 1960, and the 1961 Freedom Rides in which black and white volunteers rode buses and trains through the South to enforce a 1946 Supreme Court decision that desegregated interstate transportation (*Morgan v. Virginia*).[25]

While such focused campaigns could be effective, they often had little impact in places where they were not replicated. In addition, some of the campaigns led to violence against both the campaigns' leaders and ordinary people; Rosa Parks, a longtime NAACP member and graduate of the Highlander Folk School for civil rights activists, whose actions had begun the Montgomery boycott, received death threats, E. D. Nixon's home was bombed, and the Freedom Riders were attacked in Alabama.[26]

As the campaign for civil rights continued and gained momentum, President John F. Kennedy called for Congress to pass new civil rights legislation, which began to work its way through Congress in 1963.

Although there was bipartisan support for this legislation, Democrats filibustered for 75 days before Republicans attained enough support to move the process forward. The **Civil Rights Act of 1964** had wide-ranging effects on U.S. society. Not only did the act outlaw government discrimination and the unequal application of voting qualifications by race, but it also, for the first time, outlawed segregation and other forms of discrimination by most businesses that were open to the public, including hotels, theaters, and restaurants that were not private clubs.

This act outlawed discrimination on the basis of race, ethnicity, religion, sex, or national origin by most employers, and it created the Equal Employment Opportunity Commission (EEOC) to monitor employment discrimination claims and help enforce this provision of the law. The provisions that affected private businesses and employers were legally justified not by the Fourteenth Amendment's guarantee of equal protection of the laws but instead by Congress's power to regulate interstate commerce.[27]



Image 16.10 Photo of John Lewis and Other Civil Rights Protesters Being Assaulted by Law Enforcement

John Lewis, the leader of Student Nonviolent Coordinating Committee, is beaten by a state trooper March 7, 1965, as he attempts to march with 600 others from Selma to Montgomery, Alabama, in a right to vote demonstration. Credit: National Archives at archives.gov/exhibits/eyewitness/html.php?section=2; "John Lewis (in the foreground) being beaten by state troopers, March 7, 1965."

Even though the Civil Rights Act of 1964 had a monumental impact over the long term, it did not end efforts by many southern whites to maintain the white-dominated political power structure in the region. Progress in registering African American voters remained slow in many states despite increased federal

activity supporting it, so civil rights leaders including Rev. Dr. Martin Luther King, Jr. decided to draw the public eye to the area where the greatest resistance to voter registration drives were taking place.

The Southern Christian Leadership Conference and Student Nonviolent Coordinating Committee particularly focused their attention on the city of Selma, Alabama, which had been the site of violent reactions against civil rights activities.

The organizations' leaders planned a march from Selma to Montgomery in March 1965. Their first attempt to march was violently broken up by state police and sheriff's deputies. The second attempt was aborted because King feared it would lead to a brutal confrontation with police and violate a court order from a federal judge who had been sympathetic to the movement in the past. That night, three of the marchers, white ministers from the north, were attacked and beaten with clubs by members of the Ku Klux Klan; one of the victims died from his injuries.

Televised images of the brutality against protesters and the death of a minister led to greater public sympathy for the cause. Eventually, a third march was successful in reaching the state capital of Montgomery.[28]

The 1987 PBS documentary ***Eyes on the Prize*** won several Emmys and other awards for its coverage of major events in the civil rights movement, including the Montgomery bus boycott, the battle for school integration in Little Rock, the march from Selma to Montgomery, and Martin Luther King, Jr.'s leadership of the march on Washington, DC.

The events at Selma galvanized support in Congress for a follow-up bill solely dealing with the right to vote. The Voting Rights Act of 1965 went beyond previous laws by requiring greater oversight of elections by federal officials. Literacy and understanding tests, and other devices used to discriminate against voters on the basis of race, were banned.

The Voting Rights Act proved to have much more immediate and dramatic effect than the laws that preceded it; what had been a fairly slow process of improving voter registration and participation was replaced by a rapid increase of black voter registration rates—although white registration rates increased over this period as well.[29]

Not all African Americans in the civil rights movement were comfortable with gradual change. Instead of using marches and demonstrations to change people's attitudes, calling for tougher civil rights laws, or suing for their rights in court, they favored more immediate action that forced whites to give in to their demands. Men like Malcolm X, the leader of the Nation of Islam, and groups like the Black Panthers were willing to use violence to achieve their goals.[30]

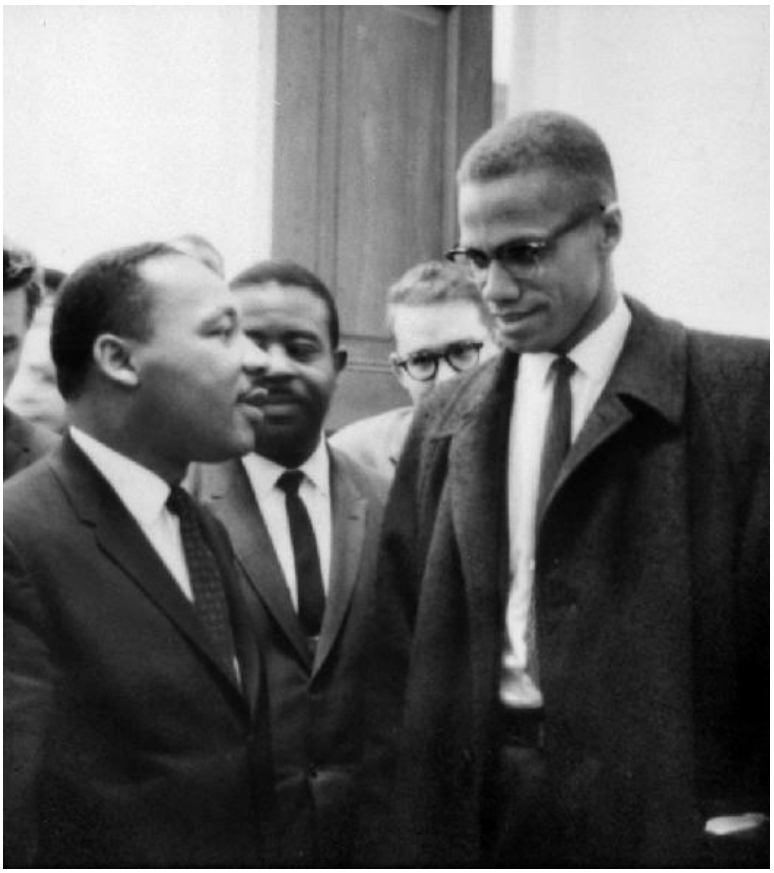


Image 16.11 Photo of Dr. King and Malcolm X in 1964

These activists called for Black Power and Black Pride, not assimilation into white society. Their position was attractive to many young African Americans, especially after Martin Luther King, Jr. was assassinated in 1968.

Martin Luther King, Jr. (left) and Malcolm X (right) adopted different approaches to securing civil rights for African Americans. This occasion, a Senate debate of the Civil Rights Act of 1964, was the only time the two men ever met. (Credit: *Texas Liberal* and *U.S. News and World Report*)

Continuing Challenges for African Americans

The civil rights movement for African Americans did not end with the passage of the **Voting Rights Act** in 1965. For the last fifty years, the African American community has faced challenges related to both past and current discrimination; progress on both fronts remains slow, uneven, and often frustrating.

Legacies of the ***de jure*** segregation of the past remain in much of the United States. Many African Americans still live in predominantly black neighborhoods where their ancestors were forced by laws and housing covenants to live.[31]

Even those who live in the suburbs, once largely white, tend to live in suburbs that are mostly black.[32]

Some two million African American young people attend schools whose student body is composed almost entirely of students of color.[33]

During the late 1960s and early 1970s, efforts to tackle these problems were stymied by large-scale public opposition, not just in the South but across the nation. Attempts to integrate public schools through the use of busing—transporting students from one segregated neighborhood to another to achieve more racially balanced schools—were particularly unpopular and helped contribute to "white flight" from cities to the suburbs.[34]

This white flight has created ***de facto*** **segregation**, a form of segregation that results from the choices of individuals to live in segregated communities without government action or support.

Today, a lack of high-paying jobs in many urban areas, combined with persistent racism, has trapped many African Americans in poor neighborhoods. While the **Civil Rights Act** of 1964 created opportunities for members of the black middle class to advance economically and socially, and to live in the same neighborhoods as the white middle class did, their departure left many black neighborhoods

mired in poverty and without the strong community ties that existed during the era of legal segregation. Many of these neighborhoods also suffered from high rates of crime and violence.[35]

Some police also appear, consciously or subconsciously, to engage in racial profiling: singling out blacks (and Latinos) for greater attention than members of other racial and ethnic groups, as the then FBI director has admitted.[36] When incidents of real or perceived injustice arise, as recently occurred after a series of deaths of young black men at the hands of police in Ferguson, Missouri; Staten Island, New York; and Baltimore, Maryland, some African Americans turn to the streets to protest because they believe that politicians—white and black alike—fail to pay sufficient attention to these problems.

The most serious concerns of the black community today appear to revolve around poverty. While the public mood may have shifted toward greater concern about economic inequality in the United States, substantial policy changes to immediately improve the economic standing of African Americans in general have not occurred.

Meanwhile, grassroots movements to improve neighborhoods and local schools have taken root in many black communities across America.

AFFIRMATIVE ACTION

One of the major controversies regarding race in the United States today is related to affirmative action, the practice of ensuring that members of historically disadvantaged or underrepresented groups have equal access to opportunities in education, the workplace, and government contracting.

The phrase *affirmative action* originated in the Civil Rights Act of 1964 and Executive Order 11246, and it has drawn controversy ever since. The Civil Rights Act of 1964 prohibited discrimination in employment, and Executive Order 11246, issued in 1965, forbade employment discrimination not only within the federal government but by federal contractors and contractors and subcontractors who received government funds.

Clearly, African Americans, as well as other groups, have been subject to discrimination in the past and present, limiting their opportunity to compete on a level playing field with those who face no such challenge. Opponents of affirmative action, however, point out that many of its beneficiaries are ethnic minorities from relatively affluent backgrounds, while whites and Asian Americans who grew up in poverty are expected to succeed despite facing many of the same handicaps.

Because affirmative action attempts to redress discrimination on the basis of race or ethnicity, it is generally subject to the strict scrutiny standard, which means the burden of proof is on the government to demonstrate the necessity of racial discrimination to achieve a compelling governmental interest. In 1978, in *Bakke v. California*, the Supreme Court upheld affirmative action and said that colleges and universities could consider race when deciding whom to admit but could not establish racial quotas.[37]

In 2003, the Supreme Court reaffirmed the Bakke decision in *Grutter v. Bollinger*, which said that taking race or ethnicity into account as one of several factors in admitting a student to a college or university was acceptable, but a system setting aside seats for a specific quota of minority students was not.[38] The Supreme Court effectively overruled Grutter and Bakke in 2023 in two cases involving the Harvard University and the University of North Carolina. On the important question of whether race should be a deciding factor or even a limited factor in who will be admitted to a particular college, the Supreme Court said no. Chief Justice Roberts writing for the majority stated, "The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color."[39] Roberts wrote that these affirmative action programs "[…] lack sufficiently focused and measurable objectives warranting the use of race […]."[40] However, the Court stated that universities can still consider an applicants' discussion of how race affected his or her life experiences, but their evaluation of any student must be "as an individual—not on the basis of race."[41]

QUESTIONS TO CONSIDER

1. How have voting rights been denied to individuals?

   Show Answer
   white-only primaries; poll taxes; literacy and understanding tests; etc.

2. Name two laws or amendments that helped remove de jure discrimination?

   Show Answer
   13th, 14th, 15th, 19th, 24th, 26th Amendments, as well as the Civil Rights Act (1964) and the Voting Rights Act (1965), and etc.

TERMS TO REMEMBER

***Brown v. Board of Education*–**the 1954 Supreme Court ruling that struck down *Plessy v. Ferguson* and declared segregation and "separate but equal" to be unconstitutional in public education

civil disobedience–an action taken in violation of the letter of the law to demonstrate that the law is unjust

***de facto* segregation–**segregation that results from the private choices of individuals

***de jure* segregation–**segregation that results from government discrimination

direct action–civil rights campaigns that directly confronted segregationist practices through public demonstrations

disenfranchisement–the revocation of someone's right to vote

***Dred Scott v. Sandford*–**the Court's majority stated that Scott had no legal right to sue for his freedom because blacks (whether free or slave) were not and could not become U.S. citizens; Scott lacked the standing to even appear before the court; court also held that Congress lacked the power to decide whether slavery would be permitted in a territory that had been acquired after the *Constitution* was ratified, in effect prohibiting the federal government from passing any laws that would limit the expansion of slavery into any part of the West

grandfather clause–the provision in some southern states that allowed illiterate whites to vote because their ancestors had been able to vote before the Fifteenth Amendment was ratified

Jim Crow laws–state and local laws that promoted racial segregation and undermined black voting rights in the south after Reconstruction

literacy tests–tests that required the prospective voter in some states to be able to read a passage of text and answer questions about it; often used as a way to disenfranchise racial or ethnic minorities

Loving v. Virginia–the Supreme Court ruling overturning Virginia law against interracial marriage

***Plessy v. Ferguson*–**the 1896 Supreme Court ruling that allowed "separate but equal" racial segregation under the equal protection clause of the Fourteenth Amendment

poll tax–annual tax imposed by some states before a person was allowed to vote

understanding tests–tests requiring prospective voters in some states to be able to explain the meaning of a passage of text or to answer questions related to citizenship; often used as a way to disenfranchise black voters

white primary–a primary election in which only whites are allowed to vote

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16.3 Civil Rights: The Fight for Women's Rights



Image 16.12 Photograph of Women's Rights Protestors 2017

Women's March on Washington; Credit: Mobilus in Mobili, 21 January 2017, 20:12; "Another Perspective" Licensing CC:SA

Learning Objectives

- Describe early efforts to achieve equal political and civil rights for women.
- Describe the 2nd women's rights movement of the 20th century.
- Explain why the Equal Rights Amendment failed to be ratified.
- Analyze continuing challenges equal treatment.

Chart 16.7 Learning Objectives on Women's and Equal Rights

Women of all races and ethnicities have long been legally discriminated against, and the women's rights movement started at the same time as the movement to abolish slavery in the United States. Indeed, the women's rights movement began largely as a result of the difficulties women encountered while trying to abolish slavery. The trailblazing Seneca Falls Convention for women's rights was held in 1848--before the Civil War. Throughout most of the early nineteenth century, the abolition movement largely eclipsed the women's movement. Women began to campaign actively again in the late nineteenth and early twentieth centuries for their political right to vote, and another movement for expanded women's civil rights began in the 1960s.

The Early Women's Rights Movement and Women's Suffrage



Image 16.13 Photograph of Women Marching in 1917 for Suffrage

At the time of the American Revolution and throughout the nineteenth century, women had few political or civil rights. Although single women could own property, married women could not. When women married, their separate legal identities were erased under the legal principle of **coverture**. Not only did women adopt their husbands' names, but all personal property they owned legally became their husbands' property. Husbands could not sell their wives' real property without their permission, but they could manage it and retain the profits. If women worked outside the home, their husbands were entitled to their wages.[1]

So long as a man provided food, clothing, and shelter for his wife, she was not legally allowed to leave him. Divorce was difficult and in some places impossible to obtain.[2] Higher education for women was not available, and women were barred from professional positions in medicine, law, and ministry.

Women were not granted the right to vote by any of the states except New Jersey, which at first allowed all taxpaying property owners to vote. However, in 1807, the law changed to limit the vote to men.[3]

Although women had few political and civil rights, they nevertheless played an important role in transforming American society. This was especially true in the 1830s and 1840s, a time when numerous social reform movements swept across the United States. Many women were active in these causes, especially the abolition movement and the temperance movement, which tried to end the excessive

consumption of liquor. They often found they were hindered in their efforts, however, either by the law (de jure) which limited their political rights of participation or by widely held beliefs (de facto) that they were weak, silly creatures who should leave important issues to men.[4]

Many of these women realized that their effectiveness as reformers was limited by laws that prohibited married women from signing contracts and by social customs against women addressing male audiences. Without such rights, women found it difficult to rent halls in which to deliver lectures or to hire printers to produce antislavery literature.

One of the leaders of the early women's movement, Elizabeth Cady Stanton, was shocked and angered when she sought to attend an 1840 antislavery meeting in London, only to learn that women would not be allowed to participate and had to sit apart from the men. At this convention, she made the acquaintance of another American female abolitionist, Lucretia Mott, who was also appalled by the male reformers' treatment of women.[5]



(a)



(b)

Image 16.14 Photo of Elizabeth Cady Stanton and Children; Portrait of Lucretia Mott

Elizabeth Cady Stanton (a) and Lucretia Mott (b) both emerged from the abolitionist movement as strong advocates of women's rights. Credit: OpenStax included image.

In 1848, Elizabeth Stanton and Lucretia Mott called for a women's rights convention, the first ever held specifically to address the subject, at Seneca Falls, New York. At the Seneca Falls Convention, Stanton wrote the Declaration of Sentiments, which was modeled after the Declaration of Independence and proclaimed women were equal to men and deserved the same rights. Among the rights Stanton wished to see granted to women was suffrage--the right to vote. When called upon to sign the Declaration, some of the delegates feared that if women demanded the right to vote, the movement would be considered too radical and its members would become a laughingstock. The Declaration passed, but the resolution demanding suffrage was the only one that did not pass unanimously.[6]

Other advocates of women's equality, such as Susan B. Anthony, fought for rights for women besides voting, including the right to seek higher education. As a result of their efforts, several states passed laws

that allowed married women to retain control of their property and let divorced women keep custody of their children.[7]

The Struggle for the Political Right to Vote

Following the Civil War and the abolition of slavery, the women's rights movement fragmented. Stanton and Anthony denounced the Fifteenth Amendment because it granted voting rights only to black men and not to women of any race.[8] The fight for women's rights did not die, however. In 1869, Stanton and Anthony formed the National Woman Suffrage Association (NWSA), which demanded that the Constitution be amended to grant the right to vote to all women. In 1878, the amendment was first introduced in Congress.

The American Woman Suffrage Association (AWSA) formed in the same year. They hoped to win the suffrage for women by working on a state-by-state basis instead of seeking to amend the Constitution.[9]

Four western states—Utah, Colorado, Wyoming, and Idaho—did extend the right to vote to women in the late nineteenth century, but no other states did. Women were also granted the right to vote on matters involving liquor licenses, in school board elections, and in municipal elections in several states. However, this was often done because of stereotyped beliefs that associated women with moral reform and concern for children, not as a result of a belief in women's equality. Furthermore, voting in municipal elections was restricted to women who owned property.[11]

Finally, in 1890, the two suffragist groups united to form the National American Woman Suffrage Association (NAWSA).



Image 16.15 Photo of Women Protesting Outside White House for Suffrage

Members of the National Woman's Party picketed outside the White House six days a week from January 10, 1917, when President Woodrow Wilson took office, until June 4, 1919, when the Nineteenth Amendment was passed by Congress. The protesters wore banners proclaiming the name of the institution of higher learning they attended. (Credit: Library of Congress)

To call attention to their cause, members circulated petitions, lobbied politicians, and held parades in which hundreds of women and girls marched through the streets. The more radical National Woman's Party (NWP), led by Alice Paul, advocated the use of stronger tactics. The NWP held public protests and picketed outside the White House.[10]

Demonstrators were often beaten and arrested, and suffragists were subjected to cruel treatment in jail. When some, like Paul, began hunger strikes to call attention to their cause, their jailers force-fed them, an incredibly painful and invasive experience for the women.[11] Finally, in 1920, the triumphant passage of the **Nineteenth Amendment** granted all women the right to vote.

The 2nd Women's Rights Movement

Just as the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments did not result in equality for African Americans, the Nineteenth Amendment did not end discrimination against women in education, employment, or other areas of life, which continued to be legal. Although women could vote, they very rarely ran for or held public office. Women continued to be underrepresented in the professions, and relatively few sought advanced degrees. Until the mid-twentieth century, the ideal in U.S. society was typically for women to marry, have children, and become housewives. Those who sought work for pay outside the home were routinely denied jobs because of their sex and, when they did find employment, were paid less than men.

A second women's rights movement emerged in the 1960s to address these problems. Title VII of the Civil Rights Act of 1964 prohibited discrimination in employment based on sex as well as race, color, national origin, and religion. Nevertheless, women continued to be denied jobs because of their sex and were often sexually harassed at the workplace. In 1966, feminists who were angered by the lack of progress made by women and by the government's lackluster enforcement of Title VII organized the National Organization for Women (NOW). N.O.W. promoted workplace equality, including equal pay for women also calling for the greater presence of women in public office, the professions, and graduate and professional degree programs.

The Equal Rights Amendment (ERA)

N.O.W. also declared its support for the **Equal Rights Amendment** (ERA), which mandated equal treatment for all regardless of gender/sex. The ERA, written by Alice Paul and Crystal Eastman, was first proposed to Congress, unsuccessfully, in 1923. It was introduced in every Congress thereafter but did not pass both the House and the Senate until 1972. The amendment was then sent to the states for ratification with a deadline of March 22, 1979. Although many states ratified the amendment in 1972 and 1973, the ERA still lacked sufficient support as the deadline drew near. Opponents, including both women and men, argued that passage would subject women to military conscription and deny them alimony and custody of their children should they divorce.[12]

In 1978, Congress voted to extend the deadline for ratification to June 30, 1982. Even with the extension, however, the amendment failed to receive the support of the required thirty-eight states; by the time the

deadline arrived, it had been ratified by only thirty-five, some of those had rescinded their ratification, and no new state had ratified the ERA during the extension period.

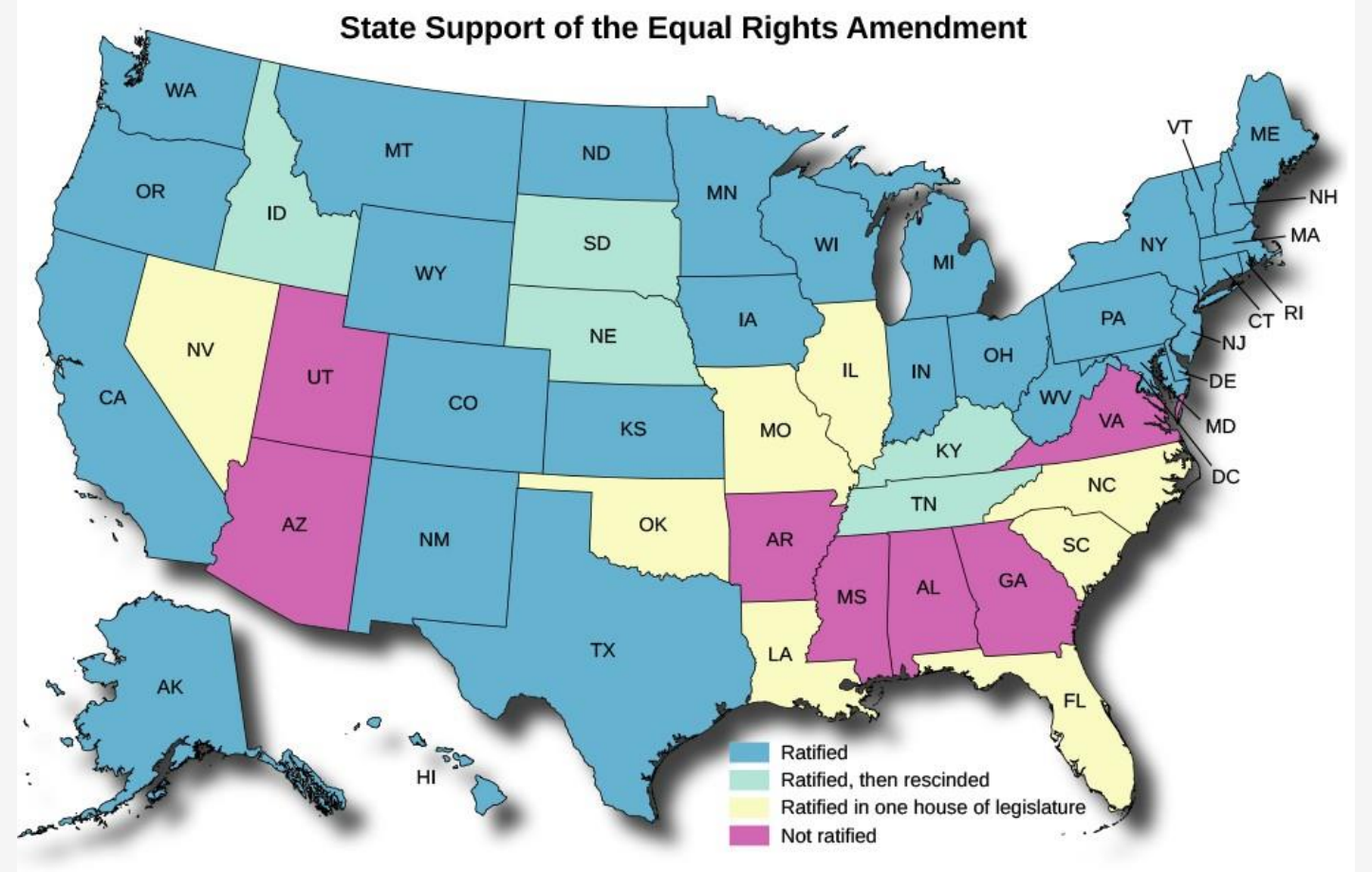


Chart 16.8 Map Showing Equal Rights Ratification Statistics

The map shows which states supported the ERA and which did not. The dark blue states ratified the amendment. The amendment was ratified but later rescinded in the light blue states and was ratified in only one branch of the legislature in the yellow states. The ERA was never ratified by the purple states. (Credit: OpenStax Chart)

Although the ERA failed to be ratified, **Title IX** of the United States Education Amendments of 1972 passed into law as a federal statute (not as an amendment, as the ERA was meant to be). Title IX applies to all educational institutions that receive federal aid and prohibits discrimination on the basis of sex in academic programs, dormitory space, health-care access, and school activities including sports. Thus, if a school receives federal aid, it cannot spend more funds on programs for men than on programs for women.

Despite the failure to ratify the ERA significant gains toward legal equality were achieved through Supreme Court decisions. In 1971, the Court ruled for the first time that gender discrimination was a direct violation of the 15th Amendment to the Constitution. This courts case created the opportunity to

determine the appropriateness of laws that dealt with sex-based classifications.[13] In the same year, the Court held that Civil Rights Act required that persons with similar qualifications be given equal employment opportunities regardless of their sex.[14] The Court upheld a Pittsburgh ordinance in 1973, which made it illegal to indicate gender requirements in most job postings—a common newspaper practice before this court decision.[15]

Continuing Challenges for Women

There is no doubt that women have made great progress since the Seneca Falls Convention. Today, more women than men attend college, and they are more likely than men to graduate.[16]



Figure 4 Image 16.16 Photo of Filipino Women Meeting in Washington D.C.

Filipino Women's Club Meeting Washington, D.C. 1944. (Credit: Library of Congress https://www.loc.gov/resource/fsa.8d42581)

Women are represented in all the professions, and approximately half of all law and medical school students are women.[17]

Women have held Cabinet positions and have been elected to Congress. They have run for president and vice president, and four female justices currently serve on the Supreme Court. Women are also represented in all branches of the military and can serve in combat.

Nevertheless, women are still underrepresented in some jobs and are less likely to hold executive positions than are men. Many believe the **glass ceiling**, an invisible barrier caused by discrimination, prevents women from rising to the highest levels of American organizations, including corporations, governments, academic institutions, and religious groups. As a 2022 study by Pew Research Center has found, American women typically earn 82 cents for every dollar earned by men.[17] Women are also more likely to be single parents than are men.[18]

As a result, more women live below the poverty line than do men, and, as of 2012, households headed by single women are twice as likely to be below the poverty line as those headed by single men.[19] Women remain underrepresented in elective offices. As of June 2021, women held only about 27 percent of seats in Congress and only about 31 percent of seats in state legislatures.[20] Women remain subject to sexual harassment in the workplace and are more likely than men to be the victims of domestic violence. Approximately one-third of all women have experienced domestic violence; one in five women is assaulted during her college years.[21] Women's rights advocates also call for stricter enforcement of laws prohibiting sexual harassment and for harsher punishment such as mandatory arrest for perpetrators of domestic violence. The *Dobbs* v. *Jackson Women's Health Organization* (2022) decision returned most decisions concerning abortion to the states, there is no longer a national standard for women to access abortion services.[22] While some have called for a more restricted access abortion at the state level, other women's rights advocates have successfully expanded women's access to abortion.[23] States such as Oregon and Colorado essentially have "no cut-off" on access, which includes "partial-birth" procedures at full term.[24]

For example, many states have required abortion clinics to meet the same standards set for hospitals, such as corridor size and parking lot capacity, despite lack of evidence regarding the benefits of such standards. Abortion clinics, which are smaller than hospitals, often cannot meet such standards. Other restrictions include mandated counseling before the procedure and the need for minors to secure parental permission.[25] Furthermore, the federal government will not pay for abortions for low-income women except in cases of rape or incest or in situations in which carrying the fetus to term would endanger the life of the mother.[23]

To address these issues, many have called for additional protections for women. These include laws mandating equal pay for equal work. According to the doctrine of **comparable worth**, people should be compensated equally for work requiring comparable skills, responsibilities, and effort. Thus, even though women are underrepresented in certain fields, they should receive the same wages as men if performing jobs requiring the same level of accountability, knowledge, skills, and/or working conditions, even though the specific job may be different. For example, garbage collectors are largely male. The chief job requirements are the ability to drive a sanitation truck and to lift heavy bins and toss their contents into the back of truck. The average wage for a garbage collector is $15.34 an hour.[26] Daycare workers are largely female, and the average pay is $9.12 an hour.[27]

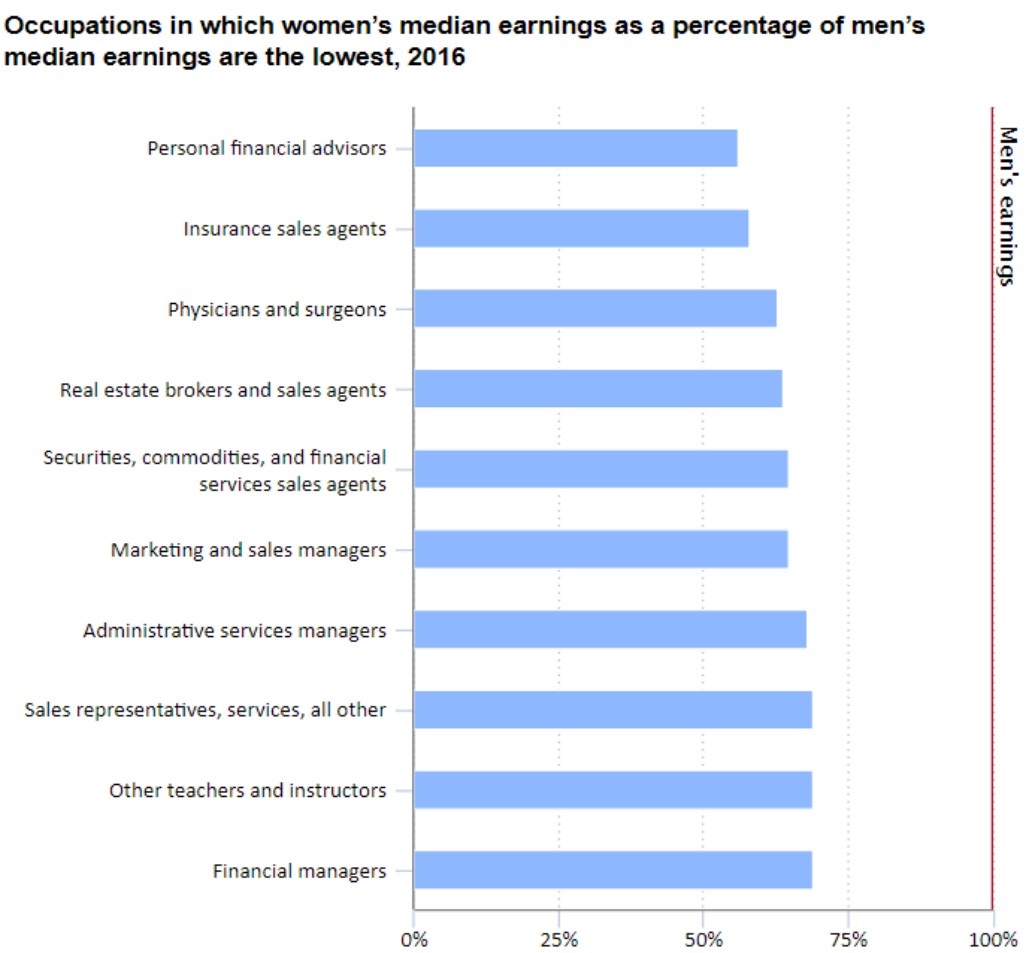


Chart 16.9 Illustration of Women's Earnings by Career

Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, Women's median earnings 82 percent of men's in 2016 on the Internet at https://www.bls.gov/opub/ted/2017/womens-median-earnings-82-percent-of-mens-in-2016.htm (July 28, 2017).

However, the work arguably requires more skills and is a more responsible position. Daycare workers must be able to feed, clean, and dress small children; prepare meals for them; entertain them; give them medicine if required; and teach the basic skills.

They must be educated in first aid and assume responsibility for the children's safety. In terms of the skills and physical activity required and the associated level of responsibility of the job, daycare workers should be paid at least as much as garbage collectors and perhaps more. Women's rights advocates also call for stricter enforcement of laws prohibiting sexual harassment, and for harsher punishment, such as mandatory arrest, for perpetrators of domestic violence.

Interesting Information

HARRY BURN AND THE TENNESSEE GENERAL ASSEMBLY

In 1918, the proposed **Nineteenth Amendment** to the Constitution, extending the right to vote to all adult female citizens of the United States, was passed by both houses of Congress and sent to the states for ratification. Thirty-six votes were needed. Throughout 1918 and 1919, the Amendment dragged through legislature after legislature as pro- and anti-suffrage advocates made their arguments. By the summer of 1920, only one more state had to ratify it before it became law. The Amendment passed through Tennessee's state Senate and went to its House of Representatives. Arguments were bitter and intense.

Pro-suffrage advocates argued that the amendment would reward women for their service to the nation during World War I and that women's supposedly greater morality would help to clean up politics. Those opposed claimed women would be degraded by entrance into the political arena and that their interests were already represented by their male relatives. On August 18, the amendment was brought for a vote before the House. The vote was closely divided, and it seemed unlikely it would pass. But as a young anti-suffrage representative waited for his vote to be counted, he remembered a note he had received from his mother that day. In it, she urged him, "Hurrah and vote for suffrage!" At the last minute, Harry Burn abruptly changed his ballot. The amendment passed the House by one vote, and eight days later, the Nineteenth Amendment was added to the *Constitution*.



The website for the **Women's National History Project** contains a variety of resources for learning more about the women's rights movement and women's history. It features a history of the women's movement, a "This Day in Women's History" page, and quizzes to test your knowledge.

QUESTIONS TO CONSIDER

1. How have women acquired recognition of rights?

   Show Answer
   through a slow process of fighting de jure and de facto discrimination

2. Do women continue to experience unequal treatment?

   Show Answer
   personal opinion; open for debate

TERMS TO REMEMBER

comparable worth–a doctrine calling for the same pay for workers whose jobs require the same level of education, responsibility, training, or working conditions

coverture–a legal status of married women in which their separate legal identities were erased

Equal Rights Amendment (ERA)–the proposed amendment to the Constitution that would have prohibited all discrimination based on sex

glass ceiling–an invisible barrier caused by discrimination that prevents women from rising to the highest levels of an organization—including corporations, governments, academic institutions, and religious organizations

Title IX–the section of the U.S. Education Amendments of 1972 that prohibits discrimination in education on the basis of sex

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16.4 Civil Rights: Native Americans--how has the fight expanded?



(a) (b)

Image 16.17 Photographs of Sarah Winnemucca and Dr. Charles Eastman

Sarah Winnemucca (a), called the "Paiute Princess" by the press, and Dr. Charles Eastman (b), of the Lakota tribe, campaigned for Native American rights in the late nineteenth and early twentieth centuries. Winnemucca wears traditional dress for a publicity photograph. (Credit: OpenStax included image)

Learning Objectives

- Outline the history of discrimination against Native Americans.
- Describe the expansion of Native American civil rights from 1960 to 1990.
- Discuss the persistence of problems Native Americans face today.

Chart 16.10 Learning Objectives on Native Americans

Native Americans have long suffered the effects of segregation and discrimination imposed by the U.S. government and supported by the larger white society. Ironically, Native Americans were not granted the full rights and protections of U.S. citizenship until long after African Americans and women were, with many having to wait until the Nationality Act of 1940 to become citizens.[1]

This was long after the passage of the Fourteenth Amendment in 1868, which granted citizenship to African Americans but not, the Supreme Court decided in *Elk v. Wilkins* (1884), to Native Americans.[2]

Native Americans Lose Their Land and Their Rights

Following the American Revolution, the U.S. government assumed responsibility for conducting negotiations with Indian tribes, all of which were designated as sovereign nations, and regulating commerce with them. Because Indians were officially regarded as citizens of other sovereign nations, they were denied U.S. citizenship.[3]

Although the federal government signed numerous treaties guaranteeing Indians the right to live in the places where they had traditionally farmed, hunted, or fished, land-hungry white settlers routinely violated these agreements and the federal government did little to enforce them.[4]

In 1830, Congress passed the **Indian Removal Act**, which forced Native Americans to move west of the Mississippi River.[5] Not all tribes were willing to leave their land, however.



Image 16.18 Portrait of John Ross

John Ross, as Cherokee chief, had to lead his people on the "Trail of Tears." (Credit: Prints and Photographs Division, Library of Congress. Reproduction Number Lc-USZC4-3156)

The Cherokee resisted; and, in the 1820s, the state of Georgia tried numerous tactics to force them from their territory. Wishing to remain where they were, the tribe sued the state of Georgia.[6]

In 1831, the Supreme Court decided in *Cherokee Nation v. Georgia* that Indian tribes were not sovereign nations, but also that tribes were entitled to their ancestral lands and could not be forced to move from them.[7]

The next year, in *Worcester v. Georgia*, the Court ruled that whites could not enter tribal lands without the tribe's permission. White Georgians, however, refused to abide by the Court's decision, and President Andrew Jackson refused to enforce it.[8]

Between 1831 and 1838, members of several southern tribes, including the Cherokees, were forced by the U.S. Army to move west along routes shown in the map on the following page.

The forced removal of the Cherokees to Oklahoma Territory, which had been set aside for settlement by displaced tribes and designated Indian Territory, resulted in the death of one-quarter of the tribe's population.[9] The Cherokees remember this journey as the Trail of Tears.



Chart 16.11 Map Illustrating Trail of Tears Indian Removals

After the passage of the Indian Removal Act, the U.S. military forced the removal of the Cherokee, Chickasaw, Choctaw, Creek, and Seminole from the Southeast to the western territory (present-day Oklahoma), marching them along the routes shown here. The lines in yellow mark the routes taken by the Cherokee on the Trail of Tears.

By the time of the Civil War, most Indian tribes had been relocated west of the Mississippi. They were confined to reservations, which are federal lands set aside for their use where non-Indians could not settle. Reservation land was usually poor, however, and attempts to farm or raise livestock, not traditional occupations for most western tribes anyway, often ended in failure.

Unable to feed themselves, the tribes became dependent on the Bureau of Indian Affairs (BIA) in Washington, DC, for support. Protestant missionaries could "adopt" various tribes, to convert them to Christianity and thus speed their assimilation. In an effort to hasten this process, Indian children were taken from their parents and sent to boarding schools, many of them run by churches, where they were forced to speak English and abandon their traditional cultures.[10]

In 1887, the **Dawes Severalty Act**, another effort to assimilate Native Americans to white society, divided reservation lands into individual allotments. Native Americans who accepted these allotments and agreed to sever tribal ties were also given U.S. citizenship. All lands remaining after the division of reservations into allotments were offered for sale by the federal government to white farmers and ranchers. As a result, Indians swiftly lost control of reservation land.[11] In 1898, the **Curtis Act** dealt the final blow to Indian sovereignty by abolishing all tribal governments.[12]

The Fight for Native American Rights

As Indians were removed from their tribal lands and increasingly saw their traditional cultures being destroyed over the course of the nineteenth century, a movement to protect their rights began to grow. Sarah Winnemucca, member of the Paiute tribe, lectured throughout the east in the 1880s in order to acquaint white audiences with the injustices suffered by the western tribes.[13] Lakota physician Charles Eastman also worked for Native American rights. In 1924, the Indian Citizenship Act granted citizenship to all Native Americans born after its passage. Native Americans born before the act took effect, who had not already become citizens as a result of the Dawes Severalty Act or service in the army in World War I, had to wait until the Nationality Act of 1940 to become citizens. In 1934, Congress passed the Indian Reorganization Act, which ended the division of reservation land into allotments. It returned to Native American tribes the right to institute self-government on their reservations, write constitutions, and manage their remaining lands and resources. It also provided funds for Native Americans to start their own businesses and attain a college education.[14]

Despite the Indian Reorganization Act, conditions on the reservations did not improve dramatically. Most tribes remained impoverished, and many Native Americans, despite the fact that they were now U.S. citizens, were denied the right to vote by the states in which they lived.

States justified this violation of the Fifteenth Amendment by claiming that Native Americans might be U.S. citizens but were not state residents because they lived on reservations. Other states denied Native Americans voting rights if they did not pay taxes. [15] Despite states' actions, the federal government continued to uphold the rights of tribes to govern themselves. Federal concern for tribal sovereignty was part of an effort on the government's part to end its control of, and obligations to, Indian tribes.[16]

In the 1960s, a modern Native American civil rights movement, inspired by the African American civil rights movement, began to grow.

In 1969, a group of Native American activists from various tribes, part of a new Pan-Indian movement, took control of Alcatraz Island in San Francisco Bay, which had once been the site of a federal prison. They demanded federal recognition of their rights, they maintained control of the island for more than a year and a half.

They claimed the land as compensation for the federal government's violation of numerous treaties and offered to pay for it with beads and trinkets. In January 1970, some of the occupiers began to leave the island. Some may have been disheartened by the accidental death of the daughter of one of the activists.

In May 1970, all electricity and telephone service to the island was cut off by the federal government, and many of the occupiers began to leave. In June, the few people remaining on the island were removed by the government. Though the goals of the activists were not achieved, the occupation of Alcatraz had brought national attention to the concerns of Native American activists.[17]

In 1974, members of the **American Indian Movement (AIM)** and some two hundred Oglala Lakota supporters occupied the town of Wounded Knee on the Lakota tribe's Pine Ridge Reservation in South Dakota, the site of an 1890 massacre of Lakota men, women, and children by the U.S. Army.

Many of the Oglala were protesting the actions of their half-white tribal chieftain, who they claimed had worked too closely with the BIA. The occupiers also wished to protest the failure of the Justice Department to investigate acts of white violence against Lakota tribal members outside the bounds of the reservation.

The occupation led to a confrontation between the Native American protestors and the FBI and U.S. Marshals. Violence erupted; two Native American activists were killed, and a marshal was shot. After the second death, the Lakota called for an end to the occupation and negotiations began with the federal government. Two of AIM's leaders, Russell Means and Dennis Banks, were arrested, but the case against them was later dismissed.[18] Violence continued on the Pine Ridge Reservation for several years after the siege; the reservation had the highest per capita murder rate in the United States. Two FBI agents were among those who were killed. The Oglala blamed the continuing violence on the federal government.[19]

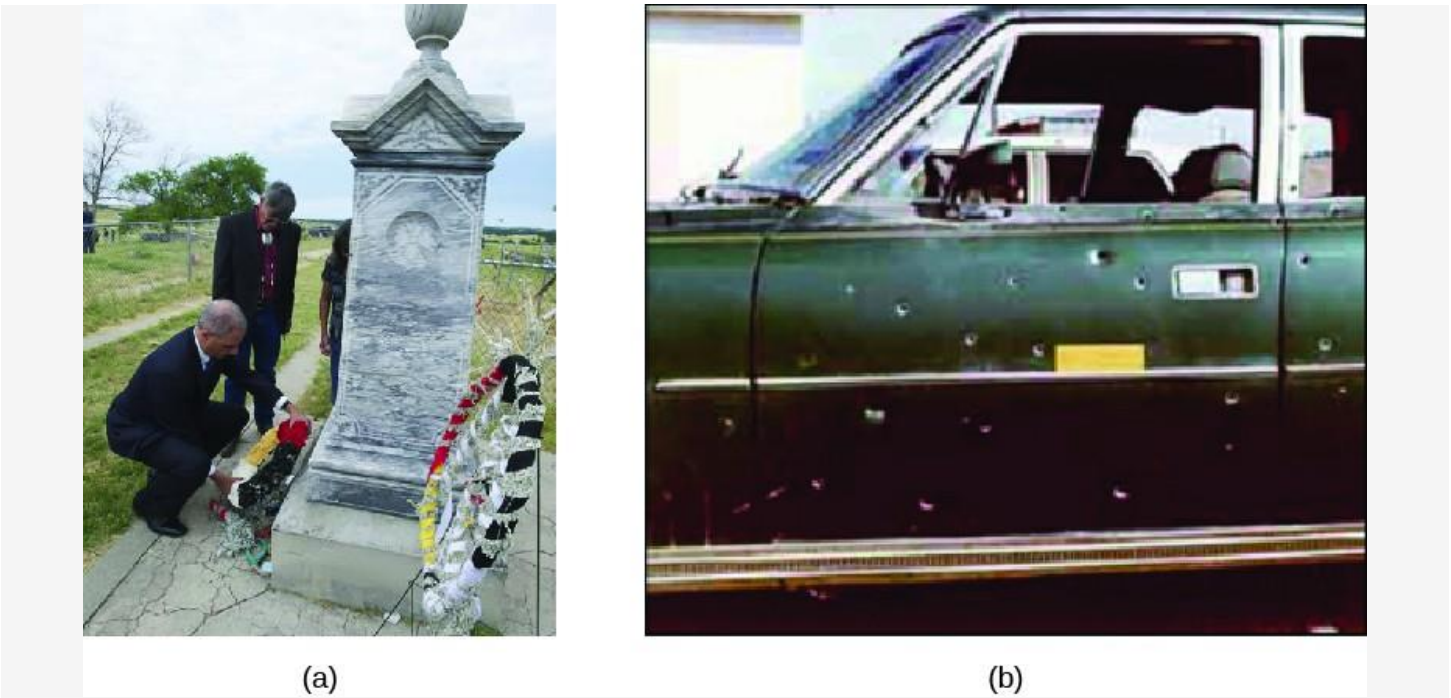


Image 16.19 Photographs Illustrating Violence in the Struggle for Native American Rights

A memorial stone (a) marks the spot of the mass grave of the Lakotas killed in the 1890 massacre at Wounded Knee. The bullet-riddled car (b) of FBI agent Ronald Williams reveals the level of violence reached during—and for years after—the 1973 occupation of the town.
(Credit: OpenStax included images)

The official website of the **American Indian Movement** provides information about ongoing issues in Native American communities in both North and South America.

The current relationship between the U.S. government and Native American tribes was established by the Indian Self-Determination and Education Assistance Act of 1975. Under the act, tribes assumed control of programs that had formerly been controlled by the Bureau of Indian Affairs(BIA), such as education and resource management, and the federal government provided the funding.[20]

Many tribes have also used their new freedom from government control to legalize gambling and to open casinos on their reservations. Although the states in which these casinos are located have attempted to control gaming on Native American lands, the Supreme Court and the Indian Gaming Regulatory Act of 1988 have limited their ability to do so.[21]

The 1978 American Indian Religious Freedom Act granted tribes the right to conduct traditional ceremonies and rituals, including those that use otherwise prohibited substances like peyote cactus and eagle bones, which can be procured only from vulnerable or protected species.[22]

In 2023, the U.S. Supreme Court ruled that Native American children can continue to be protected under federal law against being removed from their tribal communities for fostering or adoption, rejecting a petition from a white couple who argued that the provision was a form of racial discrimination. The decision upheld the Indian Child Welfare Act enacted in 1978 that gives Native Americans and tribal members preference in the adoption or foster care of Native American children.[23]

Alaska Natives and Native Hawaiians

Alaska Natives and Native Hawaiians suffered many of the same abuses as Native Americans, including loss of land and forced assimilation.

Following the discovery of oil in Alaska, however, the state, to gain undisputed title to oil rich land, settled the issue of Alaska Natives' land claims with the passage of the Alaska Native Claims Settlement Act in 1971. According to the terms of the act, Alaska Natives received 44 million acres of resource-rich land and more than $900 million in cash in exchange for relinquishing claims to ancestral lands to which the state wanted title.[24]

Native Hawaiians also lost control of their land—nearly two million acres—after the Hawaiian Islands were annexed by the United States in 1893. Two acts passed by Congress in 1900 and 1959, when the territory was granted statehood, returned slightly more than one million acres of federally owned land to the state of Hawaii. The state was to hold it in trust and use profits from the land to improve the condition of Native Hawaiians.[25]

Despite significant advances, Alaska Natives and Native Hawaiians still trail behind U.S. citizens of other ethnic backgrounds in many important areas. These groups continue to suffer widespread poverty and high unemployment. These minorities are also less likely than white Americans, African Americans, or Asian Americans to complete high school or college.[26]

Many Alaskan tribes endure high rates of infant mortality, alcoholism, and suicide.[27] Native Hawaiians are also more likely to live in poverty than whites in Hawaii, and they are more likely than white Hawaiians to be homeless or unemployed.[28]

Alaska Natives and Native Hawaiians have, since the 1960s, been somewhat successful in having lands restored to them or obtaining compensation for their loss. Despite these achievements, members of these groups still tend to be poorer, less educated, less likely to be employed, and more likely to suffer addictions or to be incarcerated than other racial and ethnic groups in the United States.

QUESTION TO CONSIDER

1. What was one impact of the Dawes Act?

   Show Answer
   separation of families; discrimination against Native American culture; division of land; etc.

2. Why was there seemingly extra controversy over the rights of Native Americans?

   Show Answer
   lack of a clear legal understanding between citizenship in the United States and citizenship as an independent nation was exploited

TERMS TO REMEMBER

American Indian Movement (AIM)–the Native American civil rights group responsible for the occupation of Wounded Knee, South Dakota, in 1973

Dawes Severalty Act–another effort to assimilate Indians to white society, divided reservation lands into individual allotments

Trail of Tears–the name given to the forced migration of the Cherokees from Georgia to Oklahoma in 1838–1839

1. Theodore Haas. 1957. "The Legal Aspects of Indian Affairs from 1887 to 1957," *American Academy of Political Science* 311, 12–22.
2. *Elk v. Wilkins*, (1884)112 U.S. 94.
3. See James Wilson. 1998. *The Earth Shall Weep: A History of Native America*. New York: Grove Press.
4. Ibid; Gloria Jahoda. 1975. *Trail of Tears: The Story of American Indian Removal, 1813–1855*. New York: Henry Holt.
5. See Wilson. 1998. *The Earth Shall Weep*.
6. See John Ehle. 1988. *Trail of Tears: The Rise and Fall of the Cherokee Nation*. New York: Doubleday; Theda Perdue and Michael Green. 2007. *The Cherokee Nation and the Trail of Tears*. New York: Penguin Books.
7. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).
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9. Prucha, 241; Ehle, 390–392; Russell Thornton. 1991. "Demography of the Trail of Tears," In *Cherokee Removal: Before and After*, ed. William L. Anderson. Athens: University of Georgia Press, 75–93.
10. "Indian Reservations," http://ic.galegroup.com/ic/uhic/ReferenceDetailsPage/ReferenceDetailsWindow?zid=2a87fa28f20f1e66b5f663e76873fd8c&action=2&catId=&documentId=GALE%7CCX3401802046&userGroupName=lnoca_hawken&jsid=f44511ddfece4faafab082109e34a539 (April10, 2016).
11. Ibid.
12. "Curtis Act (1898)," http://www.okhistory.org/publications/enc/entry.php?entry=CU006 (April 10, 2016).

13. See Gae Whitney Canfield. 1988. *Sarah Winnemucca of the Northern Paiutes*. Norman: University of Oklahoma Press.
14. Indian Reorganization Act of 1934 (P.L. 73–383); "Indian Reservations," http://ic.galegroup.com/ic/uhic/ReferenceDetailsPage/ReferenceDetailsWindow?zid=2a87fa28f20f1e66b5f663e76873fd8c&action=2&catId=&documentId=GALE|CX3401802046&userGroupName=lnoca_hawken&jsid=f44511ddfece4faafab082109e34a539 (April 10, 2016).
15. Daniel McCool, Susan M. Olson, and Jennifer L. Robinson. 2007. *Native Vote*. Cambridge, MA: Cambridge University Press, 9, 19.
16. "Indian Reservations," http://ic.galegroup.com/ic/uhic/ReferenceDetailsPage/ReferenceDetailsWindow?zid=2a87fa28f20f1e66b5f663e76873fd8c&action=2&catId=&documentId=GALE|CX3401802046&userGroupName=lnoca_hawken&jsid=f44511ddfece4faafab082109e34a539 (April 10, 2016).
17. See Troy R. Johnson. 1996. *The Occupation of Alcatraz Island: Indian Self-Determination and the Rise of Indian Activism*. Urbana: University of Illinois Press.
18. Emily Chertoff, "Occupy Wounded Knee: A 71-Day Siege and a Forgotten Civil Rights Movement," *The Atlantic*, 23 October 2012. http://www.theatlantic.com/national/archive/2012/10/occupy-wounded-knee-a-71-day-siege-and-a-forgotten-civil-rights-movement/263998/.
19. Ibid.
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16.5 Civil Rights: Hispanics, Asian Americans, and Other Groups

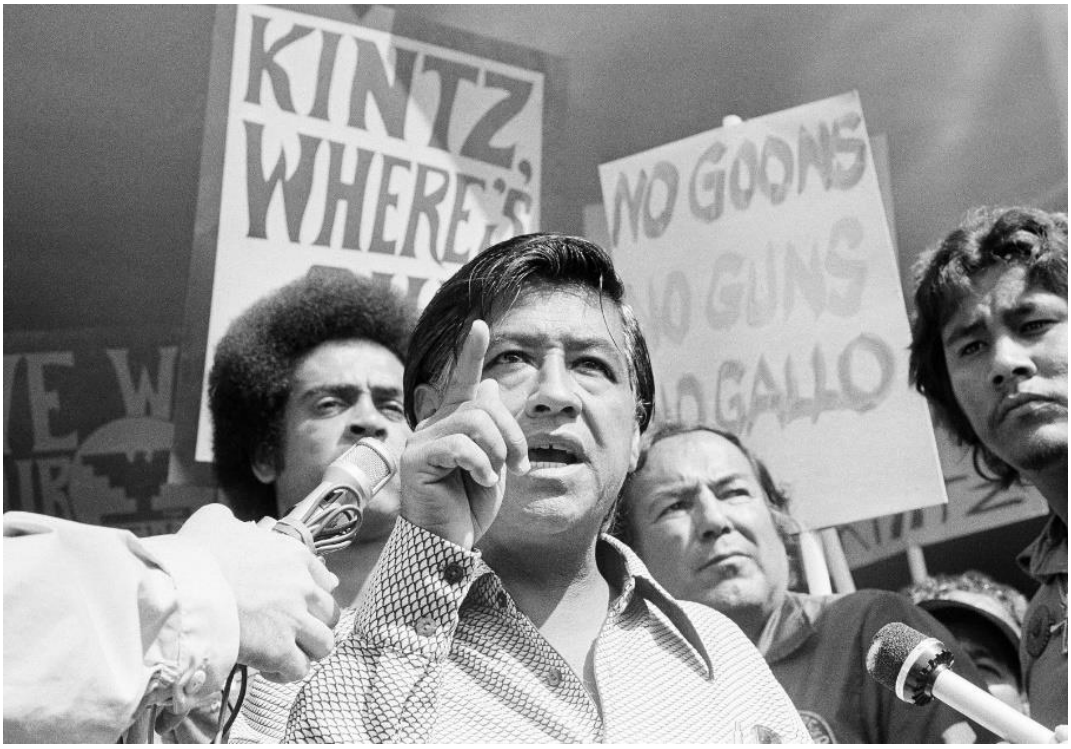


Image 16.20 Photo of Cesar Chavez and Other Protesters

"Cesar Chavez, the head of the United Farm Workers Union, calls for the resignation of Walter Kintz, the first legal counsel for the state Agriculture Labor Relations Board, in Sacramento, Calif., on Sept. 16, 1975. Chavez's efforts in California culminated in landmark legislation that protected the rights of the state's farmworkers and created the ALRB." (Credit: National Public Radio at thttp://www.npr.org/2016/08/02/488428577/ cesar-chavez-the-life-behind-a-legacy-of-farm-labor-rights; Credit Image: Associated Press/AP)

Learning Objectives
• Discuss the discrimination faced by Hispanic/Latino Americans and Asian Americans.
• Describe the influence of the African American civil rights movement on Hispanic/Latino, Asian American, and LGBTQ civil rights movements.
• Describe federal actions to improve opportunities for people with disabilities.
• Describe discrimination faced by religious minorities.

Chart 16.12 Learning Objectives on Equal Rights for Various Groups of Citizens

Hispanic/Latino Civil Rights

Hispanics and Latinos in the United States have faced many of the same problems as African Americans and Native Americans. Although the terms Hispanic and Latino are often used interchangeably, they are not the same. *Hispanic* usually refers to native speakers of Spanish. *Latino* refers to people who come

from, or whose ancestors came from, Latin America. Latinos may be of any race or ethnicity; they may be of European, African, Native American descent, or they may be of mixed ethnic background. During the nineteenth century, Latinos were concentrated in Texas, California, Arizona, New Mexico, Nevada, Utah, and Colorado. Most were subject to discrimination and could find employment only as poorly paid migrant farm workers, railroad workers, and unskilled laborers.[1]

In the early twentieth century, waves of violence aimed at Mexicans and Mexican Americans swept the Southwest. Mexican Americans in Arizona and in parts of Texas were denied the right to vote, which they had previously possessed by means of the poll tax and literacy tests. That is, legal tactics used to prevent Blacks from voting were sometimes applied to Mexican Americans. Mexican American children were barred from attending Anglo-American schools.

During the Great Depression of the 1930s, Mexican immigrants and many Mexican Americans, both U.S.-born and naturalized citizens, living in the Southwest and Midwest were deported by the government so that Anglo-Americans could take the jobs that they had once held.[2]

When the United States entered World War II, however, Mexicans were invited to immigrate to the United States as farm workers under the Bracero (*bracero* meaning "manual laborer" in Spanish) Program to make it possible for these American men to enlist in the armed services.[3] Mexican Americans and Puerto Ricans did not passively accept discriminatory treatment, however. In 1903, Mexican farm workers joined with Japanese farm workers, who were also poorly paid, to form the first union to represent agricultural laborers. In 1929, Latino civil rights activists formed the League of United Latin American Citizens (LULAC) to protest against discrimination and to fight for greater rights for Latinos.[4]

Just as in the case of African Americans, however, true civil rights advances for Hispanics and Latinos did not take place until the end of World War II. Hispanic and Latino activists targeted the same discriminatory practices as did African Americans and used many of the same tactics to end them.

In 1946, Mexican American parents in California, with the assistance of the NAACP, sued several California school districts that forced Mexican and Mexican American children to attend segregated schools. In the case of *Mendez v. Westminster* (1947), the Court of Appeals for the Ninth Circuit Court held that the segregation of Mexican and Mexican American students into separate schools was unconstitutional.[5]

In the case of Texas Mexican Americans, LULAC and others led the effort for educational access. In *Delgado v. Bastrop Independent School District* (1948), the U.S. District Court for the western District of Texas ruled that segregation of Mexican Americans violated the 14th Amendment.[6]

Because of the loophole provided in the decision, some school districts continued to find ways to use segregation with regards to Mexican American students. The school districts said they were not segregating based on race, but based on what was needed to benefit the child due to a lack of English proficiency.[7]

The *Delgado* decision, however, started the effort to undermine the rigid segregation of Mexican Americans and began a ten-year struggle led by the American G.I. Forum and LULAC, which culminated in 1957 with the decision in *Hernandez et al. v. Driscoll Consolidated ISD*—ending legal segregation in the Texas public school system.[8]

In 1954, the Supreme Court ruled qualified Mexican Americans could not be excluded as jurors. In a unanimous ruling the court held that all nationality groups in the US have equal protection under the 14th Amendment.[9]

Although Latinos made some civil rights advances in the decades following World War II, discrimination continued. Alarmed by the large number of persons without legal immigration authority crossing the border into the United States in the 1950s, the United States government began Operation Wetback (*wetback* is a derogatory term for Mexicans living without legal authorization in the United States). From 1953 to 1958, more than three million Mexican immigrants, and some Mexican Americans as well, were deported from California, Texas, and Arizona.[10]

During the 1960s, Mexican American civil rights movement grew stronger, just as the African American civil rights movement had done. While African Americans demanded Black Power and called for Black Pride, some young Mexican American civil rights activists called for Brown Power and began to refer to themselves as Chicanos, a term disliked by many older, conservative Mexican Americans, in order to stress their pride in their hybrid Spanish-Native American cultural identity.[11]

Demands by Mexican American activists often focused on improving education for their children, and they called upon school districts to hire teachers and principals who were bilingual in English and Spanish, to teach Mexican and Mexican American history, and to offer instruction in both English and Spanish for children with limited ability to communicate in English.[12] In the Supreme Court case, *Lau v. Nichols* (1974), school districts nationwide were ordered to assure equal access to educational opportunity. This permitted bilingual teaching but did not mandate it.[13] Bilingual education remains controversial, even among Hispanics and Latinos. Some feel bilingual education slows down learning English, which stigmatizes students by separating them.

EAST L.A. STUDENT WALKOUTS

In March 1968, Chicano students at five high schools in East Los Angeles went on strike to demand better education for students of Mexican ancestry. Los Angeles schools did not allow Latino students to speak Spanish in class and gave no place to study Mexican history in the curriculum. Guidance counselors also encouraged students, regardless of their interests or ability, to pursue vocational careers instead of setting their sights on college. Some students were placed in classes for the mentally challenged even though they were of normal intelligence. As a result, the dropout rate among Mexican American students was very high.

School administrators refused to meet with the student protesters to discuss their grievances. After a week, police were sent in to end the strike. Thirteen of the organizers of the walkout were arrested and charged with conspiracy to disturb the peace. After Sal Castro, a teacher who had led the striking students, was

dismissed from his job, activists held a sit-in at school district headquarters until Castro was reinstated. Student protests spread across the Southwest, and in response many schools did change. That same year, Congress passed the Bilingual Education Act, which required school districts with large numbers of Hispanic or Latino students to provide instruction in Spanish.[14]

Mexican American civil rights leaders were active in other areas as well. Throughout the 1960s, Cesar Chavez and Dolores Huerta fought for the rights of Mexican American agricultural laborers through their organization, the **United Farm Workers** (UFW), a union for migrant workers they founded in 1962. Chavez, Huerta, and the UFW proclaimed their solidarity with Filipino farm workers by joining them in a strike against grape growers in Delano, California, in 1965. Chavez consciously adopted the tactics of the African American civil rights movement. In 1965, he called upon all U.S. consumers to boycott California grapes, and in 1966, he led the UFW on a 300-mile march to Sacramento, the state capital, to bring the state farm workers' problems to the attention of the entire country. The strike finally ended in 1970 when the grape growers agreed to give the pickers better pay and benefits.[15]

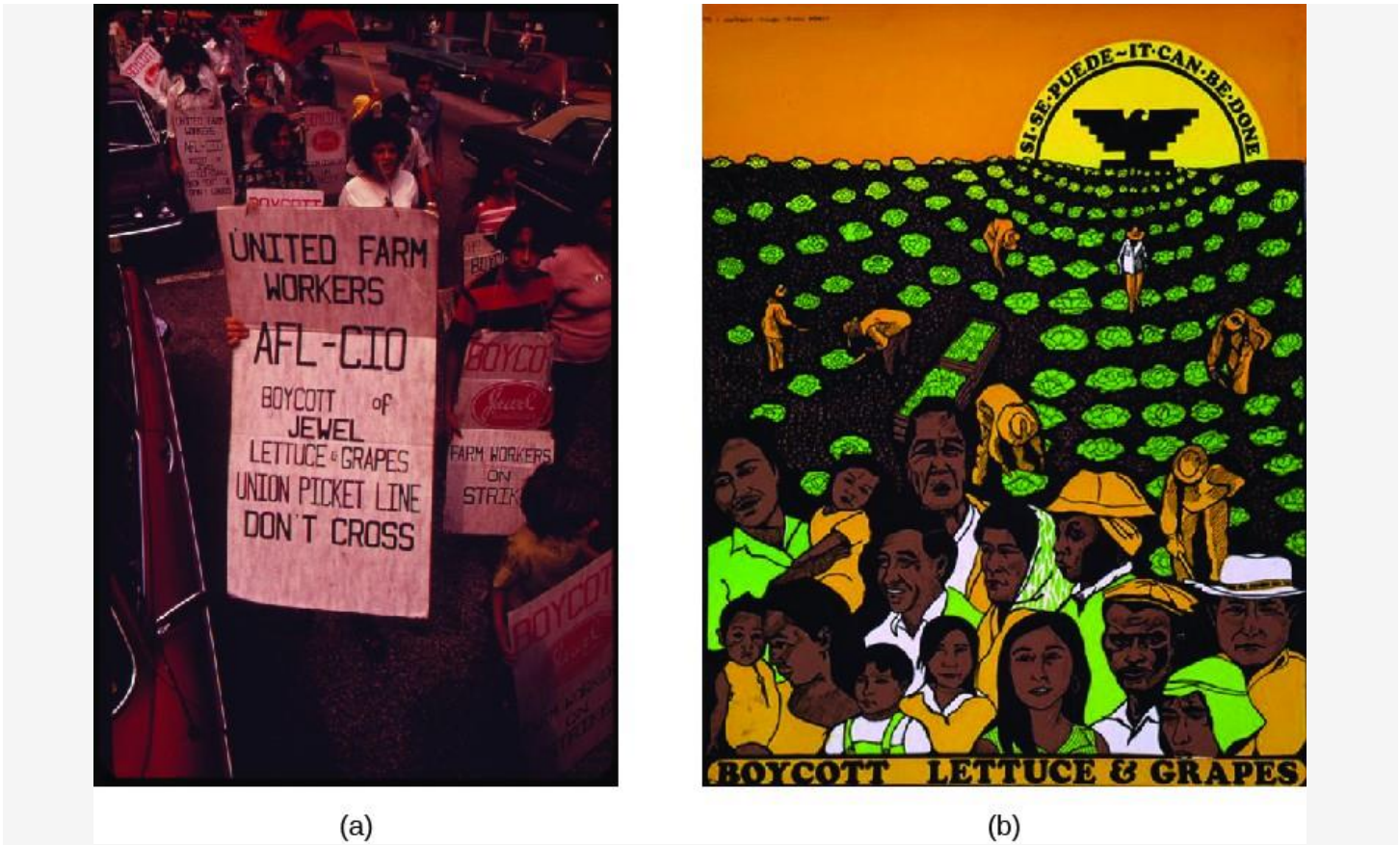


Image 16.21 Photo of United Farm Workers Protesters and Boycott Poster

Protestors picket a grocery store in 1973, urging consumers not to buy grapes or lettuce picked by underpaid farm workers (a). The boycott, organized by Cesar Chavez and the **United Farm Workers** using the slogan "Sí se puede" or "Yes, it can be done!" (b), ultimately forced California growers to improve conditions for migrant laborers. (Credit: OpenStax included images)

As both legally authorized and unauthorized Latino immigration to the United States increased in the late twentieth and early twenty-first centuries, discrimination also increased in many places toward these immigrants. In 1994, California voters passed Proposition 187. The proposition sought to deny non-emergency health services, food stamps, welfare, and Medicaid to unauthorized immigrants. It also

banned children from attending public school unless they could present proof that they and their parents were legal residents of the United States. A federal court found it unconstitutional in 1997 on the grounds that the law's intention was to regulate immigration, a power held only by the federal government.[16]

Although the bill did not pass the U.S. Congress, in 2005 legislation was proposed to make it a felony to enter the U.S. illegally or to give assistance to anyone who had done this. Following the failure to make undocumented immigration a felony under federal law, several states attempted to impose their own sanctions on unauthorized entry. Although the bill quickly died, on April 2010, Arizona passed a law that made unauthorized immigration a state crime. The law also forbade undocumented immigrants from seeking work and allowed law enforcement officers to arrest people suspected of being in the U.S. illegally. Thousands protested the law, claiming that it encouraged racial profiling. In 2012, in *Arizona v. United States*, the U.S. Supreme Court struck down those provisions of the law that made it a state crime to reside in the United States illegally, forbade undocumented immigrants to take jobs, and allowed the police to arrest those suspected of being illegal immigrants.[17] The court, however, upheld the authority of the police to ascertain the immigration status of someone suspected of being an undocumented alien if the person had been stopped or arrested by the police for other reasons.[18] Today, Latinos constitute the largest minority group in the United States.

Topics that remain at the forefront of public debate include comprehensive immigration reform, preventing unauthorized entry into the United States, and the DREAM Act—a proposal for granting permanent residency and eventual citizenship to youths who entered the U.S. with unauthorized parents. The Trump administration was very active on issues of unauthorized immigration including plans to build a border wall and developing a policy to require unauthorized immigrants claiming asylum to "stay in Mexico" while waiting for their hearing. The Biden administration has reversed many of these policies, but significant dispute remains on how to proceed with border security and the handling of unauthorized immigrants.

Asian American Civil Rights

Because Asian Americans are often stereotypically regarded as "the model minority" (it is assumed they are generally financially successful and do well academically), it is easy to forget that they have also often been discriminated against and denied their civil rights. Indeed, in the nineteenth century, Asians were among the most despised of all immigrant groups and were often subjected to the same laws enforcing segregation and forbidding interracial marriage as were African Americans and American Indians.

The Chinese were the first large group of Asians to immigrate to the United States. They arrived in large numbers in the mid-nineteenth century to work in the mining industry and on the Central Pacific Railroad. Others worked as servants or cooks or operated laundries. Their willingness to work for less money than whites led white workers in California to call for a ban on Chinese immigration. In 1882, Congress passed the Chinese Exclusion Act, which prevented Chinese from immigrating to the United States for ten years and prevented Chinese already in the country from becoming citizens. In 1892, the Geary Act extended the ban on Chinese immigration for another ten years. In 1913, California passed a law preventing all Asians, not just the Chinese, from owning land. With the passage of the Immigration

Act of 1924, all Asians, with the exception of Filipinos, were prevented from immigrating to the United States or becoming naturalized citizens. Laws in several states barred marriage between Chinese and white Americans, and some cities with large Asian populations required Asian children to attend segregated schools.[19]

During World War II, citizens of Japanese descent living on the West Coast, whether naturalized immigrants or Japanese Americans born in the United States, were subjected to the indignity of being removed from their communities and interned under Executive Order 9066. The reason was fear that they might prove disloyal to the United States and give assistance to Japan. Although Italians and Germans suspected of disloyalty were also interned by the U.S. government, only the Japanese were imprisoned solely based on their ethnicity. None of the more than 110,000 Japanese and Japanese Americans internees was ever found to have committed a disloyal act against the United States, and many young Japanese American men served in the U.S. army during the war.[20]

Although Japanese American Fred Korematsu challenged the right of the government to imprison law-abiding citizens, the Supreme Court decision in the 1944 case of ***Korematsu v. United States*** upheld the actions of the government as a necessary precaution in a time of war.[21] When internees returned from the camps after the war was over, many of them discovered that the houses, cars, and businesses they had left behind, often in the care of white neighbors, had been sold or destroyed.[22]



Image 16.22 of Japanese Americans at an Internment Camp in California

Japanese Americans displaced from their homes by the U.S. government during World War II stand in line outside the mess hall at a relocation center in San Bruno, California, on April 29, 1942. (Credit: Library of Congress)

Explore the resources at **Japanese American Internment** and **Digital History** to learn more about experiences of Japanese Americans during World War II.

The growth of the African American, Hispanic, and Native American civil rights movements in the 1960s inspired many Asian Americans to demand their own rights. Discrimination against Asian Americans, regardless of national origin, increased during the Vietnam War.

Ironically, violence directed indiscriminately against Chinese, Japanese, Koreans, and Vietnamese caused members of these groups to unite around a shared pan-Asian identity, much as Native Americans had in the Pan-Indian movement.[23]

In 1974, in the previously mentioned case of *Lau v. Nichols*, it was Chinese American students in San Francisco who sued the school district, claiming its failure to provide them with assistance in learning English denied them equal educational opportunities.[24] The Supreme Court found in favor of the students. Although discrimination persists, Americans of Asian ancestry are generally more successful than members of other ethnic groups. They have higher rates of high school and college graduation and higher average income than other groups.[25] Although educational achievement and economic success do not protect them from discrimination, it does place them in a much better position to defend their rights.

In 2023, in Students for Fair Admissions v. President and Fellows of Harvard College, the Court held that Harvard College's admissions system discriminated against Asian American students and did not comply with the principles of the equal protection clause of the 14th Amendment. Justice Roberts, writing for the majority, stated that Black applicants were 4 to 10 times as likely to be admitted to Harvard than similarly qualified Asian American students.[26]

Civil Rights and the LGBTQ Community

Laws against homosexuality existed in most states throughout the nineteenth and twentieth centuries.[27] As a result, lesbians, gay men, bisexuals, and transgender people, collectively known as the LGBTQ community, had to keep their sexual orientation hidden. The secrecy made it difficult to organize to fight for their rights as other, more visible groups had done. Some organizations did exist, however. The Mattachine Society, established in 1950, was one of the first groups to champion the rights of gay men. Its goal was to unite gay men who otherwise lived in secrecy and to fight against abuse. The Mattachine Society often worked with the Daughters of Bilitis, a lesbian rights organization. Among the early issues targeted by the Mattachine Society was police entrapment of male homosexuals.[28]

In June 1969, gay men, lesbians, and transgender people erupted in violence when New York City police attempted to arrest customers at a gay bar in Greenwich Village called the Stonewall Inn. The patrons' ability to resist arrest and fend off the police inspired many members of New York's LGBTQ community, and the riots persisted over several nights. In 1969 following Stonewall, several new more confrontational organizations were formed promoting LGBTQ rights in a manner similar to other civil rights movements. These groups, like the Gay Activists Alliance and the Gay Liberation Front, called not just for equality before the law and protection against abuse but also for "liberation," Gay Power, and Gay Pride.[29] In 1973, the American Psychological Association ended its classification of homosexuality as a

mental disorder. In 1994, the U.S. military adopted the policy of "Don't ask, don't tell." This act, Department of Defense Directive 1304.26, officially prohibited discrimination against suspected gays, lesbians, and bisexuals by the U.S. military. It also prohibited superior officers from asking about or investigating the sexual orientation of those below them in rank.[30] Those who spoke openly about their sexual orientation were subject to dismissal because it remained illegal for anyone except heterosexuals to serve in the armed forces. The policy ended in 2011.[31] Transgender people were banned from serving in the military in 1960. The ban lasted until 2016, when the government began a gradual process of expanding and altering the limitations on their service. In early 2021, the Biden Administration announced that there would no longer be a restriction on military service by transgender individuals, that medical support for gender transition would be provided, and that procedures would be developed to change a service member's official gender marker.

In 2003, in the case of *Lawrence v. Texas*, the Supreme Court, in a landmark decision, ruled unconstitutional state laws that criminalized sexual intercourse between consenting adults of the same sex.[32] The Court held that intimate consensual sexual conduct was part of the liberty protected by the due process clause of the 15th Amendment of the U.S. Constitution. The Court overturned its previous ruling on the same issue in the 1986 case, where it did not find a constitutional protection of sexual privacy. Justice Kennedy wrote, "The petitioners [Lawrence and Garner] are entitled to respect for their private lives."[33]

Interesting Information

Lawrence v. Texas (2003) Majority Opinion

The case involves two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The state cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the due process clause gives them the full right to engage in their conduct without intervention of the government. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." *Casey, supra*, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.

Credit: *Lawrence v. Texas* 539 U.S. 558 (2003)

Chart 16.13 Excerpt from *Lawrence v. Texas* 2003

LGBTQ marital rights have also significantly changed in recent years triggered by the interaction of state legislative and judicial action, federal legislative action, and decisions of the U.S. Supreme Court culminating in the decision in Obergefell v. Hodges declaring same-sex marriage a constitutional right.[34]

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Image 16.23 Photo of Marriage Equality Protesters

On June 26, 2015, supporters of marriage equality in front of the U.S. Supreme Court building eagerly await the announcement of a decision in the case of *Obergefell v. Hodges*. (Credit: OpenStax included image; Matt Popovich)

In particular, in light of a 1993 ruling in which the Hawaii Supreme Court asserted that the state's ban on same-sex marriage was unconstitutional, a number of states became worried that they would be required to recognize those marriage certificates because under Article IV, Section 1 of the U.S. Constitution (known as the full faith and credit clause) state are required to accept court decisions, public acts, and contracts of other states.

To address this concern, Congress passed and President Clinton signed the Defense of Marriage Act (DOMA) in 1996. The law declared that "no state (or political subdivision within the United States) need recognize a marriage between person of the same sex, even if the marriage was concluded or recognized in another state." The law defined marriage as a union between a man and a woman, which meant that same-sex couples were denied various federal provisions and benefits—such as the right to file joint tax returns and receive Social Security survivor benefits.

DOMA clearly made the topic a state matter. Scores of states considered legislation and ballot initiatives on the question. By 1997, more than half of the states in the union had passed some form of legislation banning same-sex marriage, and by 2006 twenty-seven states had passed constitutional bans on same-sex marriage.

Beginning in 2000, several states made it possible for same-sex couples to enter into legal relationships known as civil unions or domestic partnerships.

These arrangements extended many of the same protections enjoyed by heterosexual married couples to same-sex couples. LGBTQ activists, however, continued to fight for the right to marry. Same-sex marriages would allow partners to enjoy the same rights as married heterosexual couples and accord their relationships the same dignity and importance.

In 2004, Massachusetts became the first state to grant legal status to same-sex marriage. Other states followed. While many states passed laws banning same-sex marriage, and many gay and lesbian couples challenged these laws in the courts.

In 2012 in United States v. Windsor, the Supreme Court changed the dynamic established by DOMA by ruling that the federal government had no authority to define marriage. The Court held that states possess the "historic and essential authority to define the marital relation," and that the federal government's involvement in this are "departs from this history and tradition of reliance on state law to define marriage."[36]



Image 16.24 Photo of Marriage Equality Supporters Thanking Edith Windsor
Credit: SCOTUS 26195, 26 June 2013, Wikimedia Commons, Flickr, tedeytan

Following the Windsor decision, the number of states that recognized same-sex marriages increased rapidly. In 2015, marriage equality was recognized in thirty-six states plus Washington, D.C.—up from seventeen in 2013. The diffusion of marriage equality across states was driven in large part by federal district sand appeals courts, which have used the rationale underpinning the Windsor case (i.e., laws cannot discriminate between same-sex and different-sex couples based on the equal protection clause of the Fourteenth Amendment) to invalidate state bans on same-sex marriage. The 2014 Court decision not to hear a collection of cases from four different states essentially affirmed same-sex marriage in thirty states. Then, in 2015, the Obergefell v. Hodges case had a sweeping effect when the Supreme Court clearly identified a constitutional right to marriage.[37] The majority held that state same-sex marriage bans are a violation of the 14th Amendment's Due Process and Equal Protection clauses. The Court states, "The Constitution promises liberty to all within its reach [...] a liberty that includes c specific rights that allow persons, within a lawful realm, to define and express their identity."[38]

Following swiftly upon the heels of the *Obergefell* ruling, the Indiana legislature passed a Religious Freedom Restoration Act (RFRA). Congress had already passed such a law in 1993; it was intended to extend protection to minority religions, such as allowing rituals of the Native American Church. However, the Supreme Court in *City of Boerne v. Flores* (1997) ruled that the 1993 law applied only to the federal government and not to state governments.[39]

Thus, several state legislatures later passed their own Religious Freedom Restoration Acts. These laws state that the government cannot "substantially burden an individual's exercise of religion" unless it would serve a "compelling governmental interest" to do so. The enactment of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, also known as the Matthew Shepard Act, in 2009 made it a federal hate crime to attack someone based on his or her gender, gender identity, sexual orientation, or disability and made it easier for federal, state, and local authorities to investigate hate crimes.

LGBTQ Americans still encounter difficulties in other areas as well, such as housing discrimination. The federal Department of Housing and Urban Development has indicated that refusing to rent or sell homes to transgender people may be considered sex discrimination, but there is no nationwide clarity on the law.[40]

However, the Supreme Court did rule in 2020 in *Bostock v. Clayton* that employers cannot discriminate based on sexual orientation and transgender status. Justice Neil Gorsuch delivered the opinion of the Court in this case in which the Court held that Title VII protections of the Civil Rights Act did extend to cover sexual orientation and gender identity. Gorsuch wrote, "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."[41]

Civil Rights and the Americans with Disabilities Act

People with disabilities make up one of the last groups whose civil rights have been recognized. For a long time, they were denied employment and access to public education, especially if they were mentally or developmentally challenged. Many were merely institutionalized.

A Progressive Era **eugenics** movement in the United States in the late nineteenth and early to mid-twentieth centuries sought to encourage childbearing among physically and mentally fit individuals and discourage it among those with physical or mental disabilities.

Many states passed laws prohibiting marriage among people who had what were believed to be hereditary "defects." Among those affected were the blind or deaf, those with epilepsy, people with mental or developmental disabilities, and those suffering mental illnesses. In some states, programs existed to sterilize people considered "feeble minded" by the standards of the time, without their will or consent.[42]

When this practice was challenged by a woman in a state institution in Virginia, the Supreme Court, in the 1927 case of *Buck v. Bell*, upheld the right of state governments to sterilize those people believed likely to have children who would become dependent upon public welfare.[43] Some of these programs persisted into the 1970s, as the map below shows.[44]

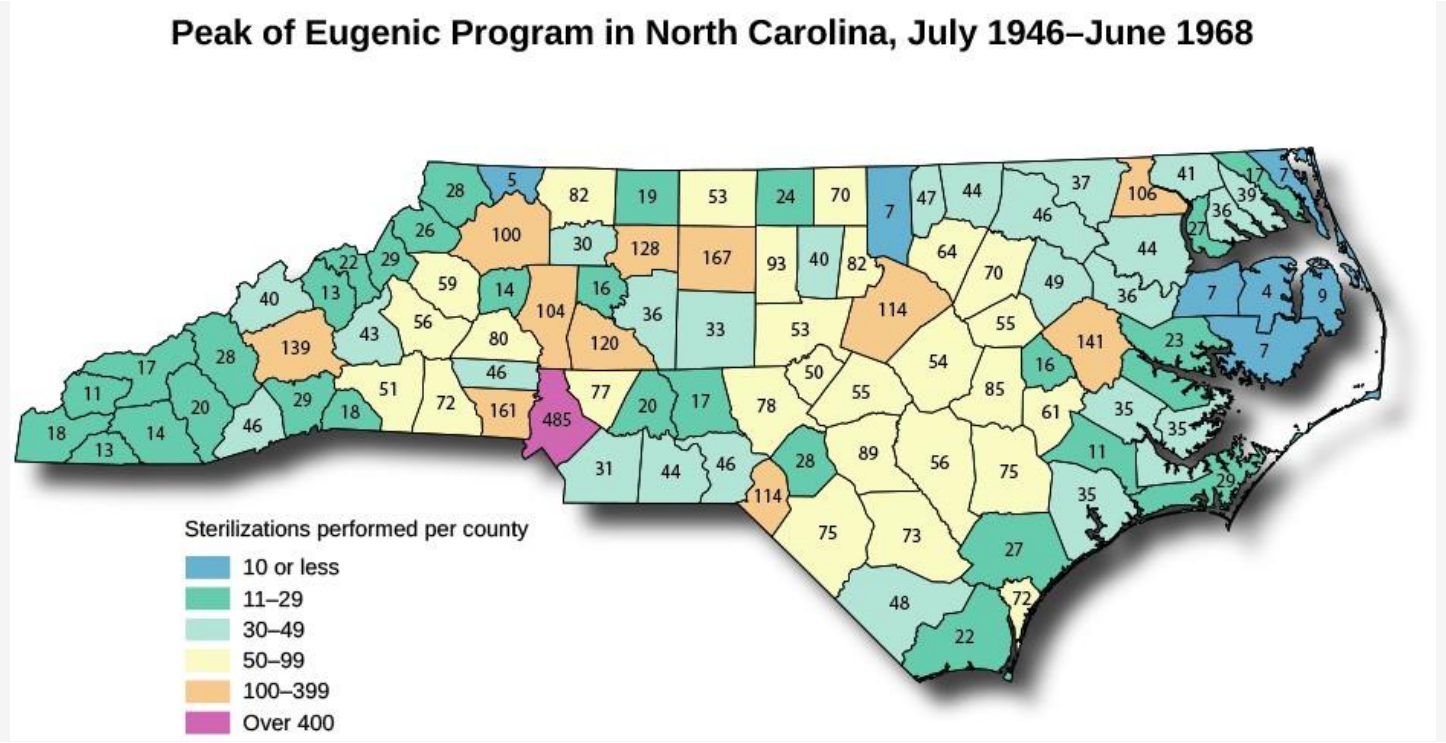


Chart 16.14 Map Illustrating Forced Sterilizations in North Carolina

The map shows the number of sterilizations performed by the state in each of the counties of North Carolina between July 1946 and June 1968. Nearly five hundred sterilizations took place during this time period in the purple county. (Credit: OpenStax included image)

By the 1970s, however, concern for extending equal opportunities to all led to the passage of two important acts by Congress. In 1973, the Rehabilitation Act made it illegal to discriminate against people with disabilities in federal employment or in programs run by federal agencies or receiving federal funding.

This was followed by the Education for all Handicapped Children Act of 1975, which required public schools to educate children with disabilities. The act specified that schools consult with parents to create a plan tailored for each child's needs that would provide an educational experience as close as possible to that received by other children.

In 1990, the **Americans with Disabilities Act** (ADA) greatly expanded opportunities and protections for people of all ages with disabilities. It also significantly expanded the categories and definition of disability.

The ADA prohibits discrimination in employment based on disability. It also requires employers to make reasonable accommodations available to workers who need them. Finally, the ADA mandates that public transportation and public accommodations be made accessible to those with disabilities. The Act was passed despite the objections of some who argued that the cost of providing accommodations would be prohibitive for small businesses.

The community of people with disabilities is well organized in the twenty-first century, as evidenced by the considerable network of **disability rights organizations** in the United States.

The Rights of Religious Minorities

The right to worship as a person chooses was one of the reasons for the initial settlement of the United States. Beginning in the early nineteenth century with the immigration of large numbers of Irish Catholics to the United States, anti-Catholicism became a common feature of American life and remained so until the mid-twentieth century. Catholic immigrants were denied jobs, and in the 1830s and 1840s anti-Catholic literature accused Catholic priests and nuns of committing horrific acts. Anti-Mormon sentiment was also quite common, and Mormons were accused of kidnapping women and building armies for the purpose of dominating their non-Mormon neighbors. At times, these fears led to acts of violence. A convent in Charlestown, Massachusetts, was burned to the ground in 1834.[45] In 1844, Joseph Smith, the founder of the Mormon religion, and his brother were murdered by a mob in Illinois.[46] American Jews faced discrimination in employment, education, and housing based on their religion. Many of the restrictive real estate covenants that prohibited people from selling their homes to African Americans also prohibited them from selling to Jews. A tradition of confronting discrimination led many American Jews to become actively involved in the civil rights movements for women and African Americans.[47]

Open discrimination against Jews in the United States is less common, although anti-Semitic sentiments still remain. In the twenty-first century, especially after the September 11 attacks, Muslims are a religious minority likely to face discrimination.[48] Christians have also been deprived of their rights because of religious beliefs. The owner of Hobby Lobby Stores, a conservative Christian, argued that his company's health-care plan should not have to pay for abortifacients because his religious beliefs are opposed to the practice of taking the life of an unborn child. In 2014, in the case of *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court ruled in his favor.[49]

Questions to Consider

1. What is the better approach to civil rights—a peaceful, gradual one that focuses on passing laws and winning cases in court, or a radical one that includes direct action and acts of civil disobedience? Why?

   Show Answer
   personal opinion

2. What legal tactics were used to discriminate against Mexican Americans in Texas that were like tactics used against African American?

   Show Answer
   Segregation of schools, literacy tests, poll taxes

3. Several States attempted to impose their own sanctions on illegal immigration. In April 2010, Arizona passed a law-making illegal immigration a state crime. What has been the general response by the federal courts to such state laws?

   Show Answer

They were declared unconstitutional as immigration is solely a national concern or jurisdiction.

4. Same-sex marriage laws allow partners to enjoy the same rights as married heterosexual couples, although many states passed laws banning same-sex marriage which were challenged. What is the legal status of same-sex marriage throughout the US?

   Show Answer
   State bans were overturned in 2015 by *Obergefell v. Hodges*.

Terms to Remember

Americans with Disabilities Act–(ADA) greatly expanded opportunities and protections for people of all ages with disabilities

United Farm Workers (UFW)–a union for migrant workers; strike against grape growers in Delano, California, in 1965; adopted the tactics of the African American civil rights movement

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Liberty v. Security: A Short Review

Learning Objectives

- Review a few basic terms from the text.
- Discuss basic terms and general questions about balancing liberty protections and security concerns.

QUESTIONS FOR OPEN DISCUSSION

1. Who oversees the government of the United States and why is this idea so important?
2. Should any individuals or groups receive special treatment under the laws and regulations of the United States?
3. How does the governmental structure of the United States balance the competing interests of the people's liberty and security?
4. Does a republic or a democracy better serve the needs of the people?
5. Should groups of individuals today pay the price for discrimination in the past?
6. How should the government provide for protection against external threats?
7. Is it acceptable to collect massive amounts of public data without probable cause?
8. How do you decide what is acceptable behavior between individuals?
9. How do you decide what is acceptable control by the government?
10. Do people working in the government know better than the American people what the people's safety needs are? healthcare? education? business and economic concerns?

TERMS TO REMEMBER FOR REVIEW

consent of the governed = people consent to government; the people control the government

unalienable rights = rights people have not from government or law

liberties = freedoms possessed by people because they are human

rights = how much freedom is given up by the people for security

equal rights = all persons are treated equally under the law

basic functions of good government = unite the people; provide a system of justice to hold people accountable; provide protection for domestic safety and security; provide protection against foreign threats & for defense; provide for the general welfare of all the people/stable economy; protect the people's liberties

republic = *form* of government balancing power over and control of the people with protecting the liberties of the people

federal = *structure* of government balancing power between various levels of government (national/state/local) and between branches of government (legislative/executive/judicial)

Appendix A

The Declaration of Independence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For Quartering large bodies of armed troops among us:

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

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

For imposing Taxes on us without our Consent:

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

For transporting us beyond Seas to be tried for pretended offences

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

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

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

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

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

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

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

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

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

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

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies,

solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

The 56 signatures appear on the original document.

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Appendix B

The Articles of Confederation

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts-bay Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

I. The Stile of this Confederacy shall be

"The United States of America".

II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

V. For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests or imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

VI. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgement of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

VII. When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining

finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following.

Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgement and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgement, which shall in like manner be final and decisive, the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgement, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgement, without favor, affection or hope of reward': provided also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States — fixing the standards of weights and measures throughout the United States — regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated — establishing or regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office — appointing all officers of the land forces, in the service of the United States, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States — making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated 'A Committee of the States', and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction — to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a solid-like manner, at the expense of the United States; and the officers and men so clothed armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled. But if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number of men than the quota thereof, such extra number shall be raised, officered, clothed armed and equipped in the same manner as the

quota of each State, unless the legislature of such State shall judge that such extra number cannot be safely spread out in the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgement require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled be requisite.

XI. Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

XII. All bills of credit emitted, monies borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.

On the part & behalf of the State of New Hampshire: JOSIAH BARTLETT; JOHN WENTWORTH JUNR.; August 8th 1778

On the part and behalf of The State of Massachusetts Bay; JOHN HANCOCK; SAMUEL ADAMS; ELBRIDGE GERRY; FRANCIS DANA; JAMES LOVELL; SAMUEL HOLTEN

On the part and behalf of the State of Rhode Island and Providence Plantations; WILLIAM ELLERY; HENRY MARCHANT; JOHN COLLINS
On the part and behalf of the State of Connecticut; ROGER SHERMAN; SAMUEL HUNTINGTON; OLIVER WOLCOTT; TITUS HOSMER ANDREW ADAMS
On the Part and Behalf of the State of New York; JAMES DUANE; FRANCIS LEWIS; WM DUER; GOUV MORRIS
On the Part and in Behalf of the State of New Jersey, November 26, 1778; JNO WITHERSPOON; NATHANIEL SCUDDER
On the part and behalf of the State of Pennsylvania; ROBT MORRIS; DANIEL ROBERDEAU; JOHN BAYARD SMITH; WILLIAM CLINGAN; JOSEPH REED; 22nd July 1778
On the part & behalf of the State of Delaware; THO McKEAN; February 12, 1779; JOHN DICKINSON; May 5th 1779; NICHOLAS VAN DYKE,
On the part and behalf of the State of Maryland; JOHN HANSON; March 1 1781; DANIEL CARROLL do
On the Part and Behalf of the State of Virginia; RICHARD HENRY LEE; JOHN BANISTER; THOMAS ADAMS; JNo HARVIE; FRANCIS LIGHTFOOT LEE
On the part and Behalf of the State of No Carolina; JOHN PENN; July 21st 1778; CORNs HARNETT; JNo WILLIAMS
On the part & behalf of the State of South Carolina; HENRY LAURENS; WILLIAM HENRY DRAYTON; JNo MATHEWS; RICHD HUTSON; THOs HEYWARD Junr
On the part & behalf of the State of Georgia JNo WALTON; 24th July 1778; EDWD TELFAIR; EDWD LANGWORTHY
Enacted Maryland, 1 March 1781 in Philadelphia, Pennsylvania

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Appendix C

The Constitution of the United States of America

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

Article. I.

SECTION. 1.

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

SECTION. 2.

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

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

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

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

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

SECTION. 3.

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

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

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

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

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

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

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

SECTION. 4.

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

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

SECTION. 5.

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

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

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

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

SECTION. 6.

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

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

SECTION. 7.

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

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

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

SECTION. 8.

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

To borrow Money on the credit of the United States;
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
To establish Post Offices and post Roads;
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
To constitute Tribunals inferior to the supreme Court;
To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
To provide and maintain a Navy;
To make Rules for the Government and Regulation of the land and naval Forces;
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

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

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

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

SECTION. 9.

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

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

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

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

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

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

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

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

SECTION. 10.

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

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

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

Article. II.

SECTION. 1.

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

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

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate.

The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

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

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

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

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

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2.

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

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

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

SECTION. 3.

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

SECTION. 4.

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

Article III.

SECTION. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2.

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

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

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

SECTION. 3.

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

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

Article. IV.

SECTION. 1.

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

SECTION. 2.

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

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

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

SECTION. 3.

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

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

SECTION. 4.

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

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a

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

Article. VI.

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

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

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

Article. VII.

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

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

Constitutional Amendments

The U.S. Bill of Rights (Amendments 1–10)

THE PREAMBLE TO THE BILL OF RIGHTS

Congress of the United States begun and held at the City of New-York, on Wednesday the fourth of March, one thousand seven hundred and eighty nine.

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

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several

States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

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

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

AMENDMENT I

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

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

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

AMENDMENT IX

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

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI

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

AMENDMENT XII

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. —]* The person having the

greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

**Superseded by Section 3 of the 20th amendment.*

AMENDMENT XIII

Section 1.

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

Section 2.

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

AMENDMENT XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

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

Section 5.

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

**Changed by Section 1 of the 26th amendment.*

AMENDMENT XV

Section 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

Section 2.

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

AMENDMENT XVI

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

AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT XVIII

Section 1.

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

Section 2.

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

Section 3.

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

AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

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

AMENDMENT XX

Section 1.

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

Section 2.

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

Section 3.

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

Section 4.

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

Section 5.

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

Section 6.

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

AMENDMENT XXI

Section 1.

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

Section 2.

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

Section 3.

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

AMENDMENT XXII

Section 1.

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

Section 2.

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

AMENDMENT XXIII

Section 1.

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

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

Section 2.

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

AMENDMENT XXIV

Section 1.

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

Section 2.

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

AMENDMENT XXV

Section 1.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

AMENDMENT XXVI

Section 1.

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

Section 2.

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

AMENDMENT XXVII

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

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Appendix D

Federalist Papers Nos. 1, 9, 10, 11, 12, 14, 51, 57, and 78

Federalist Paper No. 1: General Introduction

General Introduction

For the *Independent Journal*.

Author: **Alexander Hamilton**

To the People of the State of New York:

AFTER an unequivocal experience of the inefficiency of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

This idea will add the inducements of philanthropy to those of patriotism, to heighten the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished than seriously to be expected. The plan offered to our deliberations affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions and prejudices little favorable to the discovery of truth.

Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument, and consequence of the offices they hold under the State establishments; and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to suspicion) into interested or ambitious views. Candor will oblige us to admit that even such men may be actuated by upright intentions; and it cannot be doubted that much of the opposition which has made its appearance, or may hereafter make its appearance, will spring from sources, blameless at least, if not respectable--the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions of the first magnitude to society. This circumstance, if duly attended to, would furnish a lesson of moderation to those who are ever so much persuaded of their being in the right in any controversy. And a further reason for caution, in this respect, might be drawn from the reflection that we are not always sure that those who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives not more laudable than these, are apt to operate as well upon those who support as those who oppose the right side of a question. Were there not even these inducements to moderation, nothing could be more ill-judged than that intolerant spirit which has, at all times, characterized political parties. For in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, however just these sentiments will be allowed to be, we have already sufficient indications that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of the public good. It

will be forgotten, on the one hand, that jealousy is the usual concomitant of love, and that the noble enthusiasm of liberty is apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interest can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidden appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants.

In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected from the general scope of them, that they proceed from a source not unfriendly to the new Constitution. Yes, my countrymen, I own to you that, after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply professions on this head. My motives must remain in the depository of my own breast. My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth.

I propose, in a series of papers, to discuss the following interesting particulars:

THE UTILITY OF THE UNION TO YOUR POLITICAL PROSPERITY THE INSUFFICIENCY OF THE PRESENT CONFEDERATION TO PRESERVE THAT UNION THE NECESSITY OF A GOVERNMENT AT LEAST EQUALLY ENERGETIC WITH THE ONE PROPOSED, TO THE ATTAINMENT OF THIS OBJECT THE CONFORMITY OF THE PROPOSED CONSTITUTION TO THE TRUE PRINCIPLES OF REPUBLICAN GOVERNMENT ITS ANALOGY TO YOUR OWN STATE CONSTITUTION and lastly, THE ADDITIONAL SECURITY WHICH ITS ADOPTION WILL AFFORD TO THE PRESERVATION OF THAT SPECIES OF GOVERNMENT, TO LIBERTY, AND TO PROPERTY.

In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every State, and one, which it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole.[1] This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the new Constitution or a dismemberment of the Union. It will therefore be of use to begin by examining the advantages of that Union, the certain evils, and the probable dangers, to which every State will be exposed from its dissolution. This shall accordingly constitute the subject of my next address.

PUBLIUS.

1. The same idea, tracing the arguments to their consequences, is held out in several of the late publications against the new Constitution.

Federalist Paper No. 9: The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection

For the *Independent Journal*.

Author: **Alexander Hamilton**

To the People of the State of New York:

A FIRM Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve

as short-lived contrast to the furious storms that are to succeed. If now and then intervals of felicity open to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction and tarnish the lustre of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated.

From the disorders that disfigure the annals of those republics the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted their gloomy sophisms. And, I trust, America will be the broad and solid foundation of other edifices, not less magnificent, which will be equally permanent monuments of their errors.

But it is not to be denied that the portraits they have sketched of republican government were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided. To this catalogue of circumstances that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an objection to the new Constitution; I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single State or to the consolidation of several smaller States into one great Confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single State, which shall be attended to in another place.

The utility of a Confederacy, as well to suppress faction and to guard the internal tranquillity of States, as to increase their external force and security, is in reality not a new idea. It has been practiced upon in different countries and ages, and has received the sanction of the most approved writers on the subject of politics. The opponents of the plan proposed have, with great assiduity, cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man expressed in another part of his work, nor to have adverted to the consequences of the principle to which they subscribe with such ready acquiescence.

When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia can by any means be compared with the models from which he reasoned and to which the terms of his description apply. If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America.

Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here that, in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the Union, but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested.

So far are the suggestions of Montesquieu from standing in opposition to a general Union of the States, that he explicitly treats of a CONFEDERATE REPUBLIC as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism.

"It is very probable," (says he[1]) "that mankind would have been obliged at length to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a CONFEDERATE REPUBLIC.

"This form of government is a convention by which several smaller STATES agree to become members of a larger ONE, which they intend to form. It is a kind of assemblage of societies that constitute a new one, capable of increasing, by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body.

"A republic of this kind, able to withstand an external force, may support itself without any internal corruptions. The form of this society prevents all manner of inconveniences.

"If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great influence over one, this would alarm the rest. Were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped and overpower him before he could be settled in his usurpation.

"Should a popular insurrection happen in one of the confederate states the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

"As this government is composed of small republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies."

I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the Union, and must effectually remove the false impressions which a misapplication of other parts of the work was calculated to make. They have, at the same time, an intimate connection with the more immediate design of this paper; which is, to illustrate the tendency of the Union to repress domestic faction and insurrection.

A distinction, more subtle than accurate, has been raised between a CONFEDERACY and a CONSOLIDATION of the States. The essential characteristic of the first is said to be, the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown in the course of this investigation that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government.

The definition of a CONFEDERATE REPUBLIC seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.

In the Lycian confederacy, which consisted of twenty-three CITIES or republics, the largest were entitled to THREE votes in the COMMON COUNCIL, those of the middle class to TWO, and the smallest to ONE. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most, delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says: "Were I to give a model of an excellent Confederate Republic, it would be that of Lycia." Thus we perceive that the distinctions insisted upon were not within the contemplation of this enlightened civilian; and we shall be led to conclude, that they are the novel refinements of an erroneous theory.

PUBLIUS.

1. "Spirit of Laws," vol. i., book ix., chap. i.

Federalist Paper #10: The Union as a Safeguard Against Domestic Faction and Insurrection

From the New York Packet.
Friday, November 23, 1787.
Author: James Madison
To the People of the State of New York:

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much

alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can

such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people

themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,–is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

Federalist Paper No. 11: The Utility of the Union in Respect to Commercial Relations and a Navy

For the *Independent Journal*.

Author: **Alexander Hamilton**

To the People of the State of New York:

THE importance of the Union, in a commercial light, is one of those points about which there is least room to entertain a difference of opinion, and which has, in fact, commanded the most general assent of men who have any acquaintance with the subject. This applies as well to our intercourse with foreign countries as with each other.

There are appearances to authorize a supposition that the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe. They seem to be apprehensive of our too great interference in that carrying trade, which is the support of their navigation and the foundation of their naval strength. Those of them which have colonies in America look forward to what this country is capable of becoming, with painful solicitude. They foresee the dangers that may threaten their American dominions from the neighborhood of States, which have all the dispositions, and would possess all the means, requisite to the creation of a powerful marine. Impressions of this kind will naturally indicate the policy of fostering divisions among us, and of depriving us, as far as possible, of an ACTIVE COMMERCE in our own bottoms. This would answer the threefold purpose of preventing our interference in their navigation, of monopolizing the profits of our trade, and of clipping the wings by which we might soar to a dangerous greatness. Did not prudence forbid the detail, it would not be difficult to trace, by facts, the workings of this policy to the cabinets of ministers.

If we continue united, we may counteract a policy so unfriendly to our prosperity in a variety of ways. By prohibitory regulations, extending, at the same time, throughout the States, we may oblige foreign countries to bid against each other, for the privileges of our markets. This assertion will not appear chimerical to those who are able to appreciate the importance of the markets of three millions of people--increasing in rapid progression, for the most part exclusively addicted to agriculture, and likely from local circumstances to remain so--to any manufacturing nation; and the immense difference there would be to the trade and navigation of such a nation, between a direct communication in its own ships, and an indirect conveyance of its products and returns, to and from America, in the ships of another country. Suppose, for instance, we had a government in America, capable of excluding Great Britain (with whom we have at present no treaty of commerce) from all our ports; what would be the probable operation of this step upon her politics? Would it not enable us to negotiate, with the fairest prospect of success, for commercial privileges of the most valuable and extensive kind, in the dominions of that kingdom? When these questions have been asked, upon other occasions, they have received a plausible, but not a solid or satisfactory answer. It has been said that prohibitions on our part would produce no change in the system of Britain, because she could prosecute her trade with us through the medium of the Dutch, who would be her immediate customers and paymasters for those articles which were wanted for the supply of our markets. But would not her navigation be materially injured by the loss of the important advantage of being her own carrier in that trade? Would not the principal part of its profits be intercepted by the Dutch, as a compensation for their agency and risk? Would not the mere circumstance of freight occasion a considerable deduction? Would not so circuitous an intercourse facilitate the competitions of other nations, by enhancing the price of British commodities in our markets, and by transferring to other hands the management of this interesting branch of the British commerce?

A mature consideration of the objects suggested by these questions will justify a belief that the real disadvantages to Britain from such a state of things, conspiring with the pre-possessions of a great part of the nation in favor of the American trade, and with the importunities of the West India islands, would produce a relaxation in her present system, and would let us into the enjoyment of privileges in the markets of those islands elsewhere, from which our trade would derive the most substantial benefits. Such a point gained from the British government, and which could not be expected without an equivalent in exemptions and immunities in our markets, would be likely to have a correspondent effect on the conduct of other nations, who would not be inclined to see themselves altogether supplanted in our trade.

A further resource for influencing the conduct of European nations toward us, in this respect, would arise from the establishment of a federal navy. There can be no doubt that the continuance of the Union under an efficient government would put it in our power, at a period not very distant, to create a navy which, if it could not vie with those of the great maritime powers, would at least be of respectable weight if thrown into the scale of either of two contending parties. This would be more peculiarly the case in relation to operations in the West Indies. A few ships of the line, sent opportunely to the reinforcement of either side, would often be sufficient to decide the fate of a campaign, on the event of which interests of the greatest magnitude were suspended. Our position is, in this respect, a most commanding one. And if to this consideration we add that of the usefulness of supplies from this country, in the

prosecution of military operations in the West Indies, it will readily be perceived that a situation so favorable would enable us to bargain with great advantage for commercial privileges. A price would be set not only upon our friendship, but upon our neutrality. By a steady adherence to the Union we may hope, erelong, to become the arbiter of Europe in America, and to be able to incline the balance of European competitions in this part of the world as our interest may dictate.

But in the reverse of this eligible situation, we shall discover that the rivalships of the parts would make them checks upon each other, and would frustrate all the tempting advantages which nature has kindly placed within our reach. In a state so insignificant our commerce would be a prey to the wanton intermeddlings of all nations at war with each other; who, having nothing to fear from us, would with little scruple or remorse, supply their wants by depredations on our property as often as it fell in their way. The rights of neutrality will only be respected when they are defended by an adequate power. A nation, despicable by its weakness, forfeits even the privilege of being neutral.

Under a vigorous national government, the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. This situation would even take away the motive to such combinations, by inducing an impracticability of success. An active commerce, an extensive navigation, and a flourishing marine would then be the offspring of moral and physical necessity. We might defy the little arts of the little politicians to control or vary the irresistible and unchangeable course of nature.

But in a state of disunion, these combinations might exist and might operate with success. It would be in the power of the maritime nations, availing themselves of our universal impotence, to prescribe the conditions of our political existence; and as they have a common interest in being our carriers, and still more in preventing our becoming theirs, they would in all probability combine to embarrass our navigation in such a manner as would in effect destroy it, and confine us to a PASSIVE COMMERCE. We should then be compelled to content ourselves with the first price of our commodities, and to see the profits of our trade snatched from us to enrich our enemies and p rsecutors. That unequaled spirit of enterprise, which signalizes the genius of the American merchants and navigators, and which is in itself an inexhaustible mine of national wealth, would be stifled and lost, and poverty and disgrace would overspread a country which, with wisdom, might make herself the admiration and envy of the world.

There are rights of great moment to the trade of America which are rights of the Union--I allude to the fisheries, to the navigation of the Western lakes, and to that of the Mississippi. The dissolution of the Confederacy would give room for delicate questions concerning the future existence of these rights; which the interest of more powerful partners would hardly fail to solve to our disadvantage. The disposition of Spain with regard to the Mississippi needs no comment. France and Britain are concerned with us in the fisheries, and view them as of the utmost moment to their navigation. They, of course, would hardly remain long indifferent to that decided mastery, of which experience has shown us to be possessed in this valuable branch of traffic, and by which we are able to undersell those nations in their own markets. What more natural than that they should be disposed to exclude from the lists such dangerous competitors?

This branch of trade ought not to be considered as a partial benefit. All the navigating States may, in different degrees, advantageously participate in it, and under circumstances of a greater extension of mercantile capital, would not be unlikely to do it. As a nursery of seamen, it now is, or when time shall have more nearly assimilated the principles of navigation in the several States, will become, a universal resource. To the establishment of a navy, it must be indispensable.

To this great national object, a NAVY, union will contribute in various ways. Every institution will grow and flourish in proportion to the quantity and extent of the means concentred towards its formation and support. A navy of the United States, as it would embrace the resources of all, is an object far less remote than a navy of any single State or partial confederacy, which would only embrace the resources of a single part. It happens, indeed, that different portions of confederated America possess each some peculiar advantage for this essential establishment. The more southern States furnish in greater abundance certain kinds of naval stores--tar, pitch, and turpentine. Their wood for the construction of ships is also of a more solid and lasting texture. The difference in the duration of the ships of which the navy might be composed, if chiefly constructed of Southern wood, would be of signal importance, either in the view of naval strength or of national economy. Some of the Southern and of the Middle States yield a greater plenty of iron, and of better quality. Seamen must chiefly be drawn from the Northern hive. The necessity of naval protection to external or maritime commerce does not require a particular elucidation, no more than the conduciveness of that species of commerce to the prosperity of a navy.

An unrestrained intercourse between the States themselves will advance the trade of each by an interchange of their respective productions, not only for the supply of reciprocal wants at home, but for exportation to foreign markets. The veins of commerce in every part will be replenished, and will acquire additional motion and vigor from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of different States. When the staple of one fails from a bad harvest or unproductive crop, it can call to its aid the staple of another. The variety, not less than the value, of products for exportation contributes to the activity of foreign commerce. It can be conducted upon much better terms with a large number of materials of a given value than with a small number of materials of the same value; arising from the competitions of trade and from the fluctations of markets. Particular articles may be in great demand at certain periods, and unsalable at others; but if there be a variety of articles, it can scarcely happen that they should all be at one time in the latter predicament, and on this account the

operations of the merchant would be less liable to any considerable obstruction or stagnation. The speculative trader will at once perceive the force of these observations, and will acknowledge that the aggregate balance of the commerce of the United States would bid fair to be much more favorable than that of the thirteen States without union or with partial unions.

It may perhaps be replied to this, that whether the States are united or disunited, there would still be an intimate intercourse between them which would answer the same ends; this intercourse would be fettered, interrupted, and narrowed by a multiplicity of causes, which in the course of these papers have been amply detailed. A unity of commercial, as well as political, interests, can only result from a unity of government.

There are other points of view in which this subject might be placed, of a striking and animating kind. But they would lead us too far into the regions of futurity, and would involve topics not proper for a newspaper discussion. I shall briefly observe, that our situation invites and our interests prompt us to aim at an ascendant in the system of American affairs. The world may politically, as well as geographically, be divided into four parts, each having a distinct set of interests. Unhappily for the other three, Europe, by her arms and by her negotiations, by force and by fraud, has, in different degrees, extended her dominion over them all. Africa, Asia, and America, have successively felt her domination. The superiority she has long maintained has tempted her to plume herself as the Mistress of the World, and to consider the rest of mankind as created for her benefit. Men admired as profound philosophers have, in direct terms, attributed to her inhabitants a physical superiority, and have gravely asserted that all animals, and with them the human species, degenerate in America--that even dogs cease to bark after having breathed awhile in our atmosphere.[1] Facts have too long supported these arrogant pretensions of the Europeans. It belongs to us to vindicate the honor of the human race, and to teach that assuming brother, moderation. Union will enable us to do it. Disunion will will add another victim to his triumphs. Let Americans disdain to be the instruments of European greatness! Let the thirteen States, bound together in a strict and indissoluble Union, concur in erecting one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and the new world!

PUBLIUS.

1. "Recherches philosophiques sur les Americains."

Federalist Paper No. 12: The Utility of the Union in Respect to Revenue

From the *New York Packet*
Tuesday, November 27, 1787.

Author: **Alexander Hamilton**

To the People of the State of New York:

THE effects of Union upon the commercial prosperity of the States have been sufficiently delineated. Its tendency to promote the interests of revenue will be the subject of our present inquiry.

The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares. By multipying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, it serves to vivify and invigorate the channels of industry, and to make them flow with greater activity and copiousness. The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer,--all orders of men, look forward with eager expectation and growing alacrity to this pleasing reward of their toils. The often-agitated question between agriculture and commerce has, from indubitable experience, received a decision which has silenced the rivalship that once subsisted between them, and has proved, to the satisfaction of their friends, that their interests are intimately blended and interwoven. It has been found in various countries that, in proportion as commerce has flourished, land has risen in value. And how could it have happened otherwise? Could that which procures a freer vent for the products of the earth, which furnishes new incitements to the cultivation of land, which is the most powerful instrument in increasing the quantity of money in a state--could that, in fine, which is the faithful handmaid of labor and industry, in every shape, fail to augment that article, which is the prolific parent of far the greatest part of the objects upon which they are exerted? It is astonishing that so simple a truth should ever have had an adversary; and it is one, among a multitude of proofs, how apt a spirit of ill-informed jealousy, or of too great abstraction and refinement, is to lead men astray from the plainest truths of reason and conviction.

The ability of a country to pay taxes must always be proportioned, in a great degree, to the quantity of money in circulation, and to the celerity with which it circulates. Commerce, contributing to both these objects, must of necessity render the payment of taxes easier, and facilitate the requisite supplies to the treasury. The hereditary dominions of the Emperor of Germany contain a great extent of fertile, cultivated, and populous territory, a large proportion of which is situated in mild and luxuriant climates. In some parts of this territory are to be found the best gold and silver mines in Europe. And yet, from the want of the fostering influence of commerce, that

monarch can boast but slender revenues. He has several times been compelled to owe obligations to the pecuniary succors of other nations for the preservation of his essential interests, and is unable, upon the strength of his own resources, to sustain a long or continued war.

But it is not in this aspect of the subject alone that Union will be seen to conduce to the purpose of revenue. There are other points of view, in which its influence will appear more immediate and decisive. It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation. Tax laws have in vain been multiplied; new methods to enforce the collection have in vain been tried; the public expectation has been uniformly disappointed, and the treasuries of the States have remained empty. The popular system of administration inherent in the nature of popular government, coinciding with the real scarcity of money incident to a languid and mutilated state of trade, has hitherto defeated every experiment for extensive collections, and has at length taught the different legislatures the folly of attempting them.

No person acquainted with what happens in other countries will be surprised at this circumstance. In so opulent a nation as that of Britain, where direct taxes from superior wealth must be much more tolerable, and, from the vigor of the government, much more practicable, than in America, far the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description.

In America, it is evident that we must a long time depend for the means of revenue chiefly on such duties. In most parts of it, excises must be confined within a narrow compass. The genius of the people will ill brook the inquisitive and peremptory spirit of excise laws. The pockets of the farmers, on the other hand, will reluctantly yield but scanty supplies, in the unwelcome shape of impositions on their houses and lands; and personal property is too precarious and invisible a fund to be laid hold of in any other way than by the inperceptible agency of taxes on consumption.

If these remarks have any foundation, that state of things which will best enable us to improve and extend so valuable a resource must be best adapted to our political welfare. And it cannot admit of a serious doubt, that this state of things must rest on the basis of a general Union. As far as this would be conducive to the interests of commerce, so far it must tend to the extension of the revenue to be drawn from that source. As far as it would contribute to rendering regulations for the collection of the duties more simple and efficacious, so far it must serve to answer the purposes of making the same rate of duties more productive, and of putting it into the power of the government to increase the rate without prejudice to trade.

The relative situation of these States; the number of rivers with which they are intersected, and of bays that wash there shores; the facility of communication in every direction; the affinity of language and manners; the familiar habits of intercourse; --all these are circumstances that would conspire to render an illicit trade between them a matter of little difficulty, and would insure frequent evasions of the commercial regulations of each other. The separate States or confederacies would be necessitated by mutual jealousy to avoid the temptations to that kind of trade by the lowness of their duties. The temper of our governments, for a long time to come, would not permit those rigorous precautions by which the European nations guard the avenues into their respective countries, as well by land as by water; and which, even there, are found insufficient obstacles to the adventurous stratagems of avarice.

In France, there is an army of patrols (as they are called) constantly employed to secure their fiscal regulations against the inroads of the dealers in contraband trade. Mr. Neckar computes the number of these patrols at upwards of twenty thousand. This shows the immense difficulty in preventing that species of traffic, where there is an inland communication, and places in a strong light the disadvantages with which the collection of duties in this country would be encumbered, if by disunion the States should be placed in a situation, with respect to each other, resembling that of France with respect to her neighbors. The arbitrary and vexatious powers with which the patrols are necessarily armed, would be intolerable in a free country.

If, on the contrary, there be but one government pervading all the States, there will be, as to the principal part of our commerce, but ONE SIDE to guard--the ATLANTIC COAST. Vessels arriving directly from foreign countries, laden with valuable cargoes, would rarely choose to hazard themselves to the complicated and critical perils which would attend attempts to unlade prior to their coming into port. They would have to dread both the dangers of the coast, and of detection, as well after as before their arrival at the places of their final destination. An ordinary degree of vigilance would be competent to the prevention of any material infractions upon the rights of the revenue. A few armed vessels, judiciously stationed at the entrances of our ports, might at a small expense be made useful sentinels of the laws. And the government having the same interest to provide against violations everywhere, the co-operation of its measures in each State would have a powerful tendency to render them effectual. Here also we should preserve by Union, an advantage which nature holds out to us, and which would be relinquished by separation. The United States lie at a great distance from Europe, and at a considerable distance from all other places with which they would have extensive connections of foreign trade. The passage from them to us, in a few hours, or in a single night, as between the coasts of France and Britain, and of other neighboring nations, would be impracticable. This is a prodigious security against a direct contraband with foreign countries; but a circuitous contraband to one State, through the medium of another, would be both easy and safe. The difference between a direct importation from abroad, and an indirect importation through the channel of a neighboring State, in small parcels, according to time and opportunity, with the additional facilities of inland communication, must be palpable to every man of discernment.

It is therefore evident, that one national government would be able, at much less expense, to extend the duties on imports, beyond comparison, further than would be practicable to the States separately, or to any partial confederacies. Hitherto, I believe, it may safely be asserted, that these duties have not upon an average exceeded in any State three per cent. In France they are estimated to be about fifteen per cent., and in Britain they exceed this proportion.[1] There seems to be nothing to hinder their being increased in this country to at least treble their present amount. The single article of ardent spirits, under federal regulation, might be made to furnish a considerable revenue. Upon a ratio to the importation into this State, the whole quantity imported into the United States may be estimated at four millions of gallons; which, at a shilling per gallon, would produce two hundred thousand pounds. That article would well bear this rate of duty; and if it should tend to diminish the consumption of it, such an effect would be equally favorable to the agriculture, to the economy, to the morals, and to the health of the society. There is, perhaps, nothing so much a subject of national extravagance as these spirits.

What will be the consequence, if we are not able to avail ourselves of the resource in question in its full extent? A nation cannot long exist without revenues. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province. This is an extremity to which no government will of choice accede. Revenue, therefore, must be had at all events. In this country, if the principal part be not drawn from commerce, it must fall with oppressive weight upon land. It has been already intimated that excises, in their true signification, are too little in unison with the feelings of the people, to admit of great use being made of that mode of taxation; nor, indeed, in the States where almost the sole employment is agriculture, are the objects proper for excise sufficiently numerous to permit very ample collections in that way. Personal estate (as has been before remarked), from the difficulty in tracing it, cannot be subjected to large contributions, by any other means than by taxes on consumption. In populous cities, it may be enough the subject of conjecture, to occasion the oppression of individuals, without much aggregate benefit to the State; but beyond these circles, it must, in a great measure, escape the eye and the hand of the tax-gatherer. As the necessities of the State, nevertheless, must be satisfied in some mode or other, the defect of other resources must throw the principal weight of public burdens on the possessors of land. And as, on the other hand, the wants of the government can never obtain an adequate supply, unless all the sources of revenue are open to its demands, the finances of the community, under such embarrassments, cannot be put into a situation consistent with its respectability or its security. Thus we shall not even have the consolations of a full treasury, to atone for the oppression of that valuable class of the citizens who are employed in the cultivation of the soil. But public and private distress will keep pace with each other in gloomy concert; and unite in deploring the infatuation of those counsels which led to disunion.

PUBLIUS.

1. If my memory be right they amount to twenty per cent.

Federalist Paper No. 14: Objections to the Proposed Constitution FromExtent of Territory Answered

From the *New York Packet*
Friday, November 30, 1787.

Author: **James Madison**

To the People of the State of New York:

WE HAVE seen the necessity of the Union, as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the Old World, and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own. All that remains, within this branch of our inquiries, is to take notice of an objection that may be drawn from the great extent of country which the Union embraces. A few observations on this subject will be the more proper, as it is perceived that the adversaries of the new Constitution are availing themselves of the prevailing prejudice with regard to the practicable sphere of republican administration, in order to supply, by imaginary difficulties, the want of those solid objections which they endeavor in vain to find.

The error which limits republican government to a narrow district has been unfolded and refuted in preceding papers. I remark here only that it seems to owe its rise and prevalence chiefly to the confounding of a republic with a democracy, applying to the former reasonings drawn from the nature of the latter. The true distinction between these forms was also adverted to on a former occasion. It is, that in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy, consequently, will be confined to a small spot. A republic may be extended over a large region.

To this accidental source of the error may be added the artifice of some celebrated authors, whose writings have had a great share in forming the modern standard of political opinions. Being subjects either of an absolute or limited monarchy, they have endeavored to heighten the advantages, or palliate the evils of those forms, by placing in comparison the vices and defects of the republican, and by

citing as specimens of the latter the turbulent democracies of ancient Greece and modern Italy. Under the confusion of names, it has been an easy task to transfer to a republic observations applicable to a democracy only; and among others, the observation that it can never be established but among a small number of people, living within a small compass of territory.

Such a fallacy may have been the less perceived, as most of the popular governments of antiquity were of the democratic species; and even in modern Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular, and founded, at the same time, wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which the will of the largest political body may be concentred, and its force directed to any object which the public good requires, America can claim the merit of making the discovery the basis of unmixed and extensive republics. It is only to be lamented that any of her citizens should wish to deprive her of the additional merit of displaying its full efficacy in the establishment of the comprehensive system now under her consideration.

As the natural limit of a democracy is that distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand, and will include no greater number than can join in those functions; so the natural limit of a republic is that distance from the centre which will barely allow the representatives to meet as often as may be necessary for the administration of public affairs. Can it be said that the limits of the United States exceed this distance? It will not be said by those who recollect that the Atlantic coast is the longest side of the Union, that during the term of thirteen years, the representatives of the States have been almost continually assembled, and that the members from the most distant States are not chargeable with greater intermissions of attendance than those from the States in the neighborhood of Congress.

That we may form a juster estimate with regard to this interesting subject, let us resort to the actual dimensions of the Union. The limits, as fixed by the treaty of peace, are: on the east the Atlantic, on the south the latitude of thirty-one degrees, on the west the Mississippi, and on the north an irregular line running in some instances beyond the forty-fifth degree, in others falling as low as the forty-second. The southern shore of Lake Erie lies below that latitude. Computing the distance between the thirty-first and forty-fifth degrees, it amounts to nine hundred and seventy-three common miles; computing it from thirty-one to forty-two degrees, to seven hundred and sixty-four miles and a half. Taking the mean for the distance, the amount will be eight hundred and sixty-eight miles and three-fourths. The mean distance from the Atlantic to the Mississippi does not probably exceed seven hundred and fifty miles. On a comparison of this extent with that of several countries in Europe, the practicability of rendering our system commensurate to it appears to be demonstrable. It is not a great deal larger than Germany, where a diet representing the whole empire is continually assembled; or than Poland before the late dismemberment, where another national diet was the depositary of the supreme power. Passing by France and Spain, we find that in Great Britain, inferior as it may be in size, the representatives of the northern extremity of the island have as far to travel to the national council as will be required of those of the most remote parts of the Union.

Favorable as this view of the subject may be, some observations remain which will place it in a light still more satisfactory.

In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other subjects which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the convention to abolish the governments of the particular States, its adversaries would have some ground for their objection; though it would not be difficult to show that if they were abolished the general government would be compelled, by the principle of self-preservation, to reinstate them in their proper jurisdiction.

A second observation to be made is that the immediate object of the federal Constitution is to secure the union of the thirteen primitive States, which we know to be practicable; and to add to them such other States as may arise in their own bosoms, or in their neighborhoods, which we cannot doubt to be equally practicable. The arrangements that may be necessary for those angles and fractions of our territory which lie on our northwestern frontier, must be left to those whom further discoveries and experience will render more equal to the task.

Let it be remarked, in the third place, that the intercourse throughout the Union will be facilitated by new improvements. Roads will everywhere be shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout, the whole extent of the thirteen States. The communication between the Western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.

A fourth and still more important consideration is, that as almost every State will, on one side or other, be a frontier, and will thus find, in regard to its safety, an inducement to make some sacrifices for the sake of the general protection; so the States which lie at the greatest distance from the heart of the Union, and which, of course, may partake least of the ordinary circulation of its benefits, will be at the same time immediately contiguous to foreign nations, and will consequently stand, on particular occasions, in greatest need of its strength and resources. It may be inconvenient for Georgia, or the States forming our western or northeastern borders, to send their representatives to the seat of government; but they would find it more so to struggle alone against an invading enemy, or even to support alone the whole expense of those precautions which may be dictated by the neighborhood of continual danger. If they should

derive less benefit, therefore, from the Union in some respects than the less distant States, they will derive greater benefit from it in other respects, and thus the proper equilibrium will be maintained throughout.

I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance, or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates for disunion would conduct you. Hearken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellowcitizens of one great, respectable, and flourishing empire. Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their Union, and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rendering us in pieces, in order to preserve our liberties and promote our happiness. But why is the experiment of an extended republic to be rejected, merely because it may comprise what is new? Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit, posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theatre, in favor of private rights and public happiness. Had no important step been taken by the leaders of the Revolution for which a precedent could not be discovered, no government established of which an exact model did not present itself, the people of the United States might, at this moment have been numbered among the melancholy victims of misguided councils, must at best have been laboring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily, we trust, for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great Confederacy, which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the Union, this was the work most difficult to be executed; this is the work which has been new modelled by the act of your convention, and it is that act on which you are now to deliberate and to decide.

PUBLIUS.

Federalist Paper No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments

From the New York Packet.
Friday, February 8, 1788.
Author: Alexander Hamilton or James Madison
To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention. In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because

the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them. It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test. There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view. First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and

consequently the stability and independence of some member of the government, the only other security, must be proportionately increased.

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE.

PUBLIUS.

Federalist Paper No. 57: Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation

From the *New York Packet*
Tuesday, February 19, 1788.

Author: **Alexander Hamilton** or **James Madison**

To the People of the State of New York:

THE THIRD charge against the House of Representatives is, that it will be taken from that class of citizens which will have least sympathy with the mass of the people, and be most likely to aim at an ambitious sacrifice of the many to the aggrandizement of the few. Of all the objections which have been framed against the federal Constitution, this is perhaps the most extraordinary.

Whilst the objection itself is levelled against a pretended oligarchy, the principle of it strikes at the very root of republican government. The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of republican government. The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one, is such a limitation of the term of appointments as will maintain a proper responsibility to the people. Let me now ask what circumstance there is in the constitution of the House of Representatives that violates the principles of republican government, or favors the elevation of the few on the ruins of the many? Let me ask whether every circumstance is not, on the contrary, strictly conformable to these principles, and scrupulously impartial to the rights and pretensions of every class and description of citizens? Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State. Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgement or disappoint the inclination of the people. If we consider the situation of the men on whom the free suffrages of their fellow-citizens may confer the representative trust, we shall find it involving every security which can be devised or desired for their fidelity to their constituents. In the first place, as they will have been distinguished by the preference of their fellow-citizens, we are to presume that in general they will be somewhat distinguished also by those qualities which entitle them to it, and which promise a sincere and scrupulous regard to the nature of their engagements. In the second place, they will enter into the public service under circumstances which cannot fail to produce a temporary affection at least to their

constituents. There is in every breast a sensibility to marks of honor, of favor, of esteem, and of confidence, which, apart from all considerations of interest, is some pledge for grateful and benevolent returns.

Ingratitude is a common topic of declamation against human nature; and it must be confessed that instances of it are but too frequent and flagrant, both in public and in private life. But the universal and extreme indignation which it inspires is itself a proof of the energy and prevalence of the contrary sentiment.

In the third place, those ties which bind the representative to his constituents are strengthened by motives of a more selfish nature. His pride and vanity attach him to a form of government which favors his pretensions and gives him a share in its honors and distinctions. Whatever hopes or projects might be entertained by a few aspiring characters, it must generally happen that a great proportion of the men deriving their advancement from their influence with the people, would have more to hope from a preservation of the favor, than from innovations in the government subversive of the authority of the people. All these securities, however, would be found very insufficient without the restraint of frequent elections. Hence, in the fourth place, the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it. I will add, as a fifth circumstance in the situation of the House of Representatives, restraining them from oppressive measures, that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments, of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? I answer: the genius of the whole system; the nature of just and constitutional laws; and above all, the vigilant and manly spirit which actuates the people of America, a spirit which nourishes freedom, and in return is nourished by it. If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate any thing but liberty. Such will be the relation between the House of Representatives and their constituents. Duty, gratitude, interest, ambition itself, are the chords by which they will be bound to fidelity and sympathy with the great mass of the people.

It is possible that these may all be insufficient to control the caprice and wickedness of man. But are they not all that government will admit, and that human prudence can devise? Are they not the genuine and the characteristic means by which republican government provides for the liberty and happiness of the people? Are they not the identical means on which every State government in the Union relies for the attainment of these important ends? What then are we to understand by the objection which this paper has combated? What are we to say to the men who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it; who pretend to be champions for the right and the capacity of the people to choose their own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the trust committed to them? Were the objection to be read by one who had not seen the mode prescribed by the Constitution for the choice of representatives, he could suppose nothing less than that some unreasonable qualification of property was annexed to the right of suffrage; or that the right of eligibility was limited to persons of particular families or fortunes; or at least that the mode prescribed by the State constitutions was in some respect or other, very grossly departed from. We have seen how far such a supposition would err, as to the two first points. Nor would it, in fact, be less erroneous as to the last. The only difference discoverable between the two cases is, that each representative of the United States will be elected by five or six thousand citizens; whilst in the individual States, the election of a representative is left to about as many hundreds. Will it be pretended that this difference is sufficient to justify an attachment to the State governments, and an abhorrence to the federal government? If this be the point on which the objection turns, it deserves to be examined. Is it supported by REASON?

This cannot be said, without maintaining that five or six thousand citizens are less capable of choosing a fit representative, or more liable to be corrupted by an unfit one, than five or six hundred. Reason, on the contrary, assures us, that as in so great a number a fit representative would be most likely to be found, so the choice would be less likely to be diverted from him, by the intrigues of the ambitious, or the bribes of the rich. Is the CONSEQUENCE from this doctrine admissible? If we say that five or six hundred citizens are as many as can jointly exercise their right of suffrage, must we not deprive the people of the immediate choice of their public servants, in every instance where the administration of the government does not require as many of them as will amount to one for that number of citizens? Is the doctrine warranted by FACTS? It was shown in the last paper, that the real representation in the British House of Commons very little exceeds the proportion of one for every thirty thousand inhabitants. Besides a variety of powerful causes not existing here, and which favor in that country the pretensions of rank and wealth, no person is eligible as a representative of a county, unless he possess real estate of the clear value of six hundred pounds sterling per year; nor of a city or borough, unless he possess a like estate of half that annual value. To this qualification on the part of the county representatives is added another on the part of the county electors, which restrains the right of suffrage to persons having a freehold estate of the annual value of more than twenty pounds sterling, according to the present rate of money. Notwithstanding these unfavorable circumstances, and notwithstanding some very unequal laws in the British code, it cannot be said that the representatives of the nation have elevated the few on the ruins of the many. But we need not resort to foreign experience on this subject. Our own is explicit and decisive. The districts in New Hampshire in which the senators are chosen immediately by the people, are nearly as large as will be necessary for

her representatives in the Congress. Those of Massachusetts are larger than will be necessary for that purpose; and those of New York still more so.

In the last State the members of Assembly for the cities and counties of New York and Albany are elected by very nearly as many voters as will be entitled to a representative in the Congress, calculating on the number of sixty-five representatives only. It makes no difference that in these senatorial districts and counties a number of representatives are voted for by each elector at the same time. If the same electors at the same time are capable of choosing four or five representatives, they cannot be incapable of choosing one. Pennsylvania is an additional example. Some of her counties, which elect her State representatives, are almost as large as her districts will be by which her federal representatives will be elected. The city of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of federal representatives. It forms, however, but one county, in which every elector votes for each of its representatives in the State legislature. And what may appear to be still more directly to our purpose, the whole city actually elects a SINGLE MEMBER for the executive council. This is the case in all the other counties of the State. Are not these facts the most satisfactory proofs of the fallacy which has been employed against the branch of the federal government under consideration? Has it appeared on trial that the senators of New Hampshire, Massachusetts, and New York, or the executive council of Pennsylvania, or the members of the Assembly in the two last States, have betrayed any peculiar disposition to sacrifice the many to the few, or are in any respect less worthy of their places than the representatives and magistrates appointed in other States by very small divisions of the people? But there are cases of a stronger complexion than any which I have yet quoted.

One branch of the legislature of Connecticut is so constituted that each member of it is elected by the whole State. So is the governor of that State, of Massachusetts, and of this State, and the president of New Hampshire. I leave every man to decide whether the result of any one of these experiments can be said to countenance a suspicion, that a diffusive mode of choosing representatives of the people tends to elevate traitors and to undermine the public liberty.

PUBLIUS.

Federalist Paper No. 78: The Judiciary Department

Author: **Alexander Hamilton**

To the People of the State of New York:

WE PROCEED now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power[1]; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."[2] And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an EQUAL authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove any thing, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies,[3] in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages

on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established GOOD BEHAVIOR as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

PUBLIUS.

1. The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the judiciary is next to nothing." "Spirit of Laws." vol. i., page 186. Back to text
2. Idem, page 181. Back to text
3. Vide "Protest of the Minority of the Convention of Pennsylvania," Martin's Speech, etc.

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Appendix E

Obergefell v. Hodges

Dissenting Opinion by Associate Justice Antonin Scalia

Past Justice Antonin Scalia offered a dissenting opinion in the recent court decision on same-sex marriage illustrating his opinion on the role of the Supreme Court.

The substance of today's decree is not of immense personal importance to me. The law can recognize as marriage whatever sexual attachments and living arrangements it wishes, and can accord them favorable civil consequences, from tax treatment to rights of inheritance.[1] […] So it is not of special importance to me what the law says about marriage. It is of overwhelming importance, however, who it is that rules me. Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact—and the furthest extension one can even imagine—of the Court's claimed power to create "liberties" that the Constitution and its Amendments neglect to mention. ***This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves.*** (emphasis added)

Until the courts put a stop to it, public debate over same-sex marriage displayed American democracy at its best. Individuals on both sides of the issue passionately, but respectfully, attempted to persuade their fellow citizens to accept their views. Americans considered the arguments and put the question to a vote.

The electorates of 11 States, either directly or through their representatives, chose to expand the traditional definition of marriage. Many more decided not to.[1] Win or lose, advocates for both sides continued pressing their cases, secure in the knowledge that an electoral loss can be negated by a later electoral win. That is exactly how our system of government is supposed to work.[2]

The Constitution places some constraints on self-rule—constraints adopted by the People themselves when they ratified the Constitution and its Amendments. Forbidden are laws "impairing the Obligation of Contracts,"[3] denying "Full Faith and Credit" to the "public Acts" of other States,[4] prohibiting the free exercise of religion,[5] abridging the freedom of speech,[6] infringing the right to keep and bear arms,[7] authorizing unreasonable searches and seizures,[8] and so forth. Aside from these limitations, those powers "reserved to the States respectively, or to the people"[9] can be exercised as the States or the People desire. These cases ask us to decide whether the Fourteenth Amendment contains a limitation that requires the States to license and recognize marriages between two people of the same sex. Does it remove that issue from the political process?

Of course not. It would be surprising to find a prescription regarding marriage in the Federal Constitution since, as the author of today's opinion reminded us only two years ago (in an opinion joined by the same Justices who join him today):

"[R]egulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States."[10] […] We have no basis for striking down a practice that is not expressly prohibited by the Fourteenth Amendment's text, and that bears the endorsement of a long tradition of open, widespread, and unchallenged use dating back to the Amendment's ratification. Since there is no doubt whatever that the People never decided to prohibit the limitation of marriage to opposite-sex couples, the public debate over same-sex marriage must be allowed to continue.

But the Court ends this debate, in an opinion lacking even a thin veneer of law. […]

This is a naked judicial claim to legislative—indeed, super-legislative—power; a claim fundamentally at odds with our system of government. Except as limited by a constitutional prohibition agreed to by the People, the States are free to adopt whatever laws they like, even those that offend the esteemed Justices' "reasoned judgment." A system of government that makes that the People subordinate to a committee of nine unelected lawyers does not deserve to be called a democracy. (emphasis added)

Judges are selected precisely for their skill as lawyers; whether they reflect the policy views of a particular constituency is not (or should not be) relevant. […] Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers[18] who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner (California does not count). Not a single evangelical Christian (a group that comprises about one quarter of Americans[19]), or even a Protestant of any denomination.

The strikingly unrepresentative character of the body voting on today's social upheaval would be irrelevant if they were functioning as judges, answering the legal question whether the American people had ever ratified a constitutional provision that was understood to proscribe the traditional definition of marriage. But of course the Justices in today's majority are not voting on that basis; they say they are not. And to allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation. […]

They are certain that the People ratified the Fourteenth Amendment to bestow on them the power to remove questions from the democratic process when that is called for by their "reasoned judgment." These Justices know that limiting marriage to one man and one woman is contrary to reason; they know that an institution as old as government itself, and accepted by every nation in history until 15 years ago,[21] cannot possibly be supported by anything other than ignorance or bigotry. And they are willing to say that any citizen who does not agree with that, who adheres to what was, until 15 years ago, the unanimous judgment of all generations and all societies, stands against the Constitution. […]

"The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality."[23] (Really? Who ever thought that intimacy and spirituality [whatever that means] were freedoms? And if intimacy is, one would think Freedom of Intimacy is abridged rather than expanded by marriage. Ask the nearest hippie. Expression, sure enough, is a freedom, but anyone in a long-lasting marriage will attest that that happy state constricts, rather than expands, what one can prudently say.) Rights, we are told, can "rise . . . from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era."[24] (Huh? How can a better informed understanding of how constitutional imperatives [whatever that means] define [whatever that means] an urgent liberty [never mind], give birth to a right?) And we are told that, "[i]n any particular case," either the Equal Protection or Due Process Clause "may be thought to capture the essence of [a] right in a more accurate and comprehensive way," than the other, "even as the two Clauses may converge in the identification and definition of the right."[25] (What say? What possible "essence" does substantive due process "capture" in an "accurate and comprehensive way"? It stands for nothing whatever, except those freedoms and entitlements that this Court really likes. And the Equal Protection Clause, as employed today, identifies nothing except a difference in treatment that this Court really dislikes. Hardly a distillation of essence. If the opinion is correct that the two clauses "converge in the identification and definition of [a] right," that is only because the majority's likes and dislikes are predictably compatible.) I could go on. The world does not expect logic and precision in poetry or inspirational pop philosophy; it demands them in the law. The stuff contained in today's opinion has to diminish this Court's reputation for clear thinking and sober analysis.

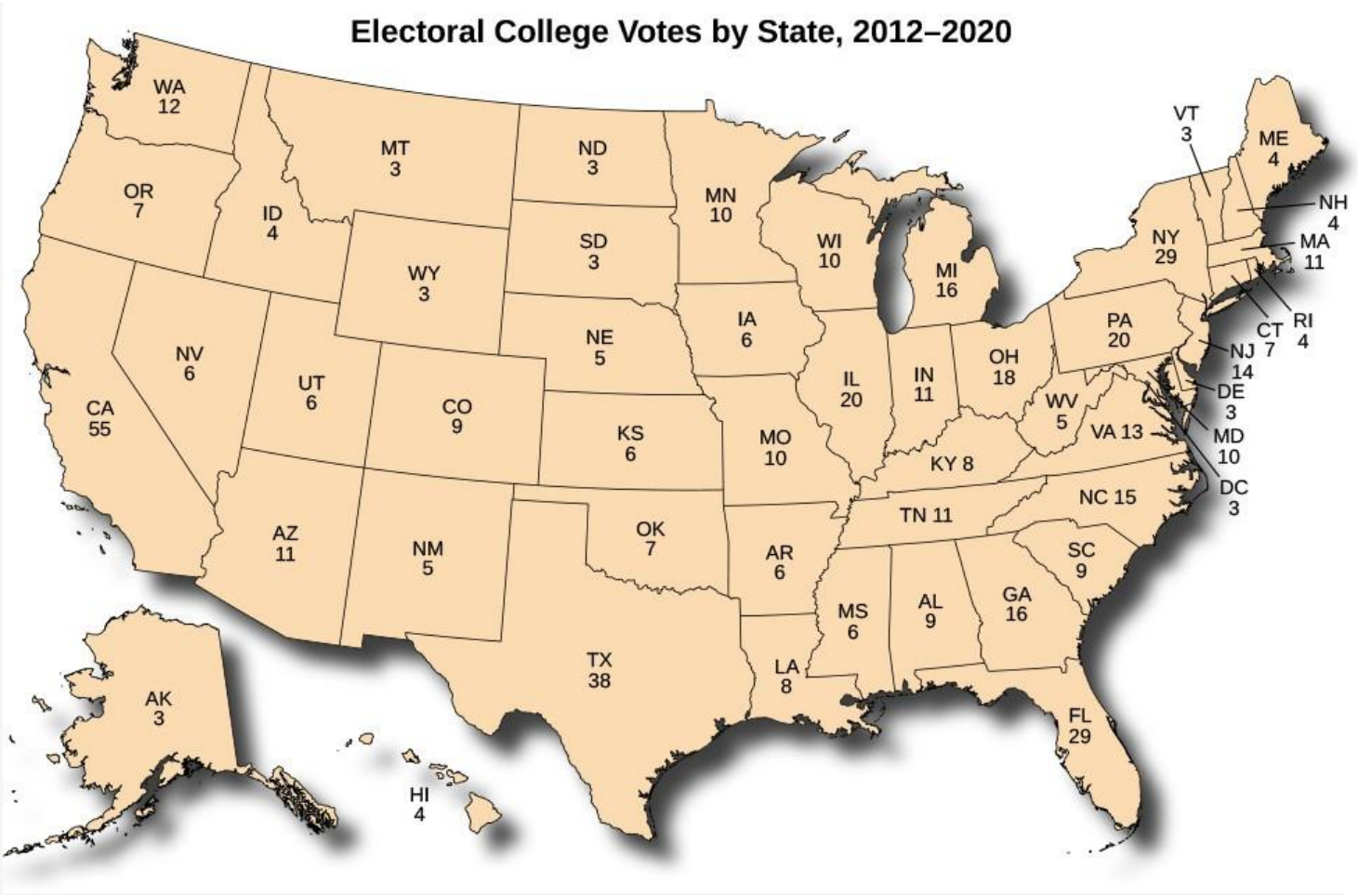
[…] The Judiciary is the "least dangerous" of the federal branches because it has "neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm" and the States, "even for the efficacy of its judgments."[26] With each decision of ours that takes from the People a question properly left to them—with each decision that is unabashedly based not on law, but on the "reasoned judgment" of a bare majority of this Court—we move one step closer to being

reminded of our impotence.

1Brief for Respondents in No. 14–571, p. 14./2Accord, Schuette v. BAMN, 572 U. S. ___, ___–___ (2014) (plurality opinion) (slip op., at 15–17)./3U. S. Const., Art. I, §10./4Art. IV, §1./5Amdt. 1./6 Ibid./7Amdt. 2./8Amdt. 4./9Amdt. 10./10 United States v. Windsor, 570 U. S. ___, ___ (2013) (slip op., at 16) (internal quotation marks and citation omitted)./11 Id., at ___ (slip op., at 17). 12See Town of Greece v. Galloway, 572 U. S. ___, ___–___ (2014) (slip op., at 7–8). 13 Ante, at 10/14 Ante, at 11./15 Ibid./16 Ante, at 10–11./17 Ante, at 12–18/18The predominant attitude of tall-building lawyers with respect to the questions presented in these cases is suggested by the fact that the American Bar Association deemed it in accord with the wishes of its members to file a brief in support of the petitioners. See Brief for American Bar Association as Amicus Curiae in Nos. 14–571 and 14– 574, pp. 1–5./19See Pew Research Center, America's Changing Religious Landscape 4 (May 12, 2015)./20 Goodridge v. Department of Public Health, 440 Mass. 309, 798 N. E. 2d 941 (2003)./21 Windsor, 570 U. S., at ___ (ALITO, J., dissenting) (slip op., at 7)./22 If, even as the price to be paid for a fifth vote, I ever joined an opinion for the Court that began: "The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity," I would hide my head in a bag. The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie./23 Ante, at 13./24 Ante, at 19./25 Ibid./26The Federalist No. 78 (A. Hamilton).OCTOBER TERM, 2014 1 Syllabus NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321, 337. SUPREME COURT OF THE UNITED STATES Syllabus OBERGEFELL ET AL. v. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT No. 14–556. Argued April 28, 2015—Decided June 26, 2015*Cite as: 576 U. S. ____ (2015) 1 SCALIA, J., dissenting SUPREME COURT OF THE UNITED STATES Nos. 14–556, 14-562, 14-571 and 14–574 JAMES OBERGEFELL, ET AL., PETITIONERS 14–556 v. RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL.; VALERIA TANCO, ET AL., PETITIONERS 14–562 v. BILL HASLAM, GOVERNOR OF TENNESSEE, ET AL.; APRIL DEBOER, ET AL., PETITIONERS 14–571 v. RICK SNYDER, GOVERNOR OF MICHIGAN, ET AL.; AND GREGORY BOURKE, ET AL., PETITIONERS 14–574 v. STEVE BESHEAR, GOVERNOR OF KENTUCKY ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT [June 26, 2015](**https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf**). ⍰

Appendix F

Electoral College Votes by State, 2012—2020



The number of Electoral College votes granted to each state equals the total number of representatives and senators that state has in the U.S. Congress or, in the case of Washington, DC, as many electors as it would have if it were a state. The number of representatives may fluctuate based on state population, which is determined every ten years by the U.S. Census, mandated by Article I, Section 2 of the Constitution. The most recent census was conducted in 2010.

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Appendix G

Selected Cases from the Supreme Court of the United States

***A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).** This case represented a challenge to the constitutionality of a law called the National Industrial Recovery Act. This law was a major part of President Franklin D. Roosevelt's attempt to rebuild the nation's economy during the Great Depression. Major industries in the United States, however, objected to the way the law empowered the president to regulate aspects of American industry, such as labor conditions and even pay. In the unanimous decision, the court determined that the act was unconstitutional because it shifted the power to regulate commerce from the legislative branch to the executive branch.

***Arizona v. United States*, 567 U.S. ___ (2012).** This case involved federal attempts to prevent an Arizona state immigration law (S.B. 1070) from being enforced. The United States brought suit, arguing that immigration law is exclusively in the federal domain. Agreeing with the federal government, a federal district court enjoined specific provisions in the law. Arizona appealed to the Supreme Court to overturn the decision. In a 5–3 decision, the court found that specific provisions in the law did conflict with federal law, while others were constitutional.

***Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).** This case represented a challenge to the principle of "separate but equal" established by *Plessy v. Ferguson* in 1896. The case was brought by students who were denied admittance to certain public schools based exclusively on race. The unanimous decision in *Brown v. Board* determined that the existence of racially segregated public schools violated the equal protection clause of the Fourteenth Amendment. The court decided that schools segregated by race perpetrated harm by giving legal sanction to the idea that African Americans were inherently inferior. The ruling effectively overturned *Plessy v. Ferguson* and removed the legal supports for segregated schools nationwide.

***Buckley v. Valeo*, 424 U.S. 1 (1976).** This case concerned the power of the then recently created Federal Election Commission to regulate the financing of political campaigns. These restrictions limited the amount of contributions that could be made to candidates and required political contributions to be disclosed, among other things. In 1975, Senator James Buckley filed suit, arguing that these limits amounted to a violation of First Amendment protections on free speech and free association. In a series of decisions in this complex case, the court determined that these restrictions did not violate the First Amendment.

***Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ___ (2014).** This case involved a challenge to the mandate in the Patient Protection and Affordable Care Act that required that all employment-based group health care plans provide coverage for certain types of contraceptives. The law, however, allowed exemptions for religious employers such as churches that held a religious-based opposition to contraception. The plaintiffs in the case argued that Hobby Lobby, a large family-owned chain of arts and crafts stores, was run based on Christian principles and therefore should be exempt as well because of the Religious Freedom Restoration Act of 1993 (RFRA). The 5–4 decision in *Burwell v. Hobby Lobby* agreed with the plaintiffs and declared that RFRA permits for-profit companies like Hobby Lobby to deny coverage for contraception in their health plans when that coverage violates a religious belief.

***Bush v. Gore*, 531 U.S. 98 (2000).** Following voting in the November 2000 presidential election, observers recognized that the outcome of the very close national election hinged on the outcome of the election in Florida. Because the Florida election was so close, manual recounts were called for by the state's supreme court. Then-governor George W. Bush, who was ahead in the initial count, appealed to the U.S. Supreme Court to halt the manual recount and to declare that the method of manual recount being used violated his rights to equal protection and due process. The court issued a two-part *per curiam* opinion on the case.

(In a *per curiam* opinion, the court makes it clear that the decision in the case is not intended to set a legal precedent.) In the first part, the court ruled in a 7–2 decision that the manual recount did violate the plaintiff's right to equal protection. In the second part, decided by a smaller 5–4 margin, the court ruled that there was not sufficient time to adjust the recount procedure and conduct a full recount. The effect of this ruling gave the Florida electoral votes, and thus the presidency, to George W. Bush.

***Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).** In 2007, the nonprofit corporation Citizens United was prevented by the Federal Election Commission (FEC) from showing a movie about then-presidential candidate Hillary Clinton. The FEC noted that showing the movie violated the Bipartisan Campaign Reform Act (BCRA). BCRA prohibited campaign communications one month before a primary election and two months before a general election, required donors to be disclosed, and prohibited corporations from using their general funds for campaign communications. The plaintiffs argued that these restrictions constituted a violation of the First Amendment. The 5–4 decision in *Citizens United v. FEC* agreed with the plaintiffs and concluded that the restrictions imposed by BCRA and enforced by the FEC violated the corporation's First Amendment right to free expression.

***Dred Scott v. Sandford*, 60 U.S. 393 (1856).** This case concerned the constitutionality of the Missouri Compromise, which declared that certain states would be entirely free of slavery. Dred Scott, a slave, was brought by his owner into free territories. When the owner brought him back to Missouri, a slave state, Dred Scott sued claiming that his time living in free territory made him free. After failing in his attempts in Missouri, Scott appealed to the Supreme Court. In a 7–2 decision, the court declared that the relevant parts of the Missouri Compromise were unconstitutional, and that Scott remained a slave as a result.

***Dobbs v. Jackson Women's Health Organization,* No. 19-1392, 597 U.S. ___ (2022).** The Court held that the Constitution does not confer a right to abortion. This decision overruled both Roe v. Wade (1973) and Planned Parenthood v. Casey (1992) and returned the power to regulate any aspect of abortion not specifically protected by federal law to the states.

***Gideon v. Wainwright*, 372 U.S. 335 (1963).** In 1961, Clarence E. Gideon was arrested and accused of breaking into a poolroom and stealing money from a cigarette machine. Not being able to afford a lawyer, and being denied a public defender by the judge, Gideon defended himself and was subsequently found guilty. Gideon appealed to the Supreme Court declaring that the denial by the trial judge constituted a violation of his constitutional right to representation. The unanimous decision by the court in *Gideon v. Wainwright* agreed that the Sixth Amendment required that those facing felony criminal charges be supplied with legal representation.

***King v. Burwell*, 576 U.S. ___ (2015).** When Congress wrote and passed the Patient Protection and Affordable Care Act in 2010, lawmakers intended for states to create exchanges through which residents in those states could purchase health care insurance plans. For those residents who could not afford the premiums, the law also allowed for tax credits to help reduce the cost. If states didn't create an exchange, the federal government created the exchange for the state. While the intention of the lawmakers was for the tax credits to apply to the federally created exchanges as well, the language of the law was somewhat unclear on this point. Residents in Virginia brought suit against the law arguing that the law should be interpreted in a way that withholds tax credits from those participating in the federally created exchange. In the 6–3 decision, the court disagreed, stating that viewing the law in its entirety made it clear that the intent of the law was to provide the tax credits to those participating in either exchange.

***Lawrence v. Texas*, 539 U.S. 558 (2003).** This case concerned two men in Houston who in 1998 were prosecuted and convicted under a Texas law that forbade certain types of intimate sexual relations between two persons of the same sex. The men appealed to the Supreme Court arguing that their Fourteenth Amendment rights to equal protection and privacy were violated when they were prosecuted for consensual sexual intimacy in their own home. In the 6–3 decision in *Lawrence v. Texas*, the court concluded that while so-called anti-sodomy statutes like the law in Texas did not violate one's right to equal protection, they did violate the due process clause of the

Fourteenth Amendment. The court stated that the government had no right to infringe on the liberty of persons engaging in such private and personal acts.

***Marbury v. Madison*, 5 U.S. 137 (1803).** This case involved the nomination of justices of the peace in Washington, DC, by President John Adams at the end of his term. Despite the Senate confirming the nominations, some of the commissions were not delivered before Adams left office. The new president, Thomas Jefferson, decided not to deliver the commissions. William Marbury, one of the offended justices, sued, saying that the Judiciary Act of 1789 empowered the court to force Secretary of State James Madison to deliver the commissions. In the unanimous decision in *Marbury v. Madison*, the court declared that while Marbury's rights were violated when Madison refused to deliver the commission, the court did not have the power to force the secretary to do so despite what the Judiciary Act says. In declaring that the law conflicted with the U.S. Constitution, the case established the principle of judicial review wherein the Supreme Court has the power to declare laws passed by Congress and signed by the president to be unconstitutional.

***McDonald v. Chicago*, 561 U.S. 742 (2010).** This case developed as a consequence of the decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), which dismissed a Washington, DC, handgun ban as a violation of the Second Amendment. In *McDonald v. Chicago*, the plaintiffs argued that the Fourteenth Amendment had the effect of applying the Second Amendment to the states, not just to the federal government. In a 5–4 decision, the court agreed with the plaintiffs and concluded that rights like the right to keep and bear arms are important enough for maintaining liberty that the Fourteenth Amendment rightly applies them to the states.

***Miranda v. Arizona*, 384 U.S. 436 (1966).** When Ernesto Miranda was arrested, interrogated, and confessed to kidnapping in 1963, the arresting officers neglected to inform him of his Fifth Amendment right not to self-incriminate. After being found guilty at trial, Miranda appealed to the Supreme Court, insisting that the officers violated his Fifth Amendment rights. The 5–4 decision in *Miranda v. Arizona*found that the right to not incriminate oneself relies heavily on the suspect's right to be informed of these rights at the time of arrest. The opinion indicated that suspects must be told that they have the right to an attorney and the right to remain silent in order to ensure that any statements they provide are issued voluntarily.

***National Federation of Independent Business v. Sebelius*, 567 U.S. ___ (2012).** This case represented a challenge to the constitutionality of the Patient Protection and Affordable Care Act. The suing states argued that the Medicare expansion and the individual mandate that required citizens to purchase health insurance or pay a fine were both unconstitutional. The 5–4 decision found that the Medicare expansion was permissible, but that the federal government could not withhold all Medicare funding for states that refused to accept the expansion. More importantly, it found that Congress had the power to apply the mandate to purchase health insurance under its enumerated power to tax.

***New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).** This case began when the *New York Times* published a full-page advertisement claiming that the arrest of Martin Luther King, Jr. in Alabama was part of a concerted effort to ruin him. Insulted, an Alabama official filed a libel suit against the newspaper. Under Alabama law, which did not require that persons claiming libel have to show harm, the official won a judgment. The *New York Times* appealed to the Supreme Court, arguing that the ruling violated its First Amendment right to free speech. In a unanimous decision, the court declared that the First Amendment protects even false statements by the press, as long as those statements are not made with actual malice.

***Obergefell v. Hodges*, 576 U.S. ___ (2015).** This case concerned groups of same-sex couples who brought suits against a number of states and relevant agencies that refused to recognize same-sex marriages created in states where such marriages were legal. In the 5–4 decision, the court found that not only did the Fourteenth Amendment provision for equal protection under the law require that states recognize same-sex marriages formed in other states, but that no state could deny marriage licenses to same-sex couples if they also issued them to other types of couples.

***Plessy v. Ferguson*, 163 U.S. 537 (1896).** When Homer Plessy, a man of mixed racial heritage, sat in a whites-only railroad car in an attempt to challenge a Louisiana law that required railroad cars be segregated, he was arrested and convicted. Appealing his conviction to the Supreme Court, he argued that the segregation law was a violation of the principle of equal protection under the law in the Fourteenth Amendment. In a 7–1 decision, the court disagreed, indicating that the law was not a violation of the equal protection principle because the different train cars were separate but equal. Plessy v. Ferguson's "separate but equal" remained a guiding principle of segregation until *Brown v. Board of Education* (1954).

***Roe v. Wade*, 410 U.S. 113 (1973).** This case involved a pregnant woman from Texas who desired to terminate her pregnancy. At the time, Texas only allowed abortions in cases where the woman's life was in danger. Using the pseudonym "Jane Roe," the woman appealed to the Supreme Court, arguing that the Constitution provides women the right to terminate an abortion. The 7–2 decision in *Roe v. Wade* sided with the plaintiff and declared that the right to privacy upheld in the decision in *Griswold v. Connecticut* (1965) included a woman's right to an abortion. In balancing the rights of the woman with the interests of the states to protect human life, the court created a trimester framework. In the first trimester, a pregnant woman could seek an abortion without restriction. In the second and third trimesters, however, the court asserted that states had an interest in regulating abortions, provided that those regulations were based on health needs.

Schechter Poultry Corp. v. United States. See ***A. L. A. Schechter Poultry Corp. v. United States***.

***Shelby County v. Holder*, 570 U.S. ___ (2013).** After decades in which African Americans encountered obstacles to voting, particularly in southern states, Congress passed the Voting Rights Act of 1965. Among other things, the law prohibited certain congressional districts from changing election laws without federal authorization. In 2010, Shelby County in Alabama brought a suit against the U.S. attorney general, claiming that both section five of the act, which required districts to seek preapproval, and section four, which determined which districts had to seek preapproval, were unconstitutional. In a 5–4 decision, the court found that both sections violated the Tenth Amendment.

***United States v. Windsor*, 570 U.S. ___ (2013).** When Thea Clara Spyer died in 2009, she left her estate to her wife, Edith Windsor, with whom she had been legally married in Canada years before. Because of a 1996 U.S. law called the Defense of Marriage Act (DOMA), this marriage was not recognized by the federal government. As a result, Windsor was compelled to pay an enormous tax on the inheritance, which she would not have had to pay had the federal government recognized the marriage. Appealing to the Supreme Court, Windsor argued that DOMA was unconstitutional because it deprives same-sex couples of their Fifth Amendment right to equal protection. In the 5–4 decision, the court agreed with Windsor, stating that DOMA was intended to treat certain married couples differently in blatant violation of their Fifth Amendment rights.

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Appendix H

U. S. Department of Justice Legal Terms Glossary

A

acquittal – Judgment that a criminal defendant has not been proven guilty beyond a reasonable doubt.

affidavit – A written statement of facts confirmed by the oath of the party making it. Affidavits must be notarized or administered by an officer of the court with such authority.

affirmed – Judgment by appellate courts where the decree or order is declared valid and will stand as decided in the lower court.

Alford plea – A defendant's plea that allows him to assert his innocence but allows the court to sentence the defendant without conducting a trial. Essentially, the defendant is admitting that the evidence is sufficient to show guilt. Such a plea is often made for purposes of negotiating a deal with the prosecutor for lesser charges or a sentence.

allegation – Something that someone says happened.

answer – The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for defense.

appeal – A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." Both the plaintiff and the defendant can appeal, and the party doing so is called the appellant. Appeals can be made for a variety of reasons including improper procedure and asking the court to change its interpretation of the law.

appellate – About appeals; an appellate court has the power to review the judgment of another lower court or tribunal.

arraignment – A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.

arrest warrant – A written order directing the arrest of a party. Arrest warrants are issued by a judge after a showing of probable cause.

B

bail – Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his/her appearance on the day and time appointed.

bankruptcy – Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings.

bench trial – Trial without a jury in which a judge decides the facts. In a jury trial, the jury decides the facts. Defendants will occasionally waive the right to a jury trial and choose to have a bench trial.

beyond a reasonable doubt – Standard required to convict a criminal defendant of a crime. The prosecution must prove the guilt so that there is no reasonable doubt to the jury that the defendant is guilty.

binding precedent – A prior decision by a court that must be followed without a compelling reason or significantly different facts or issues. Courts are often bound by the decisions of appellate courts with authority to review their decisions. For example, district courts are bound by the decisions of the court of appeals that can review their cases, and all courts – both state and federal – are bound by the decisions of the Supreme Court of the United States.

brief – A written statement submitted by the lawyer for each side in a case that explains to the judge(s) why they should decide the case (or a particular part of a case) in favor of that lawyer's client.

C

capital offense – A crime punishable by death. In the federal system, it applies to crimes such as first degree murder, genocide, and treason.

case law – The use of court decisions to determine how other law (such as statutes) should apply in a given situation. For example, a trial court may use a prior decision from the Supreme Court that has similar issues.

chambers – A judge's office.

charge – The law that the police believe the defendant has broken.

charge to the jury – The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

chief judge – The judge who has primary responsibility for the administration of a court. The chief judge also decides cases, and the choice of chief judges is determined by seniority.

circumstantial evidence – All evidence that is not direct evidence (such as eyewitness testimony).

clerk of court – An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

common law – The legal system that originated in England and is now in use in the United States. It is based on court decisions rather than statutes passed by the legislature.

complaint – A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

continuance – Decision by a judge to postpone trial until a later date.

contract – An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

conviction – A judgment of guilt against a criminal defendant.

counsel – Legal advice; a term used to refer to lawyers in a case.

counterclaim – A claim that a defendant makes against a plaintiff. Counterclaims can often be brought within the same proceedings as the plaintiff's claims.

court – Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

court reporter – A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

cross-examine – Questioning of a witness by the attorney for the other side.

D

damages – Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

default judgment – A judgment rendered because of the defendant's failure to answer or appear.

defendant – In a civil suit, the person complained against; in a criminal case, the person accused of the crime.

defense table – The table where the defense lawyer sits with the defendant in the courtroom.

deposition – An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

direct evidence – Evidence that supports a fact without an inference.

discovery – Lawyers' examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

docket – A log containing brief entries of court proceedings.

E

en banc – "In the bench" or "full bench." Refers to court sessions with the entire membership of a court participating, rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases they deem important enough to be decided by the entire court. They are then said to be sitting en banc.

evidence – Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

exculpatory evidence – Evidence which tends to show the defendant's innocence.

F

federal question – Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties. In some cases, state courts can decide these issues, too, but the cases can always be brought in federal courts.

felony – A crime carrying a penalty of more than a year in prison.

file – To place a paper in the official custody of the clerk of court to enter into the files or records of a case. Lawyers must file a variety of documents throughout the life of a case.

G

grand jury – A body of citizens who listen to evidence of criminal allegations, which are presented by the government, and determines whether there is probable cause to believe the offense was committed. As it is used in federal criminal cases, "the government" refers to the lawyers of the U.S. Attorney's office who are prosecuting the case. Grand jury proceedings are closed to the public, and the person suspected of having committed the crime is not entitled to be present or have an attorney present. States are not required to use grand juries, but the federal government must do so under the Constitution.

H

habeas corpus – A writ that is often used to bring a prisoner before the court to determine the legality of his imprisonment. A prisoner wanting to argue that there is not sufficient cause to be imprisoned would file a writ of habeas corpus. It may also be used to bring a person in custody before the court to give testimony, or to be prosecuted.

hearsay – Statements by a witness who did not see or hear the incident in question but learned about it through secondhand information such as another's statement, a newspaper, or a document. Hearsay is usually not admissible as evidence in court, but there are many exceptions to that rule.

I

impeachment – (1) The process of calling something into question, as in "impeaching the testimony of a witness." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government for trial in the Senate.

inculpatory evidence – Evidence which tends to show the defendant's guilt.

indictment – The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

in forma pauperis – In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

information – A formal accusation by a government attorney that the defendant committed a misdemeanor.

initial hearing – Court proceeding in which the defendant learns of his rights and the charges against him and the judge decides bail.

injunction – An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

interrogatories – Written questions asked to one party by an opposing party, who must answer them in writing under oath. Interrogatories are a part of discovery in a lawsuit.

interview – A meeting with the police or prosecutor.

issue – (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order.

J

judge – Government official with authority to decide lawsuits brought before courts. Judicial officers of the Supreme Court and the highest court in each state are called justices.

judgment – The official decision of a court finally determining the respective rights and claims of the parties to a suit.

jurisdiction – (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. Some issues can be heard in both state and federal courts. The plaintiff initially decides where to bring the suit, but in some cases, the defendant can seek to change the court. (2) The geographic area over which the court has authority to decide cases. A federal court in one state, for example, can usually only decide a case that arose from actions in that state.

juror – A person who is on the jury.

jury – Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact. State court juries can be as small as six jurors in some cases. Federal juries for civil suits must have six jurors criminal suits must have twelve.

jury instructions – A judge's explanation to the jury before it begins deliberations of the questions it must answer and the law governing the case. Each party suggests jury instructions to the judge, but the judge chooses the final wording.

jury pool – The group of people from which the actual jury is chosen. The jury pool is randomly selected from a source such as voter registration banks. Lawyers in the case choose the actual jurors from the jury pool through a process called voir dire.

jurisprudence – The study of law and the structure of the legal system.

L

lawsuit – A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

law clerk (or staff attorney) – Assist judges with research and drafting of opinions.

librarian – Meets the informational needs of the judges and lawyers.

litigation – A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

M

magistrate judges – Judicial officers who assist U.S. district court judges in getting cases ready for trial. They may decide some criminal and civil trials when both parties agree to have the case heard by a magistrate judge instead of a district court judge.

misdemeanor – Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.

mistrial – An invalid trial caused by fundamental error. When a mistrial is declared, the trial must start again, beginning with the selection of a new jury.

motion – Attempt to have a limited issue heard by the court. Motions can be filed before, during, and after trial.

N

nolo contendere – No contest. Has the same effect as a plea of guilty as far as the criminal sentence is concerned, but the plea may not be considered an admission of guilt for any other purpose. Sometimes, a guilty plea could later be used to show fault in a lawsuit, but the plea of nolo contendere forces the plaintiff in the lawsuit to prove that the defendant committed the crime.

O

oath – A promise to tell the truth.

objection – A protest by an attorney, challenging a statement or question made at trial. Common objections include an attorney "leading the witness" or a witness making a statement that is hearsay. Once an objection is made, the judge must decide whether to allow the question or statement.

opinion – A judge's written explanation of a decision of the court. In an appeal, multiple opinions may be written. The court's ruling comes from a majority of judges and forms the majority opinion. A dissenting opinion disagrees with the majority because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the end result of the court but offers further comment possibly because they disagree with how the court reached its conclusion.

oral argument – An opportunity for lawyers to summarize their position before the court in an appeal and also to answer the judges' questions.

P

panel – (1) In appellate cases, a group of judges (usually three) assigned to decide the case; (2) In the jury selection process, the group of potential jurors.

parties – Plaintiffs and defendants (petitioners and respondents) to lawsuits, also known as appellants and appellees in appeals, and their lawyers.

petit jury (or trial jury) – A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of six persons.

plaintiff – The person who files the complaint in a civil lawsuit.

plea – In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges in open court. A plea of nolo contendere or an Alford plea may also be made. A guilty plea allows the defendant to forego a trial.

plea deal (or plea bargain or agreement) – Agreement between the defendant and prosecutor where the defendant pleads guilty in exchange for a concession by the prosecutor. It may include lesser charges, a dismissal of charges, or the prosecutor's recommendation to the judge of a more lenient sentence.

pleadings – Written statements of the parties in a civil case of their positions. In federal courts, the principal pleadings are the complaint and the answer.

precedent – A court decision in an earlier case with facts and law similar to a dispute currently before a court. Precedent will ordinarily govern the decision of a later similar case, unless a party can show that it

was wrongly decided or that it differed in some significant way. Some precedent is binding, meaning that it must be followed. Other precedents need not be followed by the court but can be considered influential.

procedure – The rules for the conduct of a lawsuit; there are rules of civil, criminal, evidence, bankruptcy, and appellate procedure.

preliminary hearing – A hearing where the judge decides whether there is enough evidence to require the defendant to go to trial. Preliminary hearings do not require the same rules as trials. For example, hearsay is often admissible during the preliminary hearing but not at trial.

pretrial conference – A meeting of the judge and lawyers to discuss which matters should be presented to the jury, to review evidence and witnesses, to set a timetable, and to discuss the settlement of the case.

probable cause – An amount of suspicion leading one to believe certain facts are probably true. The Fourth Amendment requires probable cause for the issuance of an arrest or search warrant.

probation – A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed.

probation officers (or pretrial services officers) – Screen applicants for pretrial release and monitor convicted offenders released under court supervision.

pro se – A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

prosecute – To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

public defenders – Represent defendants who can't afford an attorney in criminal matters.

R

record – A written account of all the acts and proceedings in a lawsuit.

remand – When an appellate court sends a case back to a lower court for further proceedings. The lower court is often required to do something differently, but that does not always mean the court's final decision will change

reporter – Makes a record of court proceedings, prepares a transcript, and publishes the court's opinions or decisions.

reverse – When an appellate court sets aside the decision of a lower court because of an error. A reversal is often followed by a remand. For example, if the defendant argued on appeal that certain evidence should not have been used at trial, and the appeals court agrees, the case will be remanded in order for the trial court to reconsider the case without that evidence.

S

search warrant – Orders that a specific location be searched for items, which if found, can be used in court as evidence. Search warrants require probable cause in order to be issued.

sentence – The punishment ordered by a court for a defendant convicted of a crime. Federal courts look to the United States Sentencing Commission Guidelines when deciding the proper punishment for a given crime.

service of process – The service of writs or summonses to the appropriate party.

settlement – Parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

sequester – To separate. Sometimes juries are sequestered from outside influences during their deliberations.

sidebar – A conference between the judge and lawyers held out of earshot of the jury and spectators.

statement – A description that a witness gives to the police and that the police write down.

statute – A law passed by a legislature.

statute of limitations – A law that sets the time within which parties must take action to enforce their rights.

subpoena – A command to a witness to appear and give testimony.

subpoena duces tecum – A command to a witness to produce documents.

summary judgment – A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law.

T

temporary restraining order – Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

testify – Answer questions in court.

testimony – Evidence presented orally by witnesses during trials or before grand juries.

tort – A civil wrong or breach of a duty to another person as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

transcript – A written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation.

trial – A hearing that takes place when the defendant pleads "not guilty," and the parties are required to come to court to present evidence.

U

uphold – The decision of an appellate court not to reverse a lower court decision. Also called "affirm."

U.S. Attorney (or federal prosecutor) – A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government.

U.S. Marshal (or bailiff) – enforce the rules of behavior in courtrooms.

V

venue – The geographical location in which a case is tried.

verdict – The decision of a petit jury or a judge.

victim advocate – work with prosecutors and assist the victims of a crime.

voir dire – The process by which judges and lawyers select a petit jury from among those eligible to serve by questioning them to determine knowledge of the facts of the case and a willingness to decide the case only on the evidence presented in court. "Voir dire" is a phrase meaning "to speak the truth."

W

warrant – An arrest warrant is a written order directing the arrest of a party. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence. Search warrants require probable cause in order to be issued.

witness – A person called upon by either side in a lawsuit to give testimony before the court or jury.

writ – A formal written command, issued from the court, requiring the performance of a specific act.

writ of certiorari – An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal. The Supreme Court is usually not required to hear appeals of cases. A denial of "cert" by the Supreme Court allows the previous ruling to stand.

LICENSES AND ATTRIBUTIONS
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- Legal Terms Glossary. **Authored by**: Offices of the United States Attorneys. **Provided by**: United States Department of Justice. **Located at**: https://www.justice.gov/usao/justice-101/glossary. **Project**: Added for Achieving the Dream Grant Remix. **License**: *Public Domain: No Known Copyright*

Appendix I

What is an open educational resource?

Welcome to *United States Government: The Basics of Government Function, Structure, and Process.*

This textbook was written to increase student access to high-quality learning materials, maintaining the highest standards of academic rigor at little to no cost. The remix of OpenStax original version of the text was edited with the financial assistance of "Achieving the Dream" grant and was designed to meet the specific learning objectives of Texas Higher Education Authority and Austin Community College.

Learning Objectives for U.S. Government	GOVT 2305 Student Resources
to analyze, evaluate and synthesize the important concepts of U. S. Government	free and open textbook with chapter handouts, practice quizzes, vocabulary lists, videos and other resources available to all students at no charge; instructor lectures; small and large group discussion opportunities; classroom activities to further illustrate concepts
to have an opportunity for expressing ideas about U.S. Government in written, oral and visual formats	U.S. Government 2305 with OER materials offers students an opportunity to express ideas and opinions on a choice of topics via a written assessment (course paper); via small and large group discussion of topics during class; and via a choice of individual or group presentations on a wide variety of topics (special project day event)
to analyze data and facts about U.S. Government	visual presentations from instructor and students; student-to-student videos about important facts and data; individual research for course paper and research for special project presentations
to work with others and consider other points of view	direct discussion in lecture of civic responsibility and opportunities for civic engagement; classroom group discussion and activities; student-to-student videos
to understand personal responsibility as a U.S. citizen or resident in connection to participation and choices	direct discussion in lecture of civic rights and responsibilities; discussion of past choices and consequenses
Remixed from Texas Higher Education Coordinating Board "Elements of the Texas Core Curriculum"	*http://www.thecb.state.tx.us/index.cfm?objectid=427FDE26-AF5D-F1A1-E6FDB62091E2A507*

About the original source material for the current "United States Government" remixed and adapted version from OpenStax American Government... OpenStax is a nonprofit based at Rice University. The OpenStax mission is made possible through the generous support of philanthropic foundations.

Through these partnerships and with the help of additional low-cost resources from our OpenStax partners, ACC and OpenStax are breaking down the most common barriers to learning and empowering students and instructors to succeed.

Appendix J

About the Resources

Customization

United States Government is licensed under a Creative Commons Attribution 4.0 International (CC BY) license, which means you can distribute, remix, and build upon the content, as long as you credit OpenStax for the original creation and Austin Community College for the re-mixed version. Because our books are openly licensed, you are free to use the entire book or pick and choose the sections that are most relevant to the needs of your course. Feel free to remix the content by assigning your students select chapters and sections in your syllabus, in the order that you prefer.

ABOUT *United States Government*

United States Government is designed to meet the scope and sequence requirements of the single-semester United States Government course. This title includes innovative features designed to enhance student learning, including *Insider Perspective* features and a *Get Connected* module that shows students how they can get engaged in the political process and *Consider the Original* excerpts from original documents. The book provides an important opportunity for students to learn the core concepts of United States Government and to understand how those concepts apply to their lives and the world around them.

Coverage and Scope

Our *United States Government* textbook adheres to the scope and sequence of introductory United States government courses. We have endeavored to make the workings of United States Government interesting and accessible to students while maintaining the conceptual coverage and rigor inherent in the subject at the college level. With this objective in mind, the content of this textbook has been developed and arranged to provide a logical progression from the fundamental principles of institutional design at the founding, thorough coverage of political structures, to avenues of political participation that constitute United States government. The book builds upon what students have already learned and emphasizes connections between topics as well as between theory and applications. The goal of each section is to enable students not just to recognize concepts, but to work with them in ways that will be useful in later courses, future careers, and as engaged citizens. The organization and pedagogical features were developed and vetted with feedback from government instructors dedicated to the project.

Engaging Feature

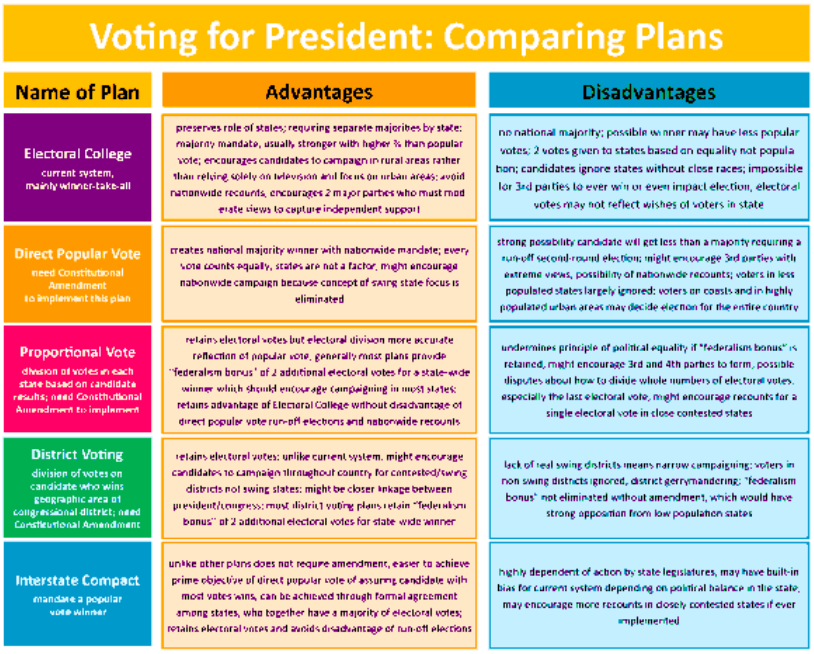
Throughout *United States Government*, you will find features that engage students by taking selected topics a step further. Our features include:

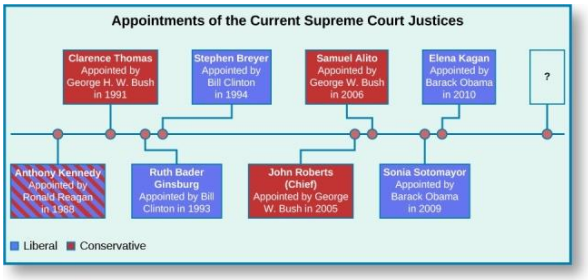
- **Get Connected!** This feature shows students ways they can become engaged in the U.S. political system. Follow-up may include an activity prompt or a discussion question on how students might address a particular problem.
- **Link to Learning.** This feature provides a very brief introduction to a website that is pertinent to students' exploration of the topic at hand. Included in every module, Link to Learning boxes allow students to easily connect to the most current data of ever-changing content such as poll research, budget statistics, and election coverage.

- **Consider the Original**. This feature provides excerpts from original documents pertinent to the subject matter of the corresponding chapter.

Effective Art Program

Original charts, tables, and illustrations are included in this new remixed version. The original material of the OpenStax art program is also included and both new and original materials are designed to enhance students' understanding of concepts through clear and effective statistical graphs, tables, and photographs.





Element	Description of Element of Shared Political Culture
liberty/freedom	political, social and economic liberty of each individual
populism	belief that the people should be in control of the government
egalitarianism	belief that everyone should be treated equally by the government
individualism	independence; self-determination
capitalism	market-based economy with minimal controls to protect the people

Module Materials That Reinforce Key Concepts

- **Learning Objectives.** Every module begins with a set of clear and concise learning objectives. These objectives are designed to help the instructor decide what content to include or assign, and to guide students with respect to what they can expect to learn. After completing the module and end-of-module exercises, students should be able to demonstrate mastery of the learning objectives.
- **Consider the Original.** Excerpts from original documents imbedded within chapters for students to read, including questions to consider in connection to chapter concepts.
- **Terms to Remember.** Key terms are bold and are followed by a definition in context. Definitions of key terms are also listed in the Glossary, which appears at the end of the module online and at the end of the chapter in print.
- **Questions to Consider.** Review Questions provide opportunities to recall and test the information students learn throughout each module. End-of-chapter Critical Thinking Questions encourage deeper reflection on the chapter concepts and themes.
- **Works Cited, Footnotes, Endnotes**

ADDITIONAL RESOURCES: Student and Instructor Resources

Additional resources are combined for both students and instructors, including Getting Started Guides, PowerPoint slides, and an Instructor Answer Guide. Instructor resources require a verified instructor account.

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Appendix K

Survey of Instructor Resources

Learning Objectives for U.S. Government	GOVT 2305 Student Resources
to analyze, evaluate and synthesize the important concepts of U. S. Government	free and open textbook with chapter handouts, practice quizzes, vocabulary lists, videos and other resources available to all students at no charge; instructor lectures; small and large group discussion opportunities; classroom activities to further illustrate concepts
to have an opportunity for expressing ideas about U.S. Government in written, oral and visual formats	U.S. Government 2305 with OER materials offers students an opportunity to express ideas and opinions on a choice of topics via a written assessment (course paper); via small and large group discussion of topics during class; and via a choice of individual or group presentations on a wide variety of topics (special project day event)
to analyze data and facts about U.S. Government	visual presentations from instructor and students; student-to-student videos about important facts and data; individual research for course paper and research for special project presentations
to work with others and consider other points of view	direct discussion in lecture of civic responsibility and opportunities for civic engagement; classroom group discussion and activities; student-to-student videos
to understand personal responsibility as a U.S. citizen or resident in connection to participation and choices	direct discussion in lecture of civic rights and responsibilities; discussion of past choices and consequenses
Remixed from Texas Higher Education Coordinating Board "Elements of the Texas Core Curriculum"	*http://www.thecb.state.tx.us/index.cfm?objectid=427FDE26-AF5D-F1A1-E6FDB62091E2A507*

Remix Version Instructor Resources Include:

- Instructor Test Banks
- Instructor Classroom Activities & Extra Credit Ideas
- Visual Presentations to Enhance Learning
- Instructor Lecture Outlines
- Practice Quiz Handouts with Attached Vocabulary Lists
- Chapter Handouts with Note-taking Boxes (narrow-rule and wide-rule)
- Proposed Unit Review Sheets
- Separate Handouts for Helpful Charts & Diagrams
- Sample Syllabus Language

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Appendix L

Student Resources

Chapter Quizzes and Vocabulary Reviews

Click on the links below to download the practice quizzes for review.

- Government
  - **GOVT 2305 Student Resource Practice Quiz and Review Sheet for US Government Basics**
- Constitution
  - **GOVT 2305 Student Resource Practice Quiz and Review Sheet for Contracts and Constitutions**
- Federalism
  - **GOVT 2305 Student Resource Practice Quiz and Review Sheet for Federalism**
- Courts
  - **GOVT 2305 Student Resource Practice Quiz and Review Sheet for U S Courts**
- Congress
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-congress**
- President
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-the-president**
- Bureaucracy
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-the-bureaucracy**
- Domestic Policy
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-domestic-policy**
- Foreign Policy
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-foreign-policy**
- Public Opinion
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-public-opinion**
- Interest Groups
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-interest-groups**
- Political Parties
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-political-parties**
- Political Participation, Elections, Voting
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-elections**
- Media
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-media**
- Civil Liberties
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-civil-liberties**
- Civil Rights
  - **govt-2305-student-resource-practice-quiz-and-review-sheet-for-civil-rights**

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Handy-Dandy Handouts

Handy-Dandy Handouts for each chapter including space for class notes–wide rule and narrow rule versions.

Note-Taking Boxes–Wide Rule Versions

- govt-2305-student-resource-us-government-handout-wide-rule
- govt-2305-student-resoruce-constitutions-and-contracts-handout-wide-rule-version
- govt-2305-student-resource-federalism-handout-wide-rule-version
- govt-2305-student-resource-u-s-courts-handout-wide-rule-version
- govt-2305-student-resource-handout-for-congress-wide-rule-version
- govt-2305-student-resource-handout-for-the-president-wide-rule-version
- govt-2305-student-resource-handout-for-the-bureaucracy-wide-rule-version
- govt-2305-student-resource-handout-for-domestic-policy-wide-rule-version
- govt-2305-student-resource-handout-for-foreign-policy-wide-rule-version
- govt-2305-student-resource-handout-for-public-opinion-wide-rule-version
- govt-2305-student-resource-handout-for-interest-groups-wide-rule-version
- govt-2305-student-resource-handout-for-political-parties-wide-rule-version
- govt-2305-student-resource-handout-for-elections-wide-rule-version
- govt-2305-student-resource-on-media-wide-rule-version
- govt-2305-student-resource-civil-liberties-wide-rule-version
- govt-2305-student-resource-handout-civil-rights-wide-rule-version
- govt-2305-student-resource-handout-liberty-v-security-wide-rule-version

Note-Taking Boxes–Narrow/College Rule Versions

- govt-2305-student-resource-us-government-handout-narrow-rule
- govt-2305-student-resoruce-constitutions-and-contracts-handout-narrow-rule-version
- govt-2305-student-resource-federalism-handout-narrow-rule-version
- govt-2305-student-resource-u-s-courts-handout-narrow-rule-version
- govt-2305-student-resource-handout-for-congress-narrow-rule-version
- govt-2305-student-resource-handout-for-the-president-narrow-rule-version
- govt-2305-student-resource-handout-for-the-bureaucracy-narrow-rule-version
- govt-2305-student-resource-handout-for-domestic-policy-narrow-rule-version
- govt-2305-student-resource-handout-for-foreign-policy-narrow-rule-version
- govt-2305-student-resource-handout-for-public-opinion-narrow-rule-version
- govt-2305-student-resource-handout-for-interest-groups-narrow-rule-version
- govt-2305-student-resource-handout-for-political-parties-narrow-rule-version
- govt-2305-student-resource-handout-for-elections-narrow-rule-version
- govt-2305-student-resource-on-media-narrow-rule-version
- govt-2305-student-resource-civil-liberties-narrow-rule-version
- govt-2305-student-resource-handout-civil-rights-narrow-rule-version
- govt-2305-student-resource-handout-liberty-v-security-narrow-rule-version

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Appendix M

Helpful Charts and Diagrams for Instructors & Students

A few of the charts and diagrams from the textbook chapters are included--in .pdf printable format for students.

- Chart Illustrating Unitary Structure for Governing
  - GOVT 2305 Government 3 Structures of Government Chart UNITARY
- Chart Illustrating Confederation/Confederacy Structure for Governing
  - GOVT 2305 Government 3 Structures of Government Chart CONFEDERATION
- Chart Illustrating U.S. Federal Structure for Governing
  - GOVT 2305 Government 3 Structures of Government Chart FEDERAL
- Chart for Reapportionment and Redistricting
  - govt-2305-student-resource-reapportionment-pie-chart
- Diagram of the Policy Making Process
  - govt-2305-student-resource-policy-making-diagram
- Chart of the Powers of Government
  - govt-2305-student-resource-government-powers-chart
- Chart of a Federal Structure of Government
  - govt-2305-student-resource-federal-structure-of-government-chart
- Chart of the Types of Jurisdiction in the Court System
  - govt-2305-government-types-of-jurisdiction-chart
- Chart of Goods in Society
  - govt-2305-government-types-of-goods-chart
- Chart of the Basic Functions of Government
  - govt-2305-government-functions-of-government-chart
- Chart on Courts and the Policy Making Process
  - govt-2305-student-resource-policy-making-diagram
- Chart of Agents of Socialization
  - govt-2305-government-agents-of-socialization-chart
- Chart of the Amendments to the *U. S. Constitution*
  - govt-2305-government-27-amendments-chart
- Chart Illustrating the Basic Functions of Political Parties
  - GOVT 2305 Student Resource Functions of Political Parties Chart
- Chart Illustrating the Connection Between Ideology and Party Influence
  - GOVT 2305 Government Basic Ideology Chart for Political Party Influence x
- Chart Illustrating the Basic Principles of the Lemon Test (*Lemon v. Kurtzman*)
  - Chart for the Lemon Test and Religious Liberty
- Chart of Unitary Structure in Government
  - GOVT 2305 Government 3 Structures of Government Chart UNITARY
- Chart of Confederate Structure in Government
  - GOVT 2305 Government 3 Structures of Government Chart CONFEDERATION
- Chart of Federal Structure in Government
  - GOVT 2305 Government 3 Structures of Government Chart FEDERAL

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Appendix N

Information about the .PDF

PDF



PDF versions of the primary textbook are available for offline use. While these versions are a convenient alternative for times when students lack Internet access, they do not include all of the interactive content such as simulations, videos, and quizzes. For that reason, the offline versions should be used as a backup rather than as the primary textbook.

To share these files with your students, copy and paste the text and download link above into a page or announcement in your learning management system (Blackboard, Canvas, etc.).

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Appendix O

An Example of Cooperative Federalism:

The Balcones Canyonlands Preserve Conservation Plan

An Example of Cooperative Federalism: The Balcones Canyonlands Preserve Conservation Plan



Golden-Cheeked Warbler
(Permission for use & photo provided by Travis County; Credit Rebecca Rylander)

Travis County, Texas is home to the city of Austin and is one of the fastest growing counties in the country.

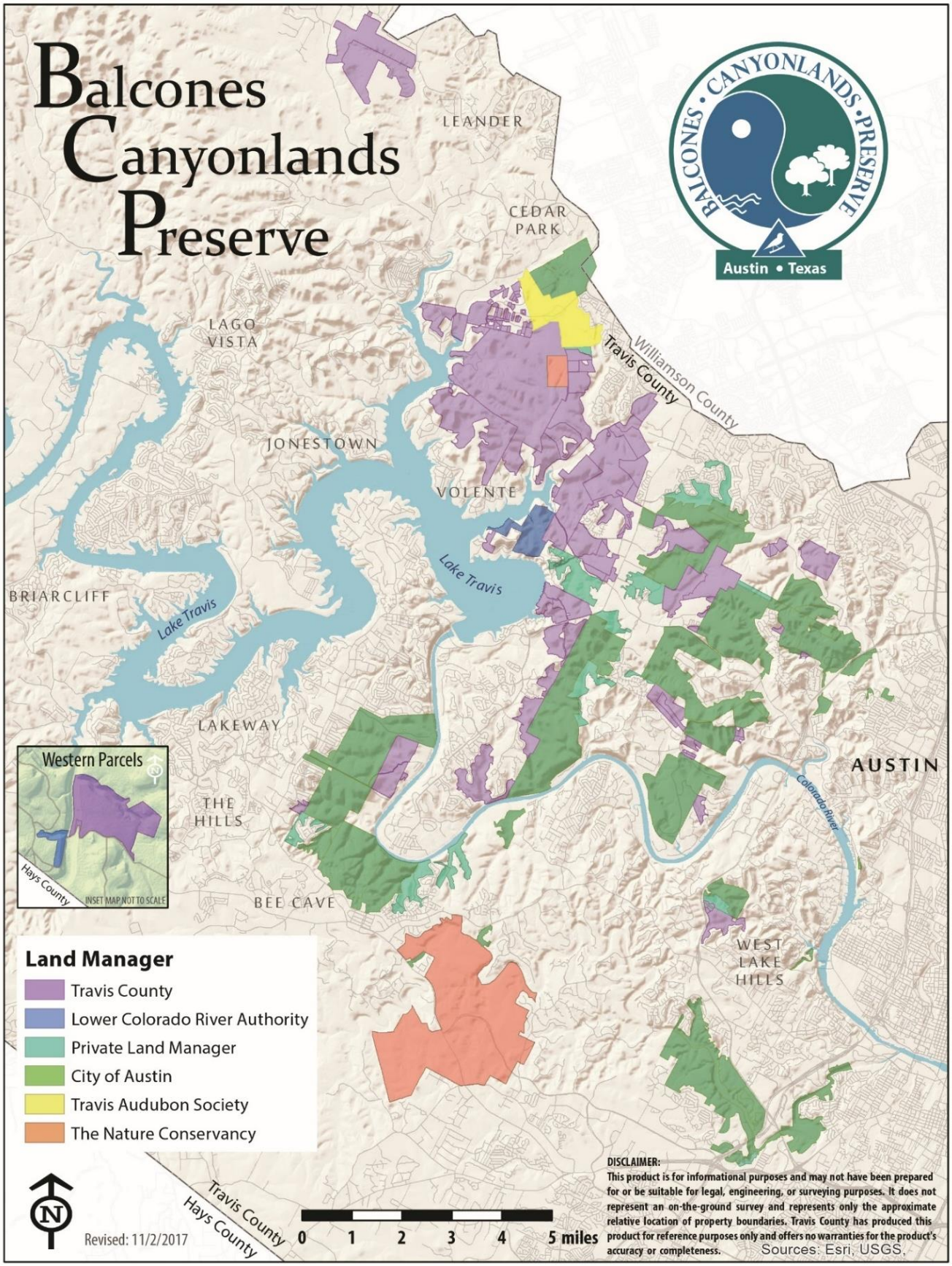
One of the major challenges the county faces is preserving the region's unique character and natural beauty as its population expands.

Development of roads, houses, and businesses has put increasing pressure on the natural environment.

From 1987 to 1990, eight species in western Travis County were listed as endangered as a result of habitat loss. The final species to be listed, the golden-cheeked warbler, nests only in Central Texas and its habitat spans much of western Travis County.

As a result of its listing, development in the area came to a near standstill. In order to develop land with endangered species habitat, landowners had to apply for a permit from the U.S. Fish & Wildlife Service (USFWS), but the process could take several years.

Local policymakers, developers, scientists, and environmentalists came together to find a solution.



Produced by Travis County; Data Sources: United States Geological Society, Travis County and Esri

They worked with USFWS to create the Balcones Canyonlands Conservation Plan (BCCP), which allowed development to continue while protecting important natural areas.

It created a streamlined permitting process through which many local landowners could legally remove endangered species habitat on their property. In return, large swaths of ideal habitat for these species were set aside in the Balcones Canyonlands Preserve (BCP), which is managed by Travis County, the City of Austin, and other local partners.



Avery Ranch Cave opened to Austin Community College students by the Texas Cave Management Association (Credit: Deb Hoag, 2019)

The BCCP comprises a Habitat Conservation Plan (HCP), a USFWS-issued Endangered Species Act 10(a)(1)(b) permit, and other guiding documents. The 10(a)(1)(b) permit, issued jointly to Travis County and the City of Austin, allows habitat for eight endangered species to be removed during development in return for the protection of other similar habitat, a process known as "mitigation." The HCP outlines how much endangered species habitat must be protected and provides land management guidelines.

When the BCCP was signed in 1996, HCPs were not a new idea – they were authorized by a 1982 amendment to the **Endangered Species Act**. But the BCCP was unusual in its scale. It provided mitigation options to residents of nearly half the county and called for the preservation of at least 30,428 acres of suitable endangered species habitat. The BCCP was also unusual in the number of species it covered: two migratory songbirds and six cave-dwelling karst invertebrates.

The BCCP provided a new, streamlined way for landowners to mitigate for impacts to any of those eight endangered species. The BCCP exemplifies how different levels of government can work together (**cooperative federalism**) to develop a regionally-appropriate way to comply with federal law – in this case, the 1973 Endangered Species Act.

The City and County: Permit Co-holders



College students from Williamson/Travis counties in Texas volunteer for "Service Learning" projects in the Preserve, coordinated by Johanna Arendt, community liaison for Travis County and the Preserve. Fall 2019 students assisted with removing invasive plant species that overwhelm native vegetation and put vulnerable species at risk.

Travis County and the City of Austin hold the 10(a)(1)(b) permit jointly and share the duties of issuing permits through the BCCP's streamlined process. Travis County issues permits to qualified landowners who want to remove endangered species habitat in order to develop their property. The City of Austin issues permits for the development and maintenance of infrastructure corridors for utilities such as electrical lines.

The City and County also manage approximately 80 percent of the Balcones Canyonlands Preserve. While they manage separate sections of the preserve, they coordinate on

everything from species monitoring to community outreach. They also work closely with the nonprofits and other entities that manage the remaining 20% of the preserve.

The administration and implementation of the BCCP is overseen by the Coordinating Committee, which is composed of a Travis County Commissioner, a City of Austin Council Member, and two non-voting members: a representative of the U.S. Fish and Wildlife Service and the BCCP Secretary. The Coordinating Committee meets four times a year and welcomes public participation.

Landscape-Scale Conservation

The Balcones Canyonlands on the eastern edge of the Texas Hill Country have historically been home to a broad range of wildlife. In fact, Central Texas is known internationally for its high level of biodiversity. **Many of the native plants and animals that live here are found nowhere else on earth.** By protecting the most vulnerable species—the first ones to become endangered—we can help perpetuate the entire ecosystem.

Landscape-scale conservation, like the Balcones Canyonlands Preserve, is the most effective way to preserve a viable ecosystem. Large natural areas are generally more resilient compared to smaller tracts, and provide resources to a larger number of species, many of which rely on each other for food and shelter. Larger preserve tracts connected to each other also create important wildlife corridors for animal populations to freely move between protected areas and maintain genetic diversity.



Students hike the Preserve to learn about endangered species and preservation of core habitat.

One of the benefits of creating a regional Habitat Conservation Plan (HCP) is the ability to preserve large, contiguous areas of the best quality habitat. Without a regional HCP, individual landowners with endangered species habitat who wish to develop must apply to USFWS for their own 10(a)(1)(b) permit and HCP. This generally results in the creation of small preserves on individual properties. While these preserves are beneficial to the protected species, they are less ideal for many species than larger, un-fragmented areas.

The golden-cheeked warbler is a good example of a species that does best in the interior of larger tracts, where it is buffered from “edge effects”. The golden-cheeked warbler’s ideal habitat is mature forests made up largely of Ashe junipers and oak trees. Non-native vegetation can invade from preserve edges, and urban predators such as blue jays, fox squirrels and feral cats can more easily threaten nesting warblers.

There’s usually more noise and other disturbances along the edge that the warblers tend to avoid as well. Preserving larger areas provides more of the interior habitat that the warblers prefer.

The Future of the BCCP

The BCCP partners reached the minimum acreage goal of 30,428 in 2012. While this large and once very daunting goal has been met, the BCCP partners still have some work to do. The 10(a)(1)(b) permit issued by USFWS contains several other requirements that Travis County and the City of Austin need to fulfill. They must protect a minimum amount of habitat in each of seven macro-sites (sections of the BCP acquisition zone), as well as 62 caves named in the permit. The preserve also must have a configuration that is well-suited to species recovery, having as little "edge" habitat as possible. The 10(a)(1)(b) permit issued in 1996 lasts for 30 years, so Travis County and the City of Austin have until 2026 to meet these goals.

When the term of the permit is ends in 2026, the Balcones Canyonlands Preserve will remain protected. It was created to make up for habitat that was removed forever, so the preserve will never be developed. However, the streamlined permitting process for developing endangered species habitat would end unless the BCCP permit is renewed with USFWS.



Austin Community College students tour Avery Ranch Cave to learn about green infrastructure and how various levels of government work to protect and preserve the environment.

How You Can Get Involved: Public Access

The BCP partners are committed to creating opportunities for public access and education wherever possible.
The primary purpose of the preserve is to provide habitat for endangered species, so decisions about when and where to allow public access considers the potential impact on wildlife.

Many areas of the BCP are regularly open to the public including popular destinations such as Hamilton Pool Preserve, Wild Basin Wilderness Preserve, and Emma Long Park. Other areas of the preserve can be accessed by joining a guided hike or volunteering.

Appendix P

Excerpts from "The Souls of Black Folk"

W.E.B. Du Bois

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To
Burghardt and Yolande
The Lost and the Found

The Forethought

Herein lie buried many things which if read with patience may show the strange meaning of being black here at the dawning of the Twentieth Century. This meaning is not without interest to you, Gentle Reader; for the problem of the Twentieth Century is the problem of the color line.

I pray you, then, receive my little book in all charity, studying my words with me, forgiving mistake and foible for sake of the faith and passion that is in me, and seeking the grain of truth hidden there.

I have sought here to sketch, in vague, uncertain outline, the spiritual world in which ten thousand thousand Americans live and strive. First, in two chapters I have tried to show what Emancipation meant to them, and what was its aftermath. In a third chapter I have pointed out the slow rise of personal leadership, and criticized candidly the leader who bears the chief burden of his race to-day. Then, in two other chapters I have sketched in swift outline the two worlds within and without the Veil, and thus have come to the central problem of training men for life. Venturing now into deeper detail, I have in two chapters studied the struggles of the massed millions of the black peasantry, and in another have sought to make clear the present relations of the sons of master and man. Leaving, then, the white world, I have stepped within the Veil, raising it that you may view faintly its deeper recesses,—the meaning of its religion, the passion of its human sorrow, and the struggle of its greater souls. All this I have ended with a tale twice told but seldom written, and a chapter of song.

Some of these thoughts of mine have seen the light before in other guise. For kindly consenting to their republication here, in altered and extended form, I must thank the publishers of the Atlantic Monthly, The World's Work, the Dial, The New World, and the Annals of the American Academy of Political and Social Science. Before each chapter, as now printed, stands a bar of the Sorrow Songs,—some echo of haunting melody from the only American music which welled up from black souls in the dark past. And, finally, need I add that I who speak here am bone of the bone and flesh of the flesh of them that live within the Veil?

W.E.B. Du B.

Atlanta, Ga., Feb. 1, 1903.

I.
Of Our Spiritual Strivings

O water, voice of my heart, crying in the sand,
All night long crying with a mournful cry,
As I lie and listen, and cannot understand
The voice of my heart in my side or the voice of the sea,
O water, crying for rest, is it I, is it I?
All night long the water is crying to me.

Unresting water, there shall never be rest
Till the last moon droop and the last tide fail,
And the fire of the end begin to burn in the west;
And the heart shall be weary and wonder and cry like the sea,
All life long crying without avail,
As the water all night long is crying to me.

ARTHUR SYMONS.



Between me and the other world there is ever an unasked question: unasked by some through feelings of delicacy; by others through the difficulty of rightly framing it. All, nevertheless, flutter round it. They approach me in a half-hesitant sort of way, eye me curiously or compassionately, and then, instead of saying directly, How does it feel to be a problem? they say, I know an excellent colored man in my town; or, I fought at Mechanicsville; or, Do not these Southern outrages make your blood boil? At these I smile, or am interested, or reduce the boiling to a simmer, as the occasion may require. To the real question, How does it feel to be a problem? I answer seldom a word.

And yet, being a problem is a strange experience,—peculiar even for one who has never been anything else, save perhaps in babyhood and in Europe. It is in the early days of rollicking boyhood that the revelation first bursts upon one, all in a day, as it were. I remember well when the shadow swept across me. I was a little thing, away up in the hills of New England, where the dark Housatonic winds between Hoosac and Taghkanic to the sea. In a wee wooden schoolhouse, something put it into the boys' and girls' heads to buy gorgeous visiting-cards—ten cents a package—and exchange. The exchange was merry, till one girl, a tall newcomer, refused my card,—refused it peremptorily, with a glance. Then it dawned upon me with a certain suddenness that I was different from the others; or like, mayhap, in heart and life and longing, but shut out from their world by a vast veil. I had thereafter no desire to tear down that veil, to creep through; I held all beyond it in common contempt, and lived above it in a region of blue sky and great wandering shadows. That sky was bluest when I could beat my mates at examination-time, or beat them at a foot-race, or even beat their stringy heads. Alas, with the years all this fine contempt began to fade; for the words I longed for, and all their dazzling opportunities, were theirs, not mine. But they should not keep these prizes, I said; some, all, I would wrest from them. Just how I would do it I could never decide: by reading law, by healing the sick, by telling the wonderful tales that swam in my head,—some way. With other black boys the strife was not so fiercely sunny: their youth shrunk into tasteless sycophancy, or into silent hatred of the pale world about them and mocking distrust of everything white; or wasted itself in a bitter cry, Why did God make me an outcast and a stranger in mine own house? The shades of the prison-house closed round about us all: walls strait and stubborn to the whitest, but relentlessly narrow, tall, and unscalable to sons of night who must plod darkly on in resignation, or beat unavailing palms against the stone, or steadily, half hopelessly, watch the streak of blue above.

After the Egyptian and Indian, the Greek and Roman, the Teuton and Mongolian, the Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world,—a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his twoness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.

The history of the American Negro is the history of this strife,—this longing to attain self-conscious manhood, to merge his double self into a better and truer self. In this merging he wishes neither of the older selves to be lost. He would not Africanize America, for America has too much to teach the world and Africa. He would not bleach his Negro soul in a flood of white Americanism, for he knows that Negro blood has a message for the world. He simply wishes to make it possible for a man to be both a Negro and an American, without being cursed and spit upon by his fellows, without having the doors of Opportunity closed roughly in his face.

This, then, is the end of his striving: to be a co-worker in the kingdom of culture, to escape both death and isolation, to husband and use his best powers and his latent genius. These powers of body and mind have in the past been strangely wasted, dispersed, or forgotten. The shadow of a mighty Negro past flits through the tale of Ethiopia the Shadowy and of Egypt the Sphinx. Through history, the powers of single black men flash here and there like falling stars, and die sometimes before the world has rightly gauged their brightness. Here in America, in the few days since Emancipation, the black man's turning hither and thither in hesitant and doubtful striving has often made his very strength to lose effectiveness, to seem like absence of power, like weakness. And yet it is not weakness,—it is the contradiction of double aims. The double-aimed struggle of the black artisan—on the one hand to escape white contempt for a nation of mere hewers of wood and drawers of water, and on the other hand to plough and nail and dig for a poverty-stricken horde—could only result in making him a poor craftsman, for he had but half a heart in either cause. By the poverty and ignorance of his people, the Negro minister or doctor was tempted toward quackery and demagogy; and by the criticism of the other world, toward ideals that made him ashamed of his lowly tasks. The would-be black savant was confronted by the paradox that the knowledge his people needed was a twice-told tale to his white neighbors, while the knowledge which would teach the white world was Greek to his own flesh and blood. The innate love of harmony and beauty that set the ruder souls of his people a-dancing and a-singing raised but confusion and doubt in the soul of the black artist; for the beauty revealed to him was the soul-beauty of a race which his larger audience despised, and he could not articulate the message of another people. This waste of double aims, this seeking to satisfy two unreconciled ideals, has wrought sad

havoc with the courage and faith and deeds of ten thousand thousand people,—has sent them often wooing false gods and invoking false means of salvation, and at times has even seemed about to make them ashamed of themselves.

Away back in the days of bondage they thought to see in one divine event the end of all doubt and disappointment; few men ever worshipped Freedom with half such unquestioning faith as did the American Negro for two centuries. To him, so far as he thought and dreamed, slavery was indeed the sum of all villainies, the cause of all sorrow, the root of all prejudice; Emancipation was the key to a promised land of sweeter beauty than ever stretched before the eyes of wearied Israelites. In song and exhortation swelled one refrain—Liberty; in his tears and curses the God he implored had Freedom in his right hand. At last it came,—suddenly, fearfully, like a dream. With one wild carnival of blood and passion came the message in his own plaintive cadences:—

> "Shout, O children!
> Shout, you're free!
> For God has bought your liberty!"

Years have passed away since then,—ten, twenty, forty; forty years of national life, forty years of renewal and development, and yet the swarthy spectre sits in its accustomed seat at the Nation's feast. In vain do we cry to this our vastest social problem:—

> "Take any shape but that, and my firm nerves
> Shall never tremble!"

The Nation has not yet found peace from its sins; the freedman has not yet found in freedom his promised land. Whatever of good may have come in these years of change, the shadow of a deep disappointment rests upon the Negro people,—a disappointment all the more bitter because the unattained ideal was unbounded save by the simple ignorance of a lowly people.

The first decade was merely a prolongation of the vain search for freedom, the boon that seemed ever barely to elude their grasp,—like a tantalizing will-o'-the-wisp, maddening and misleading the headless host. The holocaust of war, the terrors of the Ku-Klux Klan, the lies of carpet-baggers, the disorganization of industry, and the contradictory advice of friends and foes, left the bewildered serf with no new watchword beyond the old cry for freedom. As the time flew, however, he began to grasp a new idea. The ideal of liberty demanded for its attainment powerful means, and these the Fifteenth Amendment gave him. The ballot, which before he had looked upon as a visible sign of freedom, he now regarded as the chief means of gaining and perfecting the liberty with which war had partially endowed him. And why not? Had not votes made war and emancipated millions? Had not votes enfranchised the freedmen? Was anything impossible to a power that had done all this? A million black men started with renewed zeal to vote themselves into the kingdom. So the decade flew away, the revolution of 1876 came, and left the half-free serf weary, wondering, but still inspired. Slowly but steadily, in the following years, a new vision began gradually to replace the dream of political power,—a powerful movement, the rise of another ideal to guide the unguided, another pillar of fire by night after a clouded day. It was the ideal of "book-learning"; the curiosity, born of compulsory ignorance, to know and test the power of the cabalistic letters of the white man, the longing to know. Here at last seemed to have been discovered the mountain path to Canaan; longer than the highway of Emancipation and law, steep and rugged, but straight, leading to heights high enough to overlook life.

Up the new path the advance guard toiled, slowly, heavily, doggedly; only those who have watched and guided the faltering feet, the misty minds, the dull understandings, of the dark pupils of these schools know how faithfully, how piteously, this people strove to learn. It was weary work. The cold statistician wrote down the inches of progress here and there, noted also where here and there a foot had slipped or some one had fallen. To the tired climbers, the horizon was ever dark, the mists were often cold, the Canaan was always dim and far away. If, however, the vistas disclosed as yet no goal, no resting-place, little but flattery and criticism, the journey at least gave leisure for reflection and self-examination; it changed the child of Emancipation to the youth with dawning self-consciousness, self-realization, self-respect. In those sombre forests of his striving his own soul rose before him, and he saw himself,—darkly as through a veil; and yet he saw in himself some faint revelation of his power, of his mission. He began to have a dim feeling that, to attain his place in the world, he must be himself, and not another. For the first time he sought to analyze the burden he bore upon his back, that dead-weight of social degradation partially masked behind a half-named Negro problem. He felt his poverty; without a cent, without a home, without land, tools, or savings, he had entered into competition with rich, landed, skilled neighbors. To be a poor man is hard, but to be a poor race in a land of dollars is the very bottom of hardships. He felt the weight of his ignorance,—not simply of letters, but of life, of business, of the humanities; the accumulated sloth and shirking and awkwardness of decades and centuries shackled his hands and feet. Nor was his burden all poverty and ignorance. The red stain of bastardy, which two centuries of systematic legal defilement of Negro women had stamped upon his race, meant not only the loss of ancient African chastity, but also the hereditary weight of a mass of corruption from white adulterers, threatening almost the obliteration of the Negro home.

A people thus handicapped ought not to be asked to race with the world, but rather allowed to give all its time and thought to its own social problems. But alas! while sociologists gleefully count his bastards and his prostitutes, the very soul of the toiling, sweating black man is darkened by the shadow of a vast despair. Men call the shadow prejudice, and learnedly explain it as the natural defence of culture against barbarism, learning against ignorance, purity against crime, the "higher" against the "lower" races. To which the Negro cries Amen! and swears that to so much of this strange prejudice as is founded on just homage to civilization, culture, righteousness, and progress, he humbly bows and meekly does obeisance. But before that nameless prejudice that leaps beyond all this he stands helpless, dismayed, and well-nigh speechless; before that personal disrespect and mockery, the ridicule and systematic humiliation, the distortion of fact and wanton license of fancy, the cynical ignoring of the better and the boisterous welcoming of the worse, the all-

pervading desire to inculcate disdain for everything black, from Toussaint to the devil,—before this there rises a sickening despair that would disarm and discourage any nation save that black host to whom "discouragement" is an unwritten word.

But the facing of so vast a prejudice could not but bring the inevitable self-questioning, self-disparagement, and lowering of ideals which ever accompany repression and breed in an atmosphere of contempt and hate. Whisperings and portents came home upon the four winds: Lo! we are diseased and dying, cried the dark hosts; we cannot write, our voting is vain; what need of education, since we must always cook and serve? And the Nation echoed and enforced this self-criticism, saying: Be content to be servants, and nothing more; what need of higher culture for half-men? Away with the black man's ballot, by force or fraud,—and behold the suicide of a race! Nevertheless, out of the evil came something of good,—the more careful adjustment of education to real life, the clearer perception of the Negroes' social responsibilities, and the sobering realization of the meaning of progress.

So dawned the time of *Sturm und Drang:* storm and stress to-day rocks our little boat on the mad waters of the world-sea; there is within and without the sound of conflict, the burning of body and rending of soul; inspiration strives with doubt, and faith with vain questionings. The bright ideals of the past,—physical freedom, political power, the training of brains and the training of hands,—all these in turn have waxed and waned, until even the last grows dim and overcast. Are they all wrong,—all false? No, not that, but each alone was over-simple and incomplete,—the dreams of a credulous race-childhood, or the fond imaginings of the other world which does not know and does not want to know our power. To be really true, all these ideals must be melted and welded into one. The training of the schools we need to-day more than ever,—the training of deft hands, quick eyes and ears, and above all the broader, deeper, higher culture of gifted minds and pure hearts. The power of the ballot we need in sheer self-defence,—else what shall save us from a second slavery? Freedom, too, the long-sought, we still seek,—the freedom of life and limb, the freedom to work and think, the freedom to love and aspire. Work, culture, liberty,—all these we need, not singly but together, not successively but together, each growing and aiding each, and all striving toward that vaster ideal that swims before the Negro people, the ideal of human brotherhood, gained through the unifying ideal of Race; the ideal of fostering and developing the traits and talents of the Negro, not in opposition to or contempt for other races, but rather in large conformity to the greater ideals of the American Republic, in order that some day on American soil two world-races may give each to each those characteristics both so sadly lack. We the darker ones come even now not altogether empty-handed: there are to-day no truer exponents of the pure human spirit of the Declaration of Independence than the American Negroes; there is no true American music but the wild sweet melodies of the Negro slave; the American fairy tales and folklore are Indian and African; and, all in all, we black men seem the sole oasis of simple faith and reverence in a dusty desert of dollars and smartness. Will America be poorer if she replace her brutal dyspeptic blundering with light-hearted but determined Negro humility? or her coarse and cruel wit with loving jovial good-humor? or her vulgar music with the soul of the Sorrow Songs?

Merely a concrete test of the underlying principles of the great republic is the Negro Problem, and the spiritual striving of the freedmen's sons is the travail of souls whose burden is almost beyond the measure of their strength, but who bear it in the name of an historic race, in the name of this the land of their fathers' fathers, and in the name of human opportunity.

And now what I have briefly sketched in large outline let me on coming pages tell again in many ways, with loving emphasis and deeper detail, that men may listen to the striving in the souls of black folk.

II.
Of the Dawn of Freedom

Careless seems the great Avenger;
History's lessons but record
One death-grapple in the darkness
'Twixt old systems and the Word;
Truth forever on the scaffold,
Wrong forever on the throne;
Yet that scaffold sways the future,
And behind the dim unknown
Standeth God within the shadow
Keeping watch above His own.

LOWELL.



The problem of the twentieth century is the problem of the color-line,—the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea. It was a phase of this problem that caused the Civil War; and however much they who marched South and North in 1861 may have fixed on the technical points, of union and local autonomy as a shibboleth, all nevertheless knew, as we know, that the question of Negro slavery was the real cause of the conflict. Curious it was, too, how this deeper question ever forced itself to the surface despite effort and disclaimer. No sooner had Northern armies touched Southern soil than this old question, newly guised, sprang from the earth,—What shall be done with Negroes? Peremptory military commands this way and that, could not answer the query; the Emancipation Proclamation seemed but to broaden and intensify the difficulties; and the War Amendments made the Negro problems of to-day.

It is the aim of this essay to study the period of history from 1861 to 1872 so far as it relates to the American Negro. In effect, this tale of the dawn of Freedom is an account of that government of men called the Freedmen's Bureau,—one of the most singular and interesting of the attempts made by a great nation to grapple with vast problems of race and social condition.

The war has naught to do with slaves, cried Congress, the President, and the Nation; and yet no sooner had the armies, East and West, penetrated Virginia and Tennessee than fugitive slaves appeared within their lines. They came at night, when the flickering camp-fires shone like vast unsteady stars along the black horizon: old men and thin, with gray and tufted hair; women with frightened eyes, dragging whimpering hungry children; men and girls, stalwart and gaunt,—a horde of starving vagabonds, homeless, helpless, and pitiable, in their dark distress. Two methods of treating these newcomers seemed equally logical to opposite sorts of minds. Ben Butler, in Virginia, quickly declared slave property contraband of war, and put the fugitives to work; while Fremont, in Missouri, declared the slaves free under martial law. Butler's action was approved, but Fremont's was hastily countermanded, and his successor, Halleck, saw things differently. "Hereafter," he commanded, "no slaves should be allowed to come into your lines at all; if any come without your knowledge, when owners call for them deliver them." Such a policy was difficult to enforce; some of the black refugees declared themselves freemen, others showed that their masters had deserted them, and still others were captured with forts and plantations. Evidently, too, slaves were a source of strength to the Confederacy, and were being used as laborers and producers. "They constitute a military resource," wrote Secretary Cameron, late in 1861; "and being such, that they should not be turned over to the enemy is too plain to discuss." So gradually the tone of the army chiefs changed; Congress forbade the rendition of fugitives, and Butler's "contrabands" were welcomed as military laborers. This complicated rather than solved the problem, for now the scattering fugitives became a steady stream, which flowed faster as the armies marched.

Then the long-headed man with care-chiselled face who sat in the White House saw the inevitable, and emancipated the slaves of rebels on New Year's, 1863. A month later Congress called earnestly for the Negro soldiers whom the act of July, 1862, had half grudgingly allowed to enlist. Thus the barriers were levelled and the deed was done. The stream of fugitives swelled to a flood, and anxious army officers kept inquiring: "What must be done with slaves, arriving almost daily? Are we to find food and shelter for women and children?"

It was a Pierce of Boston who pointed out the way, and thus became in a sense the founder of the Freedmen's Bureau. He was a firm friend of Secretary Chase; and when, in 1861, the care of slaves and abandoned lands devolved upon the Treasury officials, Pierce was specially detailed from the ranks to study the conditions. First, he cared for the refugees at Fortress Monroe; and then, after Sherman had captured Hilton Head, Pierce was sent there to found his Port Royal experiment of making free workingmen out of slaves. Before his experiment was barely started, however, the problem of the fugitives had assumed such proportions that it was taken from the hands of the over-burdened Treasury Department and given to the army officials. Already centres of massed freedmen were forming at Fortress Monroe, Washington, New Orleans, Vicksburg and Corinth, Columbus, Ky., and Cairo, Ill., as well as at Port Royal. Army chaplains found here new and fruitful fields; "superintendents of contrabands" multiplied, and some attempt at systematic work was made by enlisting the able-bodied men and giving work to the others.

Then came the Freedmen's Aid societies, born of the touching appeals from Pierce and from these other centres of distress. There was the American Missionary Association, sprung from the Amistad, and now full-grown for work; the various church organizations, the National Freedmen's Relief Association, the American Freedmen's Union, the Western Freedmen's Aid Commission,—in all fifty or more active organizations, which sent clothes, money, school-books, and teachers southward. All they did was needed, for the destitution of the freedmen was often reported as "too appalling for belief," and the situation was daily growing worse rather than better.

And daily, too, it seemed more plain that this was no ordinary matter of temporary relief, but a national crisis; for here loomed a labor problem of vast dimensions. Masses of Negroes stood idle, or, if they worked spasmodically, were never sure of pay; and if perchance they received pay, squandered the new thing thoughtlessly. In these and other ways were camp-life and the new liberty demoralizing the freedmen. The broader economic organization thus clearly demanded sprang up here and there as accident and local conditions determined. Here it was that Pierce's Port Royal plan of leased plantations and guided workmen pointed out the rough way. In Washington the military governor, at the urgent appeal of the superintendent, opened confiscated estates to the cultivation of the fugitives, and there in the shadow of the dome gathered black farm villages. General Dix gave over estates to the freedmen of Fortress Monroe, and so on, South and West. The government and benevolent societies furnished the means of cultivation, and the Negro turned again slowly to work. The systems of control, thus started, rapidly grew, here and there, into strange little governments, like that of General Banks in Louisiana, with its ninety thousand black subjects, its fifty thousand guided laborers, and its annual budget of one hundred thousand dollars and more. It made out four thousand pay-rolls a year, registered all freedmen, inquired into grievances and redressed them, laid and collected taxes, and established a system of public schools. So, too, Colonel Eaton, the superintendent of Tennessee and Arkansas, ruled over one hundred thousand freedmen, leased and cultivated seven thousand acres of cotton land, and fed ten thousand paupers a year. In South Carolina was General Saxton, with his deep interest in black folk. He succeeded Pierce and the Treasury officials, and sold forfeited estates, leased abandoned plantations, encouraged schools, and received from Sherman, after that terribly picturesque march to the sea, thousands of the wretched camp followers.

Three characteristic things one might have seen in Sherman's raid through Georgia, which threw the new situation in shadowy relief: the Conqueror, the Conquered, and the Negro. Some see all significance in the grim front of the destroyer, and some in the bitter sufferers of the Lost Cause. But to me neither soldier nor fugitive speaks with so deep a meaning as that dark human cloud that clung like remorse on the rear of those swift columns, swelling at times to half their size, almost engulfing and choking them. In vain were they ordered back, in vain were bridges hewn from beneath their feet; on they trudged and writhed and surged, until they rolled into Savannah, a starved and naked horde of tens of thousands. There too came the characteristic military remedy: "The islands from Charleston south, the abandoned rice-fields along the rivers for thirty miles back from the sea, and the country bordering the St. John's River, Florida, are reserved and set apart for the settlement of Negroes now made free by act of war." So read the celebrated "Field-order Number Fifteen."

All these experiments, orders, and systems were bound to attract and perplex the government and the nation. Directly after the Emancipation Proclamation, Representative Eliot had introduced a bill creating a Bureau of Emancipation; but it was never reported. The following June a committee of inquiry, appointed by the Secretary of War, reported in favor of a temporary bureau for the "improvement, protection, and employment of refugee freedmen," on much the same lines as were afterwards followed. Petitions came in to President Lincoln from distinguished citizens and organizations, strongly urging a comprehensive and unified plan of dealing with the freedmen, under a bureau which should be "charged with the study of plans and execution of measures for easily guiding, and in every way judiciously and humanely aiding, the passage of our emancipated and yet to be emancipated blacks from the old condition of forced labor to their new state of voluntary industry."

Some half-hearted steps were taken to accomplish this, in part, by putting the whole matter again in charge of the special Treasury agents. Laws of 1863 and 1864 directed them to take charge of and lease abandoned lands for periods not exceeding twelve months, and to "provide in such leases, or otherwise, for the employment and general welfare" of the freedmen. Most of the army officers greeted this as a welcome relief from perplexing "Negro affairs," and Secretary Fessenden, July 29, 1864, issued an excellent system of regulations, which were afterward closely followed by General Howard. Under Treasury agents, large quantities of land were leased in the Mississippi Valley, and many Negroes were employed; but in August, 1864, the new regulations were suspended for reasons of "public policy," and the army was again in control.

Meanwhile Congress had turned its attention to the subject; and in March the House passed a bill by a majority of two establishing a Bureau for Freedmen in the War Department. Charles Sumner, who had charge of the bill in the Senate, argued that freedmen and abandoned lands ought to be under the same department, and reported a substitute for the House bill attaching the Bureau to the Treasury Department. This bill passed, but too late for action by the House. The debates wandered over the whole policy of the administration and the general question of slavery, without touching very closely the specific merits of the measure in hand. Then the national election took place; and the administration, with a vote of renewed confidence from the country, addressed itself to the matter more seriously. A conference between the two branches of Congress agreed upon a carefully drawn measure which contained the chief provisions of Sumner's bill, but made the proposed organization a department independent of both the War and the Treasury officials. The bill was conservative, giving the new department "general superintendence of all freedmen." Its purpose was to "establish regulations" for them, protect them, lease them lands, adjust their wages, and appear in civil and military courts as their "next friend." There were many limitations attached to the powers thus granted, and the organization was made permanent. Nevertheless, the Senate defeated the bill, and a new conference committee was appointed. This committee reported a new bill, February 28, which was whirled through just as the session closed, and became the act of 1865 establishing in the War Department a "Bureau of Refugees, Freedmen, and Abandoned Lands."

This last compromise was a hasty bit of legislation, vague and uncertain in outline. A Bureau was created, "to continue during the present War of Rebellion, and for one year thereafter," to which was given "the supervision and management of all abandoned lands and the control of all subjects relating to refugees and freedmen," under "such rules and regulations as may be presented by the head of the Bureau and approved by the President." A Commissioner, appointed by the President and Senate, was to control the Bureau, with an office force not exceeding ten clerks. The President might also appoint assistant commissioners in the seceded States, and to all these offices military officials might be detailed at regular pay. The Secretary of War could issue rations, clothing, and fuel to the destitute, and all abandoned property was placed in the hands of the Bureau for eventual lease and sale to ex-slaves in forty-acre parcels.

Thus did the United States government definitely assume charge of the emancipated Negro as the ward of the nation. It was a tremendous undertaking. Here at a stroke of the pen was erected a government of millions of men,—and not ordinary men either, but black men emasculated by a peculiarly complete system of slavery, centuries old; and now, suddenly, violently, they come into a new birthright, at a time of war and passion, in the midst of the stricken and embittered population of their former masters. Any man might well have hesitated to assume charge of such a work, with vast responsibilities, indefinite powers, and limited resources. Probably no one but a soldier would have answered such a call promptly; and, indeed, no one but a soldier could be called, for Congress had appropriated no money for salaries and expenses.

Less than a month after the weary Emancipator passed to his rest, his successor assigned Major-Gen. Oliver O. Howard to duty as Commissioner of the new Bureau. He was a Maine man, then only thirty-five years of age. He had marched with Sherman to the sea, had fought well at Gettysburg, and but the year before had been assigned to the command of the Department of Tennessee. An honest man, with too much faith in human nature, little aptitude for business and intricate detail, he had had large opportunity of becoming acquainted at first hand with much of the work before him. And of that work it has been truly said that "no approximately correct history of civilization can ever be written which does not throw out in bold relief, as one of the great landmarks of political and social progress, the organization and administration of the Freedmen's Bureau."

On May 12, 1865, Howard was appointed; and he assumed the duties of his office promptly on the 15th, and began examining the field of work. A curious mess he looked upon: little despotisms, communistic experiments, slavery, peonage, business speculations, organized charity, unorganized almsgiving,—all reeling on under the guise of helping the freedmen, and all enshrined in the smoke and blood of the war and the cursing and silence of angry men. On May 19 the new government—for a government it really was—issued its constitution; commissioners were to be appointed in each of the seceded states, who were to take charge of "all subjects relating to refugees and freedmen," and all relief and rations were to be given by their consent alone. The Bureau invited continued cooperation with benevolent societies, and declared: "It will be the object of all commissioners to introduce practicable systems of compensated labor," and to establish schools. Forthwith nine assistant commissioners were appointed. They were to hasten to their fields of work; seek gradually to close relief establishments, and make the destitute self-supporting; act as courts of law where there were no courts, or where Negroes were not recognized in them as free; establish the institution of marriage among ex-slaves, and keep records; see that freedmen were free to choose their employers, and help in making fair contracts for them; and finally, the circular said: "Simple good faith, for which we hope on all hands for those concerned in the passing away of slavery, will especially relieve the assistant commissioners in the discharge of their duties toward the freedmen, as well as promote the general welfare."

No sooner was the work thus started, and the general system and local organization in some measure begun, than two grave difficulties appeared which changed largely the theory and outcome of Bureau work. First, there were the abandoned lands of the South. It had long been the more or less definitely expressed theory of the North that all the chief problems of Emancipation might be settled by establishing the slaves on the forfeited lands of their masters,—a sort of poetic justice, said some. But this poetry done into solemn prose meant either wholesale confiscation of private property in the South, or vast appropriations. Now Congress had not appropriated a cent, and no sooner did the proclamations of general amnesty appear than the eight hundred thousand acres of abandoned lands in the hands of the Freedmen's Bureau melted quickly away. The second difficulty lay in perfecting the local organization of the Bureau throughout the wide field of work. Making a new machine and sending out officials of duly ascertained fitness for a great work of social reform is no child's task; but this task was even harder, for a new central organization had to be fitted on a heterogeneous and confused but already existing system of relief and control of ex-slaves; and the agents available for this work must be sought for in an army still busy with war operations,—men in the very nature of the case ill fitted for delicate social work,—or among the questionable camp followers of an invading host. Thus, after a year's work, vigorously as it was pushed, the problem looked even more difficult to grasp and solve than at the beginning. Nevertheless, three things that year's work did, well worth the doing: it relieved a vast amount of physical suffering; it transported seven thousand fugitives from congested centres back to the farm; and, best of all, it inaugurated the crusade of the New England schoolma'am.

The annals of this Ninth Crusade are yet to be written,—the tale of a mission that seemed to our age far more quixotic than the quest of St. Louis seemed to his. Behind the mists of ruin and rapine waved the calico dresses of women who dared, and after the hoarse mouthings of the field guns rang the rhythm of the alphabet. Rich and poor they were, serious and curious. Bereaved now of a father, now of a brother, now of more than these, they came seeking a life work in planting New England schoolhouses among the white and black of the South. They did their work well. In that first year they taught one hundred thousand souls, and more.

Evidently, Congress must soon legislate again on the hastily organized Bureau, which had so quickly grown into wide significance and vast possibilities. An institution such as that was well-nigh as difficult to end as to begin. Early in 1866 Congress took up the matter, when Senator Trumbull, of Illinois, introduced a bill to extend the Bureau and enlarge its powers. This measure received, at the hands of Congress, far more thorough discussion and attention than its predecessor. The war cloud had thinned enough to allow a clearer

conception of the work of Emancipation. The champions of the bill argued that the strengthening of the Freedmen's Bureau was still a military necessity; that it was needed for the proper carrying out of the Thirteenth Amendment, and was a work of sheer justice to the ex-slave, at a trifling cost to the government. The opponents of the measure declared that the war was over, and the necessity for war measures past; that the Bureau, by reason of its extraordinary powers, was clearly unconstitutional in time of peace, and was destined to irritate the South and pauperize the freedmen, at a final cost of possibly hundreds of millions. These two arguments were unanswered, and indeed unanswerable: the one that the extraordinary powers of the Bureau threatened the civil rights of all citizens; and the other that the government must have power to do what manifestly must be done, and that present abandonment of the freedmen meant their practical reenslavement. The bill which finally passed enlarged and made permanent the Freedmen's Bureau. It was promptly vetoed by President Johnson as "unconstitutional," "unnecessary," and "extrajudicial," and failed of passage over the veto. Meantime, however, the breach between Congress and the President began to broaden, and a modified form of the lost bill was finally passed over the President's second veto, July 16.

The act of 1866 gave the Freedmen's Bureau its final form,—the form by which it will be known to posterity and judged of men. It extended the existence of the Bureau to July, 1868; it authorized additional assistant commissioners, the retention of army officers mustered out of regular service, the sale of certain forfeited lands to freedmen on nominal terms, the sale of Confederate public property for Negro schools, and a wider field of judicial interpretation and cognizance. The government of the unreconstructed South was thus put very largely in the hands of the Freedmen's Bureau, especially as in many cases the departmental military commander was now made also assistant commissioner. It was thus that the Freedmen's Bureau became a full-fledged government of men. It made laws, executed them and interpreted them; it laid and collected taxes, defined and punished crime, maintained and used military force, and dictated such measures as it thought necessary and proper for the accomplishment of its varied ends. Naturally, all these powers were not exercised continuously nor to their fullest extent; and yet, as General Howard has said, "scarcely any subject that has to be legislated upon in civil society failed, at one time or another, to demand the action of this singular Bureau."

To understand and criticise intelligently so vast a work, one must not forget an instant the drift of things in the later sixties. Lee had surrendered, Lincoln was dead, and Johnson and Congress were at loggerheads; the Thirteenth Amendment was adopted, the Fourteenth pending, and the Fifteenth declared in force in 1870. Guerrilla raiding, the ever-present flickering after-flame of war, was spending its forces against the Negroes, and all the Southern land was awakening as from some wild dream to poverty and social revolution. In a time of perfect calm, amid willing neighbors and streaming wealth, the social uplifting of four million slaves to an assured and self-sustaining place in the body politic and economic would have been a herculean task; but when to the inherent difficulties of so delicate and nice a social operation were added the spite and hate of conflict, the hell of war; when suspicion and cruelty were rife, and gaunt Hunger wept beside Bereavement,—in such a case, the work of any instrument of social regeneration was in large part foredoomed to failure. The very name of the Bureau stood for a thing in the South which for two centuries and better men had refused even to argue,—that life amid free Negroes was simply unthinkable, the maddest of experiments.

The agents that the Bureau could command varied all the way from unselfish philanthropists to narrow-minded busybodies and thieves; and even though it be true that the average was far better than the worst, it was the occasional fly that helped spoil the ointment.

Then amid all crouched the freed slave, bewildered between friend and foe. He had emerged from slavery,—not the worst slavery in the world, not a slavery that made all life unbearable, rather a slavery that had here and there something of kindliness, fidelity, and happiness,—but withal slavery, which, so far as human aspiration and desert were concerned, classed the black man and the ox together. And the Negro knew full well that, whatever their deeper convictions may have been, Southern men had fought with desperate energy to perpetuate this slavery under which the black masses, with half-articulate thought, had writhed and shivered. They welcomed freedom with a cry. They shrank from the master who still strove for their chains; they fled to the friends that had freed them, even though those friends stood ready to use them as a club for driving the recalcitrant South back into loyalty. So the cleft between the white and black South grew. Idle to say it never should have been; it was as inevitable as its results were pitiable. Curiously incongruous elements were left arrayed against each other,—the North, the government, the carpet-bagger, and the slave, here; and there, all the South that was white, whether gentleman or vagabond, honest man or rascal, lawless murderer or martyr to duty.

Thus it is doubly difficult to write of this period calmly, so intense was the feeling, so mighty the human passions that swayed and blinded men. Amid it all, two figures ever stand to typify that day to coming ages,—the one, a gray-haired gentleman, whose fathers had quit themselves like men, whose sons lay in nameless graves; who bowed to the evil of slavery because its abolition threatened untold ill to all; who stood at last, in the evening of life, a blighted, ruined form, with hate in his eyes;—and the other, a form hovering dark and mother-like, her awful face black with the mists of centuries, had aforetime quailed at that white master's command, had bent in love over the cradles of his sons and daughters, and closed in death the sunken eyes of his wife,—aye, too, at his behest had laid herself low to his lust, and borne a tawny man-child to the world, only to see her dark boy's limbs scattered to the winds by midnight marauders riding after "damned Niggers." These were the saddest sights of that woful day; and no man clasped the hands of these two passing figures of the present-past; but, hating, they went to their long home, and, hating, their children's children live today.

Here, then, was the field of work for the Freedmen's Bureau; and since, with some hesitation, it was continued by the act of 1868 until 1869, let us look upon four years of its work as a whole. There were, in 1868, nine hundred Bureau officials scattered from Washington to Texas, ruling, directly and indirectly, many millions of men. The deeds of these rulers fall mainly under seven heads: the relief of physical suffering, the overseeing of the beginnings of free labor, the buying and selling of land, the establishment of schools, the paying of bounties, the administration of justice, and the financiering of all these activities.

Up to June, 1869, over half a million patients had been treated by Bureau physicians and surgeons, and sixty hospitals and asylums had been in operation. In fifty months twenty-one million free rations were distributed at a cost of over four million dollars. Next came the difficult question of labor. First, thirty thousand black men were transported from the refuges and relief stations back to the farms, back to the critical trial of a new way of working. Plain instructions went out from Washington: the laborers must be free to choose their employers, no fixed rate of wages was prescribed, and there was to be no peonage or forced labor. So far, so good; but where local agents differed *toto cælo* in capacity and character, where the *personnel* was continually changing, the outcome was necessarily varied. The largest element of success lay in the fact that the majority of the freedmen were willing, even eager, to work. So labor contracts were written,—fifty thousand in a single State,—laborers advised, wages guaranteed, and employers supplied. In truth, the organization became a vast labor bureau,—not perfect, indeed, notably defective here and there, but on the whole successful beyond the dreams of thoughtful men. The two great obstacles which confronted the officials were the tyrant and the idler,—the slaveholder who was determined to perpetuate slavery under another name; and, the freedman who regarded freedom as perpetual rest,—the Devil and the Deep Sea.

In the work of establishing the Negroes as peasant proprietors, the Bureau was from the first handicapped and at last absolutely checked. Something was done, and larger things were planned; abandoned lands were leased so long as they remained in the hands of the Bureau, and a total revenue of nearly half a million dollars derived from black tenants. Some other lands to which the nation had gained title were sold on easy terms, and public lands were opened for settlement to the very few freedmen who had tools and capital. But the vision of "forty acres and a mule"—the righteous and reasonable ambition to become a landholder, which the nation had all but categorically promised the freedmen—was destined in most cases to bitter disappointment. And those men of marvellous hindsight who are today seeking to preach the Negro back to the present peonage of the soil know well, or ought to know, that the opportunity of binding the Negro peasant willingly to the soil was lost on that day when the Commissioner of the Freedmen's Bureau had to go to South Carolina and tell the weeping freedmen, after their years of toil, that their land was not theirs, that there was a mistake—somewhere. If by 1874 the Georgia Negro alone owned three hundred and fifty thousand acres of land, it was by grace of his thrift rather than by bounty of the government.

The greatest success of the Freedmen's Bureau lay in the planting of the free school among Negroes, and the idea of free elementary education among all classes in the South. It not only called the school-mistresses through the benevolent agencies and built them schoolhouses, but it helped discover and support such apostles of human culture as Edmund Ware, Samuel Armstrong, and Erastus Cravath. The opposition to Negro education in the South was at first bitter, and showed itself in ashes, insult, and blood; for the South believed an educated Negro to be a dangerous Negro. And the South was not wholly wrong; for education among all kinds of men always has had, and always will have, an element of danger and revolution, of dissatisfaction and discontent. Nevertheless, men strive to know. Perhaps some inkling of this paradox, even in the unquiet days of the Bureau, helped the bayonets allay an opposition to human training which still to-day lies smouldering in the South, but not flaming. Fisk, Atlanta, Howard, and Hampton were founded in these days, and six million dollars were expended for educational work, seven hundred and fifty thousand dollars of which the freedmen themselves gave of their poverty.

Such contributions, together with the buying of land and various other enterprises, showed that the ex-slave was handling some free capital already. The chief initial source of this was labor in the army, and his pay and bounty as a soldier. Payments to Negro soldiers were at first complicated by the ignorance of the recipients, and the fact that the quotas of colored regiments from Northern States were largely filled by recruits from the South, unknown to their fellow soldiers. Consequently, payments were accompanied by such frauds that Congress, by joint resolution in 1867, put the whole matter in the hands of the Freedmen's Bureau. In two years six million dollars was thus distributed to five thousand claimants, and in the end the sum exceeded eight million dollars. Even in this system fraud was frequent; but still the work put needed capital in the hands of practical paupers, and some, at least, was well spent.

The most perplexing and least successful part of the Bureau's work lay in the exercise of its judicial functions. The regular Bureau court consisted of one representative of the employer, one of the Negro, and one of the Bureau. If the Bureau could have maintained a perfectly judicial attitude, this arrangement would have been ideal, and must in time have gained confidence; but the nature of its other activities and the character of its *personnel* prejudiced the Bureau in favor of the black litigants, and led without doubt to much injustice and annoyance. On the other hand, to leave the Negro in the hands of Southern courts was impossible. In a distracted land where slavery had hardly fallen, to keep the strong from wanton abuse of the weak, and the weak from gloating insolently over the half-shorn strength of the strong, was a thankless, hopeless task. The former masters of the land were peremptorily ordered about, seized, and imprisoned, and punished over and again, with scant courtesy from army officers. The former slaves were intimidated, beaten, raped, and butchered by angry and revengeful men. Bureau courts tended to become centres simply for punishing whites, while the regular civil courts tended to become solely institutions for perpetuating the slavery of blacks. Almost every law and method ingenuity could devise was employed by the legislatures to reduce the Negroes to serfdom,—to make them the slaves of the State, if not of individual owners; while the Bureau officials too often were found striving to put the "bottom rail on top," and gave the freedmen a power and independence which they could not yet use. It is all well enough for us of another generation to wax wise with advice to those who bore the burden in the heat of the day. It is full easy now to see that the man who lost home, fortune, and family at a stroke, and saw his land ruled by "mules and niggers," was really benefited by the passing of slavery. It is not difficult now to say to the young freedman, cheated and cuffed about who has seen his father's head beaten to a jelly and his own mother namelessly assaulted, that the meek shall inherit the earth. Above all, nothing is more convenient than to heap on the Freedmen's Bureau all the evils of that evil day, and damn it utterly for every mistake and blunder that was made.

All this is easy, but it is neither sensible nor just. Someone had blundered, but that was long before Oliver Howard was born; there was criminal aggression and heedless neglect, but without some system of control there would have been far more than there was. Had that control been from within, the Negro would have been re-enslaved, to all intents and purposes. Coming as the control did from without, perfect men and methods would have bettered all things; and even with imperfect agents and questionable methods, the work accomplished was not undeserving of commendation.

Such was the dawn of Freedom; such was the work of the Freedmen's Bureau, which, summed up in brief, may be epitomized thus: for some fifteen million dollars, beside the sums spent before 1865, and the dole of benevolent societies, this Bureau set going a system of free labor, established a beginning of peasant proprietorship, secured the recognition of black freedmen before courts of law, and founded the free common school in the South. On the other hand, it failed to begin the establishment of good-will between ex-masters and freedmen, to guard its work wholly from paternalistic methods which discouraged self-reliance, and to carry out to any considerable extent its implied promises to furnish the freedmen with land. Its successes were the result of hard work, supplemented by the aid of philanthropists and the eager striving of black men. Its failures were the result of bad local agents, the inherent difficulties of the work, and national neglect.

Such an institution, from its wide powers, great responsibilities, large control of moneys, and generally conspicuous position, was naturally open to repeated and bitter attack. It sustained a searching Congressional investigation at the instance of Fernando Wood in 1870. Its archives and few remaining functions were with blunt discourtesy transferred from Howard's control, in his absence, to the supervision of Secretary of War Belknap in 1872, on the Secretary's recommendation. Finally, in consequence of grave intimations of wrong-doing made by the Secretary and his subordinates, General Howard was court-martialed in 1874. In both of these trials the Commissioner of the Freedmen's Bureau was officially exonerated from any wilful misdoing, and his work commended. Nevertheless, many unpleasant things were brought to light,—the methods of transacting the business of the Bureau were faulty; several cases of defalcation were proved, and other frauds strongly suspected; there were some business transactions which savored of dangerous speculation, if not dishonesty; and around it all lay the smirch of the Freedmen's Bank.

Morally and practically, the Freedmen's Bank was part of the Freedmen's Bureau, although it had no legal connection with it. With the prestige of the government back of it, and a directing board of unusual respectability and national reputation, this banking institution had made a remarkable start in the development of that thrift among black folk which slavery had kept them from knowing. Then in one sad day came the crash,—all the hard-earned dollars of the freedmen disappeared; but that was the least of the loss,—all the faith in saving went too, and much of the faith in men; and that was a loss that a Nation which to-day sneers at Negro shiftlessness has never yet made good. Not even ten additional years of slavery could have done so much to throttle the thrift of the freedmen as the mismanagement and bankruptcy of the series of savings banks chartered by the Nation for their especial aid. Where all the blame should rest, it is hard to say; whether the Bureau and the Bank died chiefly by reason of the blows of its selfish friends or the dark machinations of its foes, perhaps even time will never reveal, for here lies unwritten history.

Of the foes without the Bureau, the bitterest were those who attacked not so much its conduct or policy under the law as the necessity for any such institution at all. Such attacks came primarily from the Border States and the South; and they were summed up by Senator Davis, of Kentucky, when he moved to entitle the act of 1866 a bill "to promote strife and conflict between the white and black races… by a grant of unconstitutional power." The argument gathered tremendous strength South and North; but its very strength was its weakness. For, argued the plain common-sense of the nation, if it is unconstitutional, unpractical, and futile for the nation to stand guardian over its helpless wards, then there is left but one alternative,—to make those wards their own guardians by arming them with the ballot. Moreover, the path of the practical politician pointed the same way; for, argued this opportunist, if we cannot peacefully reconstruct the South with white votes, we certainly can with black votes. So justice and force joined hands.

The alternative thus offered the nation was not between full and restricted Negro suffrage; else every sensible man, black and white, would easily have chosen the latter. It was rather a choice between suffrage and slavery, after endless blood and gold had flowed to sweep human bondage away. Not a single Southern legislature stood ready to admit a Negro, under any conditions, to the polls; not a single Southern legislature believed free Negro labor was possible without a system of restrictions that took all its freedom away; there was scarcely a white man in the South who did not honestly regard Emancipation as a crime, and its practical nullification as a duty. In such a situation, the granting of the ballot to the black man was a necessity, the very least a guilty nation could grant a wronged race, and the only method of compelling the South to accept the results of the war. Thus Negro suffrage ended a civil war by beginning a race feud. And some felt gratitude toward the race thus sacrificed in its swaddling clothes on the altar of national integrity; and some felt and feel only indifference and contempt.

Had political exigencies been less pressing, the opposition to government guardianship of Negroes less bitter, and the attachment to the slave system less strong, the social seer can well imagine a far better policy,—a permanent Freedmen's Bureau, with a national system of Negro schools; a carefully supervised employment and labor office; a system of impartial protection before the regular courts; and such institutions for social betterment as savings-banks, land and building associations, and social settlements. All this vast expenditure of money and brains might have formed a great school of prospective citizenship, and solved in a way we have not yet solved the most perplexing and persistent of the Negro problems.

That such an institution was unthinkable in 1870 was due in part to certain acts of the Freedmen's Bureau itself. It came to regard its work as merely temporary, and Negro suffrage as a final answer to all present perplexities. The political ambition of many of its agents and *protégés* led it far afield into questionable activities, until the South, nursing its own deep prejudices, came easily to ignore all the

good deeds of the Bureau and hate its very name with perfect hatred. So the Freedmen's Bureau died, and its child was the Fifteenth Amendment.

The passing of a great human institution before its work is done, like the untimely passing of a single soul, but leaves a legacy of striving for other men. The legacy of the Freedmen's Bureau is the heavy heritage of this generation. To-day, when new and vaster problems are destined to strain every fibre of the national mind and soul, would it not be well to count this legacy honestly and carefully? For this much all men know: despite compromise, war, and struggle, the Negro is not free. In the backwoods of the Gulf States, for miles and miles, he may not leave the plantation of his birth; in well-nigh the whole rural South the black farmers are peons, bound by law and custom to an economic slavery, from which the only escape is death or the penitentiary. In the most cultured sections and cities of the South the Negroes are a segregated servile caste, with restricted rights and privileges. Before the courts, both in law and custom, they stand on a different and peculiar basis. Taxation without representation is the rule of their political life. And the result of all this is, and in nature must have been, lawlessness and crime. That is the large legacy of the Freedmen's Bureau, the work it did not do because it could not.

I have seen a land right merry with the sun, where children sing, and rolling hills lie like passioned women wanton with harvest. And there in the King's Highways sat and sits a figure veiled and bowed, by which the traveller's footsteps hasten as they go. On the tainted air broods fear. Three centuries' thought has been the raising and unveiling of that bowed human heart, and now behold a century new for the duty and the deed. The problem of the Twentieth Century is the problem of the color-line.

III.
Of Mr. Booker T. Washington and Others

From birth till death enslaved; in word, in deed, unmanned!
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Hereditary bondsmen! Know ye not
Who would be free themselves must strike the blow?

BYRON.



Easily the most striking thing in the history of the American Negro since 1876 is the ascendancy of Mr. Booker T. Washington. It began at the time when war memories and ideals were rapidly passing; a day of astonishing commercial development was dawning; a sense of doubt and hesitation overtook the freedmen's sons,—then it was that his leading began. Mr. Washington came, with a simple definite programme, at the psychological moment when the nation was a little ashamed of having bestowed so much sentiment on Negroes, and was concentrating its energies on Dollars. His programme of industrial education, conciliation of the South, and submission and silence as to civil and political rights, was not wholly original; the Free Negroes from 1830 up to war-time had striven to build industrial schools, and the American Missionary Association had from the first taught various trades; and Price and others had sought a way of honorable alliance with the best of the Southerners. But Mr. Washington first indissolubly linked these things; he put enthusiasm, unlimited energy, and perfect faith into his programme, and changed it from a by-path into a veritable Way of Life. And the tale of the methods by which he did this is a fascinating study of human life.

It startled the nation to hear a Negro advocating such a programme after many decades of bitter complaint; it startled and won the applause of the South, it interested and won the admiration of the North; and after a confused murmur of protest, it silenced if it did not convert the Negroes themselves.

To gain the sympathy and cooperation of the various elements comprising the white South was Mr. Washington's first task; and this, at the time Tuskegee was founded, seemed, for a black man, well-nigh impossible. And yet ten years later it was done in the word spoken at Atlanta: "In all things purely social we can be as separate as the five fingers, and yet one as the hand in all things essential to mutual progress." This "Atlanta Compromise" is by all odds the most notable thing in Mr. Washington's career. The South interpreted it in different ways: the radicals received it as a complete surrender of the demand for civil and political equality; the conservatives, as a generously conceived working basis for mutual understanding. So both approved it, and to-day its author is certainly the most distinguished Southerner since Jefferson Davis, and the one with the largest personal following.

Next to this achievement comes Mr. Washington's work in gaining place and consideration in the North. Others less shrewd and tactful had formerly essayed to sit on these two stools and had fallen between them; but as Mr. Washington knew the heart of the South from birth and training, so by singular insight he intuitively grasped the spirit of the age which was dominating the North. And so thoroughly did he learn the speech and thought of triumphant commercialism, and the ideals of material prosperity, that the picture of a lone black boy poring over a French grammar amid the weeds and dirt of a neglected home soon seemed to him the acme of absurdities. One wonders what Socrates and St. Francis of Assisi would say to this.

And yet this very singleness of vision and thorough oneness with his age is a mark of the successful man. It is as though Nature must needs make men narrow in order to give them force. So Mr. Washington's cult has gained unquestioning followers, his work has wonderfully prospered, his friends are legion, and his enemies are confounded. To-day he stands as the one recognized spokesman of his ten million fellows, and one of the most notable figures in a nation of seventy millions. One hesitates, therefore, to criticise a life which, beginning with so little, has done so much. And yet the time is come when one may speak in all sincerity and utter courtesy of the mistakes and shortcomings of Mr. Washington's career, as well as of his triumphs, without being thought captious or envious, and without forgetting that it is easier to do ill than well in the world.

The criticism that has hitherto met Mr. Washington has not always been of this broad character. In the South especially has he had to walk warily to avoid the harshest judgments,—and naturally so, for he is dealing with the one subject of deepest sensitiveness to that section. Twice—once when at the Chicago celebration of the Spanish-American War he alluded to the color-prejudice that is "eating away the vitals of the South," and once when he dined with President Roosevelt—has the resulting Southern criticism been violent enough to threaten seriously his popularity. In the North the feeling has several times forced itself into words, that Mr. Washington's counsels of submission overlooked certain elements of true manhood, and that his educational programme was unnecessarily narrow. Usually, however, such criticism has not found open expression, although, too, the spiritual sons of the Abolitionists have not been prepared to acknowledge that the schools founded before Tuskegee, by men of broad ideals and self-sacrificing spirit, were wholly failures or worthy of ridicule. While, then, criticism has not failed to follow Mr. Washington, yet the prevailing public opinion of the land has been but too willing to deliver the solution of a wearisome problem into his hands, and say, "If that is all you and your race ask, take it."

Among his own people, however, Mr. Washington has encountered the strongest and most lasting opposition, amounting at times to bitterness, and even today continuing strong and insistent even though largely silenced in outward expression by the public opinion of the nation. Some of this opposition is, of course, mere envy; the disappointment of displaced demagogues and the spite of narrow minds. But aside from this, there is among educated and thoughtful colored men in all parts of the land a feeling of deep regret, sorrow, and apprehension at the wide currency and ascendancy which some of Mr. Washington's theories have gained. These same men admire his sincerity of purpose, and are willing to forgive much to honest endeavor which is doing something worth the doing. They cooperate with Mr. Washington as far as they conscientiously can; and, indeed, it is no ordinary tribute to this man's tact and power that, steering as he must between so many diverse interests and opinions, he so largely retains the respect of all.

But the hushing of the criticism of honest opponents is a dangerous thing. It leads some of the best of the critics to unfortunate silence and paralysis of effort, and others to burst into speech so passionately and intemperately as to lose listeners. Honest and earnest criticism from those whose interests are most nearly touched,—criticism of writers by readers,—this is the soul of democracy and the safeguard of modern society. If the best of the American Negroes receive by outer pressure a leader whom they had not recognized before, manifestly there is here a certain palpable gain. Yet there is also irreparable loss,—a loss of that peculiarly valuable education which a group receives when by search and criticism it finds and commissions its own leaders. The way in which this is done is at once the most elementary and the nicest problem of social growth. History is but the record of such group-leadership; and yet how infinitely changeful is its type and character! And of all types and kinds, what can be more instructive than the leadership of a group within a group?—that curious double movement where real progress may be negative and actual advance be relative retrogression. All this is the social student's inspiration and despair.

Now in the past the American Negro has had instructive experience in the choosing of group leaders, founding thus a peculiar dynasty which in the light of present conditions is worth while studying. When sticks and stones and beasts form the sole environment of a people, their attitude is largely one of determined opposition to and conquest of natural forces. But when to earth and brute is added an environment of men and ideas, then the attitude of the imprisoned group may take three main forms,—a feeling of revolt and revenge; an attempt to adjust all thought and action to the will of the greater group; or, finally, a determined effort at self-realization and self-development despite environing opinion. The influence of all of these attitudes at various times can be traced in the history of the American Negro, and in the evolution of his successive leaders.

Before 1750, while the fire of African freedom still burned in the veins of the slaves, there was in all leadership or attempted leadership but the one motive of revolt and revenge,—typified in the terrible Maroons, the Danish blacks, and Cato of Stono, and veiling all the

Americas in fear of insurrection. The liberalizing tendencies of the latter half of the eighteenth century brought, along with kindlier relations between black and white, thoughts of ultimate adjustment and assimilation. Such aspiration was especially voiced in the earnest songs of Phyllis, in the martyrdom of Attucks, the fighting of Salem and Poor, the intellectual accomplishments of Banneker and Derham, and the political demands of the Cuffes.

Stern financial and social stress after the war cooled much of the previous humanitarian ardor. The disappointment and impatience of the Negroes at the persistence of slavery and serfdom voiced itself in two movements. The slaves in the South, aroused undoubtedly by vague rumors of the Haytian revolt, made three fierce attempts at insurrection,—in 1800 under Gabriel in Virginia, in 1822 under Vesey in Carolina, and in 1831 again in Virginia under the terrible Nat Turner. In the Free States, on the other hand, a new and curious attempt at self-development was made. In Philadelphia and New York color-prescription led to a withdrawal of Negro communicants from white churches and the formation of a peculiar socio-religious institution among the Negroes known as the African Church,—an organization still living and controlling in its various branches over a million of men.

Walker's wild appeal against the trend of the times showed how the world was changing after the coming of the cotton-gin. By 1830 slavery seemed hopelessly fastened on the South, and the slaves thoroughly cowed into submission. The free Negroes of the North, inspired by the mulatto immigrants from the West Indies, began to change the basis of their demands; they recognized the slavery of slaves, but insisted that they themselves were freemen, and sought assimilation and amalgamation with the nation on the same terms with other men. Thus, Forten and Purvis of Philadelphia, Shad of Wilmington, Du Bois of New Haven, Barbadoes of Boston, and others, strove singly and together as men, they said, not as slaves; as "people of color," not as "Negroes." The trend of the times, however, refused them recognition save in individual and exceptional cases, considered them as one with all the despised blacks, and they soon found themselves striving to keep even the rights they formerly had of voting and working and moving as freemen. Schemes of migration and colonization arose among them; but these they refused to entertain, and they eventually turned to the Abolition movement as a final refuge.

Here, led by Remond, Nell, Wells-Brown, and Douglass, a new period of self-assertion and self-development dawned. To be sure, ultimate freedom and assimilation was the ideal before the leaders, but the assertion of the manhood rights of the Negro by himself was the main reliance, and John Brown's raid was the extreme of its logic. After the war and emancipation, the great form of Frederick Douglass, the greatest of American Negro leaders, still led the host. Self-assertion, especially in political lines, was the main programme, and behind Douglass came Elliot, Bruce, and Langston, and the Reconstruction politicians, and, less conspicuous but of greater social significance, Alexander Crummell and Bishop Daniel Payne.

Then came the Revolution of 1876, the suppression of the Negro votes, the changing and shifting of ideals, and the seeking of new lights in the great night. Douglass, in his old age, still bravely stood for the ideals of his early manhood,—ultimate assimilation *through* self-assertion, and on no other terms. For a time Price arose as a new leader, destined, it seemed, not to give up, but to re-state the old ideals in a form less repugnant to the white South. But he passed away in his prime. Then came the new leader. Nearly all the former ones had become leaders by the silent suffrage of their fellows, had sought to lead their own people alone, and were usually, save Douglass, little known outside their race. But Booker T. Washington arose as essentially the leader not of one race but of two,—a compromiser between the South, the North, and the Negro. Naturally the Negroes resented, at first bitterly, signs of compromise which surrendered their civil and political rights, even though this was to be exchanged for larger chances of economic development. The rich and dominating North, however, was not only weary of the race problem, but was investing largely in Southern enterprises, and welcomed any method of peaceful cooperation. Thus, by national opinion, the Negroes began to recognize Mr. Washington's leadership; and the voice of criticism was hushed.

Mr. Washington represents in Negro thought the old attitude of adjustment and submission; but adjustment at such a peculiar time as to make his programme unique. This is an age of unusual economic development, and Mr. Washington's programme naturally takes an economic cast, becoming a gospel of Work and Money to such an extent as apparently almost completely to overshadow the higher aims of life. Moreover, this is an age when the more advanced races are coming in closer contact with the less developed races, and the race-feeling is therefore intensified; and Mr. Washington's programme practically accepts the alleged inferiority of the Negro races. Again, in our own land, the reaction from the sentiment of war time has given impetus to race-prejudice against Negroes, and Mr. Washington withdraws many of the high demands of Negroes as men and American citizens. In other periods of intensified prejudice all the Negro's tendency to self-assertion has been called forth; at this period a policy of submission is advocated. In the history of nearly all other races and peoples the doctrine preached at such crises has been that manly self-respect is worth more than lands and houses, and that a people who voluntarily surrender such respect, or cease striving for it, are not worth civilizing.

In answer to this, it has been claimed that the Negro can survive only through submission. Mr. Washington distinctly asks that black people give up, at least for the present, three things,—

First, political power,

Second, insistence on civil rights,

Third, higher education of Negro youth,—and concentrate all their energies on industrial education, and accumulation of wealth, and the conciliation of the South. This policy has been courageously and insistently advocated for over fifteen years, and has been triumphant for perhaps ten years. As a result of this tender of the palm-branch, what has been the return? In these years there have occurred:

1. The disfranchisement of the Negro.

2. The legal creation of a distinct status of civil inferiority for the Negro.

3. The steady withdrawal of aid from institutions for the higher training of the Negro.

These movements are not, to be sure, direct results of Mr. Washington's teachings; but his propaganda has, without a shadow of doubt, helped their speedier accomplishment. The question then comes: Is it possible, and probable, that nine millions of men can make effective progress in economic lines if they are deprived of political rights, made a servile caste, and allowed only the most meagre chance for developing their exceptional men? If history and reason give any distinct answer to these questions, it is an emphatic *No*. And Mr. Washington thus faces the triple paradox of his career:

1. He is striving nobly to make Negro artisans business men and property-owners; but it is utterly impossible, under modern competitive methods, for workingmen and property-owners to defend their rights and exist without the right of suffrage.

2. He insists on thrift and self-respect, but at the same time counsels a silent submission to civic inferiority such as is bound to sap the manhood of any race in the long run.

3. He advocates common-school and industrial training, and depreciates institutions of higher learning; but neither the Negro common-schools, nor Tuskegee itself, could remain open a day were it not for teachers trained in Negro colleges, or trained by their graduates.

This triple paradox in Mr. Washington's position is the object of criticism by two classes of colored Americans. One class is spiritually descended from Toussaint the Savior, through Gabriel, Vesey, and Turner, and they represent the attitude of revolt and revenge; they hate the white South blindly and distrust the white race generally, and so far as they agree on definite action, think that the Negro's only hope lies in emigration beyond the borders of the United States. And yet, by the irony of fate, nothing has more effectually made this programme seem hopeless than the recent course of the United States toward weaker and darker peoples in the West Indies, Hawaii, and the Philippines,—for where in the world may we go and be safe from lying and brute force?

The other class of Negroes who cannot agree with Mr. Washington has hitherto said little aloud. They deprecate the sight of scattered counsels, of internal disagreement; and especially they dislike making their just criticism of a useful and earnest man an excuse for a general discharge of venom from small-minded opponents. Nevertheless, the questions involved are so fundamental and serious that it is difficult to see how men like the Grimkes, Kelly Miller, J. W. E. Bowen, and other representatives of this group, can much longer be silent. Such men feel in conscience bound to ask of this nation three things:

1. The right to vote.

2. Civic equality.

3. The education of youth according to ability. They acknowledge Mr. Washington's invaluable service in counselling patience and courtesy in such demands; they do not ask that ignorant black men vote when ignorant whites are debarred, or that any reasonable restrictions in the suffrage should not be applied; they know that the low social level of the mass of the race is responsible for much discrimination against it, but they also know, and the nation knows, that relentless color-prejudice is more often a cause than a result of the Negro's degradation; they seek the abatement of this relic of barbarism, and not its systematic encouragement and pampering by all agencies of social power from the Associated Press to the Church of Christ. They advocate, with Mr. Washington, a broad system of Negro common schools supplemented by thorough industrial training; but they are surprised that a man of Mr. Washington's insight cannot see that no such educational system ever has rested or can rest on any other basis than that of the well-equipped college and university, and they insist that there is a demand for a few such institutions throughout the South to train the best of the Negro youth as teachers, professional men, and leaders.

This group of men honor Mr. Washington for his attitude of conciliation toward the white South; they accept the "Atlanta Compromise" in its broadest interpretation; they recognize, with him, many signs of promise, many men of high purpose and fair judgment, in this section; they know that no easy task has been laid upon a region already tottering under heavy burdens. But, nevertheless, they insist that the way to truth and right lies in straightforward honesty, not in indiscriminate flattery; in praising those of the South who do well and criticising uncompromisingly those who do ill; in taking advantage of the opportunities at hand and urging their fellows to do the same, but at the same time in remembering that only a firm adherence to their higher ideals and aspirations will ever keep those ideals within the realm of possibility. They do not expect that the free right to vote, to enjoy civic rights, and to be educated, will come in a moment; they do not expect to see the bias and prejudices of years disappear at the blast of a trumpet; but they are absolutely certain that the way for a people to gain their reasonable rights is not by voluntarily throwing them away and insisting that they do not want them; that the way for a people to gain respect is not by continually belittling and ridiculing themselves; that, on the contrary, Negroes must insist continually, in season and out of season, that voting is necessary to modern manhood, that color discrimination is barbarism, and that black boys need education as well as white boys.

In failing thus to state plainly and unequivocally the legitimate demands of their people, even at the cost of opposing an honored leader, the thinking classes of American Negroes would shirk a heavy responsibility,—a responsibility to themselves, a responsibility to the struggling masses, a responsibility to the darker races of men whose future depends so largely on this American experiment, but especially a responsibility to this nation,—this common Fatherland. It is wrong to encourage a man or a people in evil-doing; it is wrong to aid and abet a national crime simply because it is unpopular not to do so. The growing spirit of kindliness and reconciliation between the North and South after the frightful difference of a generation ago ought to be a source of deep congratulation to all, and especially to those whose mistreatment caused the war; but if that reconciliation is to be marked by the industrial slavery and civic death of those same black men, with permanent legislation into a position of inferiority, then those black men, if they are really men, are called upon by every consideration of patriotism and loyalty to oppose such a course by all civilized methods, even though such opposition involves

disagreement with Mr. Booker T. Washington. We have no right to sit silently by while the inevitable seeds are sown for a harvest of disaster to our children, black and white.

First, it is the duty of black men to judge the South discriminatingly. The present generation of Southerners are not responsible for the past, and they should not be blindly hated or blamed for it. Furthermore, to no class is the indiscriminate endorsement of the recent course of the South toward Negroes more nauseating than to the best thought of the South. The South is not "solid"; it is a land in the ferment of social change, wherein forces of all kinds are fighting for supremacy; and to praise the ill the South is today perpetrating is just as wrong as to condemn the good. Discriminating and broad-minded criticism is what the South needs,—needs it for the sake of her own white sons and daughters, and for the insurance of robust, healthy mental and moral development.

Today even the attitude of the Southern whites toward the blacks is not, as so many assume, in all cases the same; the ignorant Southerner hates the Negro, the workingmen fear his competition, the money-makers wish to use him as a laborer, some of the educated see a menace in his upward development, while others—usually the sons of the masters—wish to help him to rise. National opinion has enabled this last class to maintain the Negro common schools, and to protect the Negro partially in property, life, and limb. Through the pressure of the money-makers, the Negro is in danger of being reduced to semi-slavery, especially in the country districts; the workingmen, and those of the educated who fear the Negro, have united to disfranchise him, and some have urged his deportation; while the passions of the ignorant are easily aroused to lynch and abuse any black man. To praise this intricate whirl of thought and prejudice is nonsense; to inveigh indiscriminately against "the South" is unjust; but to use the same breath in praising Governor Aycock, exposing Senator Morgan, arguing with Mr. Thomas Nelson Page, and denouncing Senator Ben Tillman, is not only sane, but the imperative duty of thinking black men.

It would be unjust to Mr. Washington not to acknowledge that in several instances he has opposed movements in the South which were unjust to the Negro; he sent memorials to the Louisiana and Alabama constitutional conventions, he has spoken against lynching, and in other ways has openly or silently set his influence against sinister schemes and unfortunate happenings. Notwithstanding this, it is equally true to assert that on the whole the distinct impression left by Mr. Washington's propaganda is, first, that the South is justified in its present attitude toward the Negro because of the Negro's degradation; secondly, that the prime cause of the Negro's failure to rise more quickly is his wrong education in the past; and, thirdly, that his future rise depends primarily on his own efforts. Each of these propositions is a dangerous half-truth. The supplementary truths must never be lost sight of: first, slavery and race-prejudice are potent if not sufficient causes of the Negro's position; second, industrial and common-school training were necessarily slow in planting because they had to await the black teachers trained by higher institutions,—it being extremely doubtful if any essentially different development was possible, and certainly a Tuskegee was unthinkable before 1880; and, third, while it is a great truth to say that the Negro must strive and strive mightily to help himself, it is equally true that unless his striving be not simply seconded, but rather aroused and encouraged, by the initiative of the richer and wiser environing group, he cannot hope for great success.

In his failure to realize and impress this last point, Mr. Washington is especially to be criticised. His doctrine has tended to make the whites, North and South, shift the burden of the Negro problem to the Negro's shoulders and stand aside as critical and rather pessimistic spectators; when in fact the burden belongs to the nation, and the hands of none of us are clean if we bend not our energies to righting these great wrongs.

The South ought to be led, by candid and honest criticism, to assert her better self and do her full duty to the race she has cruelly wronged and is still wronging. The North—her co-partner in guilt—cannot salve her conscience by plastering it with gold. We cannot settle this problem by diplomacy and suaveness, by "policy" alone. If worse come to worst, can the moral fibre of this country survive the slow throttling and murder of nine millions of men?

The black men of America have a duty to perform, a duty stern and delicate,—a forward movement to oppose a part of the work of their greatest leader. So far as Mr. Washington preaches Thrift, Patience, and Industrial Training for the masses, we must hold up his hands and strive with him, rejoicing in his honors and glorying in the strength of this Joshua called of God and of man to lead the headless host. But so far as Mr. Washington apologizes for injustice, North or South, does not rightly value the privilege and duty of voting, belittles the emasculating effects of caste distinctions, and opposes the higher training and ambition of our brighter minds,—so far as he, the South, or the Nation, does this,—we must unceasingly and firmly oppose them. By every civilized and peaceful method we must strive for the rights which the world accords to men, clinging unwaveringly to those great words which the sons of the Fathers would fain forget: "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."

IV.
Of the Meaning of Progress

Willst Du Deine Macht verkünden,
Wähle sie die frei von Sünden,
Steh'n in Deinem ew'gen Haus!
Deine Geister sende aus!
Die Unsterblichen, die Reinen,
Die nicht fühlen, die nicht weinen!
Nicht die zarte Jungfrau wähle,
Nicht der Hirtin weiche Seele!

SCHILLER.



Once upon a time I taught school in the hills of Tennessee, where the broad dark vale of the Mississippi begins to roll and crumple to greet the Alleghanies. I was a Fisk student then, and all Fisk men thought that Tennessee—beyond the Veil—was theirs alone, and in vacation time they sallied forth in lusty bands to meet the county school-commissioners. Young and happy, I too went, and I shall not soon forget that summer, seventeen years ago.

First, there was a Teachers' Institute at the county-seat; and there distinguished guests of the superintendent taught the teachers fractions and spelling and other mysteries,—white teachers in the morning, Negroes at night. A picnic now and then, and a supper, and the rough world was softened by laughter and song. I remember how— But I wander.

There came a day when all the teachers left the Institute and began the hunt for schools. I learn from hearsay (for my mother was mortally afraid of firearms) that the hunting of ducks and bears and men is wonderfully interesting, but I am sure that the man who has never hunted a country school has something to learn of the pleasures of the chase. I see now the white, hot roads lazily rise and fall and wind before me under the burning July sun; I feel the deep weariness of heart and limb as ten, eight, six miles stretch relentlessly ahead; I feel my heart sink heavily as I hear again and again, "Got a teacher? Yes." So I walked on and on—horses were too expensive—until I had wandered beyond railways, beyond stage lines, to a land of "varmints" and rattlesnakes, where the coming of a stranger was an event, and men lived and died in the shadow of one blue hill.

Sprinkled over hill and dale lay cabins and farmhouses, shut out from the world by the forests and the rolling hills toward the east. There I found at last a little school. Josie told me of it; she was a thin, homely girl of twenty, with a dark-brown face and thick, hard hair. I had crossed the stream at Watertown, and rested under the great willows; then I had gone to the little cabin in the lot where Josie was resting on her way to town. The gaunt farmer made me welcome, and Josie, hearing my errand, told me anxiously that they wanted a school over the hill; that but once since the war had a teacher been there; that she herself longed to learn,—and thus she ran on, talking fast and loud, with much earnestness and energy.

Next morning I crossed the tall round hill, lingered to look at the blue and yellow mountains stretching toward the Carolinas, then plunged into the wood, and came out at Josie's home. It was a dull frame cottage with four rooms, perched just below the brow of the hill, amid peach-trees. The father was a quiet, simple soul, calmly ignorant, with no touch of vulgarity. The mother was different,—strong, bustling, and energetic, with a quick, restless tongue, and an ambition to live "like folks." There was a crowd of children. Two boys had gone away. There remained two growing girls; a shy midget of eight; John, tall, awkward, and eighteen; Jim, younger, quicker, and better looking; and two babies of indefinite age. Then there was Josie herself. She seemed to be the centre of the family: always busy at service, or at home, or berry-picking; a little nervous and inclined to scold, like her mother, yet faithful, too, like her father. She had about her a certain fineness, the shadow of an unconscious moral heroism that would willingly give all of life to make life broader,

deeper, and fuller for her and hers. I saw much of this family afterwards, and grew to love them for their honest efforts to be decent and comfortable, and for their knowledge of their own ignorance. There was with them no affectation. The mother would scold the father for being so "easy"; Josie would roundly berate the boys for carelessness; and all knew that it was a hard thing to dig a living out of a rocky side-hill.

I secured the school. I remember the day I rode horseback out to the commissioner's house with a pleasant young white fellow who wanted the white school. The road ran down the bed of a stream; the sun laughed and the water jingled, and we rode on. "Come in," said the commissioner,—"come in. Have a seat. Yes, that certificate will do. Stay to dinner. What do you want a month?" "Oh," thought I, "this is lucky"; but even then fell the awful shadow of the Veil, for they ate first, then I—alone.

The schoolhouse was a log hut, where Colonel Wheeler used to shelter his corn. It sat in a lot behind a rail fence and thorn bushes, near the sweetest of springs. There was an entrance where a door once was, and within, a massive rickety fireplace; great chinks between the logs served as windows. Furniture was scarce. A pale blackboard crouched in the corner. My desk was made of three boards, reinforced at critical points, and my chair, borrowed from the landlady, had to be returned every night. Seats for the children—these puzzled me much. I was haunted by a New England vision of neat little desks and chairs, but, alas! the reality was rough plank benches without backs, and at times without legs. They had the one virtue of making naps dangerous,—possibly fatal, for the floor was not to be trusted.

It was a hot morning late in July when the school opened. I trembled when I heard the patter of little feet down the dusty road, and saw the growing row of dark solemn faces and bright eager eyes facing me. First came Josie and her brothers and sisters. The longing to know, to be a student in the great school at Nashville, hovered like a star above this child-woman amid her work and worry, and she studied doggedly. There were the Dowells from their farm over toward Alexandria,—Fanny, with her smooth black face and wondering eyes; Martha, brown and dull; the pretty girl-wife of a brother, and the younger brood.

There were the Burkes,—two brown and yellow lads, and a tiny haughty-eyed girl. Fat Reuben's little chubby girl came, with golden face and old-gold hair, faithful and solemn. 'Thenie was on hand early,—a jolly, ugly, good-hearted girl, who slyly dipped snuff and looked after her little bow-legged brother. When her mother could spare her, 'Tildy came,—a midnight beauty, with starry eyes and tapering limbs; and her brother, correspondingly homely. And then the big boys,—the hulking Lawrences; the lazy Neills, unfathered sons of mother and daughter; Hickman, with a stoop in his shoulders; and the rest.

There they sat, nearly thirty of them, on the rough benches, their faces shading from a pale cream to a deep brown, the little feet bare and swinging, the eyes full of expectation, with here and there a twinkle of mischief, and the hands grasping Webster's blue-black spelling-book. I loved my school, and the fine faith the children had in the wisdom of their teacher was truly marvellous. We read and spelled together, wrote a little, picked flowers, sang, and listened to stories of the world beyond the hill. At times the school would dwindle away, and I would start out. I would visit Mun Eddings, who lived in two very dirty rooms, and ask why little Lugene, whose flaming face seemed ever ablaze with the dark-red hair uncombed, was absent all last week, or why I missed so often the inimitable rags of Mack and Ed. Then the father, who worked Colonel Wheeler's farm on shares, would tell me how the crops needed the boys; and the thin, slovenly mother, whose face was pretty when washed, assured me that Lugene must mind the baby. "But we'll start them again next week." When the Lawrences stopped, I knew that the doubts of the old folks about book-learning had conquered again, and so, toiling up the hill, and getting as far into the cabin as possible, I put Cicero "pro Archia Poeta" into the simplest English with local applications, and usually convinced them—for a week or so.

On Friday nights I often went home with some of the children,—sometimes to Doc Burke's farm. He was a great, loud, thin Black, ever working, and trying to buy the seventy-five acres of hill and dale where he lived; but people said that he would surely fail, and the "white folks would get it all." His wife was a magnificent Amazon, with saffron face and shining hair, uncorseted and barefooted, and the children were strong and beautiful. They lived in a one-and-a-half-room cabin in the hollow of the farm, near the spring. The front room was full of great fat white beds, scrupulously neat; and there were bad chromos on the walls, and a tired centre-table. In the tiny back kitchen I was often invited to "take out and help" myself to fried chicken and wheat biscuit, "meat" and corn pone, string-beans and berries. At first I used to be a little alarmed at the approach of bedtime in the one lone bedroom, but embarrassment was very deftly avoided. First, all the children nodded and slept, and were stowed away in one great pile of goose feathers; next, the mother and the father discreetly slipped away to the kitchen while I went to bed; then, blowing out the dim light, they retired in the dark. In the morning all were up and away before I thought of awaking. Across the road, where fat Reuben lived, they all went outdoors while the teacher retired, because they did not boast the luxury of a kitchen.

I liked to stay with the Dowells, for they had four rooms and plenty of good country fare. Uncle Bird had a small, rough farm, all woods and hills, miles from the big road; but he was full of tales,—he preached now and then,—and with his children, berries, horses, and wheat he was happy and prosperous. Often, to keep the peace, I must go where life was less lovely; for instance, 'Tildy's mother was incorrigibly dirty, Reuben's larder was limited seriously, and herds of untamed insects wandered over the Eddingses' beds. Best of all I loved to go to Josie's, and sit on the porch, eating peaches, while the mother bustled and talked: how Josie had bought the sewing-machine; how Josie worked at service in winter, but that four dollars a month was "mighty little" wages; how Josie longed to go away to school, but that it "looked like" they never could get far enough ahead to let her; how the crops failed and the well was yet unfinished; and, finally, how "mean" some of the white folks were.

For two summers I lived in this little world; it was dull and humdrum. The girls looked at the hill in wistful longing, and the boys fretted and haunted Alexandria. Alexandria was "town,"—a straggling, lazy village of houses, churches, and shops, and an aristocracy of Toms, Dicks, and Captains. Cuddled on the hill to the north was the village of the colored folks, who lived in three- or four-room

unpainted cottages, some neat and homelike, and some dirty. The dwellings were scattered rather aimlessly, but they centred about the twin temples of the hamlet, the Methodist, and the Hard-Shell Baptist churches. These, in turn, leaned gingerly on a sad-colored schoolhouse. Hither my little world wended its crooked way on Sunday to meet other worlds, and gossip, and wonder, and make the weekly sacrifice with frenzied priest at the altar of the "old-time religion." Then the soft melody and mighty cadences of Negro song fluttered and thundered.

I have called my tiny community a world, and so its isolation made it; and yet there was among us but a half-awakened common consciousness, sprung from common joy and grief, at burial, birth, or wedding; from a common hardship in poverty, poor land, and low wages; and, above all, from the sight of the Veil that hung between us and Opportunity. All this caused us to think some thoughts together; but these, when ripe for speech, were spoken in various languages. Those whose eyes twenty-five and more years before had seen "the glory of the coming of the Lord," saw in every present hindrance or help a dark fatalism bound to bring all things right in His own good time. The mass of those to whom slavery was a dim recollection of childhood found the world a puzzling thing: it asked little of them, and they answered with little, and yet it ridiculed their offering. Such a paradox they could not understand, and therefore sank into listless indifference, or shiftlessness, or reckless bravado. There were, however, some—such as Josie, Jim, and Ben—to whom War, Hell, and Slavery were but childhood tales, whose young appetites had been whetted to an edge by school and story and half-awakened thought. Ill could they be content, born without and beyond the World. And their weak wings beat against their barriers,—barriers of caste, of youth, of life; at last, in dangerous moments, against everything that opposed even a whim.

The ten years that follow youth, the years when first the realization comes that life is leading somewhere,—these were the years that passed after I left my little school. When they were past, I came by chance once more to the walls of Fisk University, to the halls of the chapel of melody. As I lingered there in the joy and pain of meeting old school-friends, there swept over me a sudden longing to pass again beyond the blue hill, and to see the homes and the school of other days, and to learn how life had gone with my school-children; and I went.

Josie was dead, and the gray-haired mother said simply, "We've had a heap of trouble since you've been away." I had feared for Jim. With a cultured parentage and a social caste to uphold him, he might have made a venturesome merchant or a West Point cadet. But here he was, angry with life and reckless; and when Fanner Durham charged him with stealing wheat, the old man had to ride fast to escape the stones which the furious fool hurled after him. They told Jim to run away; but he would not run, and the constable came that afternoon. It grieved Josie, and great awkward John walked nine miles every day to see his little brother through the bars of Lebanon jail. At last the two came back together in the dark night. The mother cooked supper, and Josie emptied her purse, and the boys stole away. Josie grew thin and silent, yet worked the more. The hill became steep for the quiet old father, and with the boys away there was little to do in the valley. Josie helped them to sell the old farm, and they moved nearer town. Brother Dennis, the carpenter, built a new house with six rooms; Josie toiled a year in Nashville, and brought back ninety dollars to furnish the house and change it to a home.

When the spring came, and the birds twittered, and the stream ran proud and full, little sister Lizzie, bold and thoughtless, flushed with the passion of youth, bestowed herself on the tempter, and brought home a nameless child. Josie shivered and worked on, with the vision of schooldays all fled, with a face wan and tired,—worked until, on a summer's day, some one married another; then Josie crept to her mother like a hurt child, and slept—and sleeps.

I paused to scent the breeze as I entered the valley. The Lawrences have gone,—father and son forever,—and the other son lazily digs in the earth to live. A new young widow rents out their cabin to fat Reuben. Reuben is a Baptist preacher now, but I fear as lazy as ever, though his cabin has three rooms; and little Ella has grown into a bouncing woman, and is ploughing corn on the hot hillside. There are babies a-plenty, and one half-witted girl. Across the valley is a house I did not know before, and there I found, rocking one baby and expecting another, one of my schoolgirls, a daughter of Uncle Bird Dowell. She looked somewhat worried with her new duties, but soon bristled into pride over her neat cabin and the tale of her thrifty husband, and the horse and cow, and the farm they were planning to buy.

My log schoolhouse was gone. In its place stood Progress; and Progress, I understand, is necessarily ugly. The crazy foundation stones still marked the former site of my poor little cabin, and not far away, on six weary boulders, perched a jaunty board house, perhaps twenty by thirty feet, with three windows and a door that locked. Some of the window-glass was broken, and part of an old iron stove lay mournfully under the house. I peeped through the window half reverently, and found things that were more familiar. The blackboard had grown by about two feet, and the seats were still without backs. The county owns the lot now, I hear, and every year there is a session of school. As I sat by the spring and looked on the Old and the New I felt glad, very glad, and yet—

After two long drinks I started on. There was the great double log-house on the corner. I remembered the broken, blighted family that used to live there. The strong, hard face of the mother, with its wilderness of hair, rose before me. She had driven her husband away, and while I taught school a strange man lived there, big and jovial, and people talked. I felt sure that Ben and 'Tildy would come to naught from such a home. But this is an odd world; for Ben is a busy farmer in Smith County, "doing well, too," they say, and he had cared for little 'Tildy until last spring, when a lover married her. A hard life the lad had led, toiling for meat, and laughed at because he was homely and crooked. There was Sam Carlon, an impudent old skinflint, who had definite notions about "niggers," and hired Ben a summer and would not pay him. Then the hungry boy gathered his sacks together, and in broad daylight went into Carlon's corn; and when the hard-fisted farmer set upon him, the angry boy flew at him like a beast. Doc Burke saved a murder and a lynching that day.

The story reminded me again of the Burkes, and an impatience seized me to know who won in the battle, Doc or the seventy-five acres. For it is a hard thing to make a farm out of nothing, even in fifteen years. So I hurried on, thinking of the Burkes. They used to have a certain magnificent barbarism about them that I liked. They were never vulgar, never immoral, but rather rough and primitive,

with an unconventionality that spent itself in loud guffaws, slaps on the back, and naps in the corner. I hurried by the cottage of the misborn Neill boys. It was empty, and they were grown into fat, lazy farm-hands. I saw the home of the Hickmans, but Albert, with his stooping shoulders, had passed from the world. Then I came to the Burkes' gate and peered through; the enclosure looked rough and untrimmed, and yet there were the same fences around the old farm save to the left, where lay twenty-five other acres. And lo! the cabin in the hollow had climbed the hill and swollen to a half-finished six-room cottage.

The Burkes held a hundred acres, but they were still in debt. Indeed, the gaunt father who toiled night and day would scarcely be happy out of debt, being so used to it. Some day he must stop, for his massive frame is showing decline. The mother wore shoes, but the lion-like physique of other days was broken. The children had grown up. Rob, the image of his father, was loud and rough with laughter. Birdie, my school baby of six, had grown to a picture of maiden beauty, tall and tawny. "Edgar is gone," said the mother, with head half bowed,—"gone to work in Nashville; he and his father couldn't agree."

Little Doc, the boy born since the time of my school, took me horseback down the creek next morning toward Farmer Dowell's. The road and the stream were battling for mastery, and the stream had the better of it. We splashed and waded, and the merry boy, perched behind me, chattered and laughed. He showed me where Simon Thompson had bought a bit of ground and a home; but his daughter Lana, a plump, brown, slow girl, was not there. She had married a man and a farm twenty miles away. We wound on down the stream till we came to a gate that I did not recognize, but the boy insisted that it was "Uncle Bird's." The farm was fat with the growing crop. In that little valley was a strange stillness as I rode up; for death and marriage had stolen youth and left age and childhood there. We sat and talked that night after the chores were done. Uncle Bird was grayer, and his eyes did not see so well, but he was still jovial. We talked of the acres bought,—one hundred and twenty-five,—of the new guest-chamber added, of Martha's marrying. Then we talked of death: Fanny and Fred were gone; a shadow hung over the other daughter, and when it lifted she was to go to Nashville to school. At last we spoke of the neighbors, and as night fell, Uncle Bird told me how, on a night like that, 'Thenie came wandering back to her home over yonder, to escape the blows of her husband. And next morning she died in the home that her little bow-legged brother, working and saving, had bought for their widowed mother.

My journey was done, and behind me lay hill and dale, and Life and Death. How shall man measure Progress there where the dark-faced Josie lies? How many heartfuls of sorrow shall balance a bushel of wheat? How hard a thing is life to the lowly, and yet how human and real! And all this life and love and strife and failure,—is it the twilight of nightfall or the flush of some faint-dawning day?

Thus sadly musing, I rode to Nashville in the Jim Crow car.

V.
Of the Wings of Atalanta

O black boy of Atlanta!
But half was spoken;
The slave's chains and the master's
Alike are broken;
The one curse of the races
Held both in tether;
They are rising—all are rising—
The black and white together.

WHITTIER.



South of the North, yet north of the South, lies the City of a Hundred Hills, peering out from the shadows of the past into the promise of the future. I have seen her in the morning, when the first flush of day had half-roused her; she lay gray and still on the crimson soil of Georgia; then the blue smoke began to curl from her chimneys, the tinkle of bell and scream of whistle broke the silence, the rattle and roar of busy life slowly gathered and swelled, until the seething whirl of the city seemed a strange thing in a sleepy land.

Once, they say, even Atlanta slept dull and drowsy at the foot-hills of the Alleghanies, until the iron baptism of war awakened her with its sullen waters, aroused and maddened her, and left her listening to the sea. And the sea cried to the hills and the hills answered the sea, till the city rose like a widow and cast away her weeds, and toiled for her daily bread; toiled steadily, toiled cunningly,—perhaps with some bitterness, with a touch, of *réclame*,—and yet with real earnestness, and real sweat.

It is a hard thing to live haunted by the ghost of an untrue dream; to see the wide vision of empire fade into real ashes and dirt; to feel the pang of the conquered, and yet know that with all the Bad that fell on one black day, something was vanquished that deserved to live, something killed that in justice had not dared to die; to know that with the Right that triumphed, triumphed something of Wrong, something sordid and mean, something less than the broadest and best. All this is bitter hard; and many a man and city and people have found in it excuse for sulking, and brooding, and listless waiting.

Such are not men of the sturdier make; they of Atlanta turned resolutely toward the future; and that future held aloft vistas of purple and gold:—Atlanta, Queen of the cotton kingdom; Atlanta, Gateway to the Land of the Sun; Atlanta, the new Lachesis, spinner of web and woof for the world. So the city crowned her hundred hills with factories, and stored her shops with cunning handiwork, and stretched long iron ways to greet the busy Mercury in his coming. And the Nation talked of her striving.

Perhaps Atlanta was not christened for the winged maiden of dull Boeotia; you know the tale,—how swarthy Atalanta, tall and wild, would marry only him who out-raced her; and how the wily Hippomenes laid three apples of gold in the way. She fled like a shadow, paused, startled over the first apple, but even as he stretched his hand, fled again; hovered over the second, then, slipping from his hot grasp, flew over river, vale, and hill; but as she lingered over the third, his arms fell round her, and looking on each other, the blazing passion of their love profaned the sanctuary of Love, and they were cursed. If Atlanta be not named for Atalanta, she ought to have been.

Atalanta is not the first or the last maiden whom greed of gold has led to defile the temple of Love; and not maids alone, but men in the race of life, sink from the high and generous ideals of youth to the gambler's code of the Bourse; and in all our Nation's striving is not the Gospel of Work befouled by the Gospel of Pay? So common is this that one-half think it normal; so unquestioned, that we almost fear to question if the end of racing is not gold, if the aim of man is not rightly to be rich. And if this is the fault of America, how dire a danger lies before a new land and a new city, lest Atlanta, stooping for mere gold, shall find that gold accursed!

It was no maiden's idle whim that started this hard racing; a fearful wilderness lay about the feet of that city after the War,—feudalism, poverty, the rise of the Third Estate, serfdom, the re-birth of Law and Order, and above and between all, the Veil of Race. How heavy a journey for weary feet! what wings must Atalanta have to flit over all this hollow and hill, through sour wood and sullen water, and by the red waste of sun-baked clay! How fleet must Atalanta be if she will not be tempted by gold to profane the Sanctuary!

The Sanctuary of our fathers has, to be sure, few Gods,—some sneer, "all too few." There is the thrifty Mercury of New England, Pluto of the North, and Ceres of the West; and there, too, is the half-forgotten Apollo of the South, under whose aegis the maiden ran,—and as she ran she forgot him, even as there in Boeotia Venus was forgot. She forgot the old ideal of the Southern gentleman,—that new-world heir of the grace and courtliness of patrician, knight, and noble; forgot his honor with his foibles, his kindliness with his carelessness, and stooped to apples of gold,—to men busier and sharper, thriftier and more unscrupulous. Golden apples are beautiful—I remember the lawless days of boyhood, when orchards in crimson and gold tempted me over fence and field—and, too, the merchant who has dethroned the planter is no despicable parvenu. Work and wealth are the mighty levers to lift this old new land; thrift and toil and saving are the highways to new hopes and new possibilities; and yet the warning is needed lest the wily Hippomenes tempt Atalanta to thinking that golden apples are the goal of racing, and not mere incidents by the way.

Atlanta must not lead the South to dream of material prosperity as the touchstone of all success; already the fatal might of this idea is beginning to spread; it is replacing the finer type of Southerner with vulgar money-getters; it is burying the sweeter beauties of Southern life beneath pretence and ostentation. For every social ill the panacea of Wealth has been urged,—wealth to overthrow the remains of the slave feudalism; wealth to raise the "cracker" Third Estate; wealth to employ the black serfs, and the prospect of wealth to keep them working; wealth as the end and aim of politics, and as the legal tender for law and order; and, finally, instead of Truth, Beauty, and Goodness, wealth as the ideal of the Public School.

Not only is this true in the world which Atlanta typifies, but it is threatening to be true of a world beneath and beyond that world,—the Black World beyond the Veil. Today it makes little difference to Atlanta, to the South, what the Negro thinks or dreams or wills. In the soul-life of the land he is to-day, and naturally will long remain, unthought of, half forgotten; and yet when he does come to think and will and do for himself,—and let no man dream that day will never come,—then the part he plays will not be one of sudden learning, but words and thoughts he has been taught to lisp in his race-childhood. To-day the ferment of his striving toward self-realization is to the strife of the white world like a wheel within a wheel: beyond the Veil are smaller but like problems of ideals, of leaders and the led, of serfdom, of poverty, of order and subordination, and, through all, the Veil of Race. Few know of these problems, few who know notice them; and yet there they are, awaiting student, artist, and seer,—a field for somebody sometime to discover. Hither has the temptation of Hippomenes penetrated; already in this smaller world, which now indirectly and anon directly must influence the larger for good or ill, the habit is forming of interpreting the world in dollars. The old leaders of Negro opinion, in the little groups where there is a Negro social consciousness, are being replaced by new; neither the black preacher nor the black teacher leads as he did two decades ago. Into their places are pushing the farmers and gardeners, the well-paid porters and artisans, the business-men,—all those with property and money. And with all this change, so curiously parallel to that of the Other-world, goes too the same inevitable change in ideals. The South laments to-day the slow, steady disappearance of a certain type of Negro,—the faithful, courteous slave of other days, with his incorruptible honesty and dignified humility. He is passing away just as surely as the old type of Southern gentleman is passing,

and from not dissimilar causes,—the sudden transformation of a fair far-off ideal of Freedom into the hard reality of bread-winning and the consequent deification of Bread.

In the Black World, the Preacher and Teacher embodied once the ideals of this people—the strife for another and a juster world, the vague dream of righteousness, the mystery of knowing; but to-day the danger is that these ideals, with their simple beauty and weird inspiration, will suddenly sink to a question of cash and a lust for gold. Here stands this black young Atalanta, girding herself for the race that must be run; and if her eyes be still toward the hills and sky as in the days of old, then we may look for noble running; but what if some ruthless or wily or even thoughtless Hippomenes lay golden apples before her? What if the Negro people be wooed from a strife for righteousness, from a love of knowing, to regard dollars as the be-all and end-all of life? What if to the Mammonism of America be added the rising Mammonism of the re-born South, and the Mammonism of this South be reinforced by the budding Mammonism of its half-wakened black millions? Whither, then, is the new-world quest of Goodness and Beauty and Truth gone glimmering? Must this, and that fair flower of Freedom which, despite the jeers of latter-day striplings, sprung from our fathers' blood, must that too degenerate into a dusty quest of gold,—into lawless lust with Hippomenes?

The hundred hills of Atlanta are not all crowned with factories. On one, toward the west, the setting sun throws three buildings in bold relief against the sky. The beauty of the group lies in its simple unity:—a broad lawn of green rising from the red street and mingled roses and peaches; north and south, two plain and stately halls; and in the midst, half hidden in ivy, a larger building, boldly graceful, sparingly decorated, and with one low spire. It is a restful group, —one never looks for more; it is all here, all intelligible. There I live, and there I hear from day to day the low hum of restful life. In winter's twilight, when the red sun glows, I can see the dark figures pass between the halls to the music of the night-bell. In the morning, when the sun is golden, the clang of the day-bell brings the hurry and laughter of three hundred young hearts from hall and street, and from the busy city below,—children all dark and heavy-haired,—to join their clear young voices in the music of the morning sacrifice. In a half-dozen class-rooms they gather then,—here to follow the love-song of Dido, here to listen to the tale of Troy divine; there to wander among the stars, there to wander among men and nations,—and elsewhere other well-worn ways of knowing this queer world. Nothing new, no time-saving devices,—simply old time-glorified methods of delving for Truth, and searching out the hidden beauties of life, and learning the good of living. The riddle of existence is the college curriculum that was laid before the Pharaohs, that was taught in the groves by Plato, that formed the *trivium* and *quadrivium*, and is to-day laid before the freedmen's sons by Atlanta University. And this course of study will not change; its methods will grow more deft and effectual, its content richer by toil of scholar and sight of seer; but the true college will ever have one goal,—not to earn meat, but to know the end and aim of that life which meat nourishes.

The vision of life that rises before these dark eyes has in it nothing mean or selfish. Not at Oxford or at Leipsic, not at Yale or Columbia, is there an air of higher resolve or more unfettered striving; the determination to realize for men, both black and white, the broadest possibilities of life, to seek the better and the best, to spread with their own hands the Gospel of Sacrifice,—all this is the burden of their talk and dream. Here, amid a wide desert of caste and proscription, amid the heart-hurting slights and jars and vagaries of a deep race-dislike, lies this green oasis, where hot anger cools, and the bitterness of disappointment is sweetened by the springs and breezes of Parnassus; and here men may lie and listen, and learn of a future fuller than the past, and hear the voice of Time:

"Entbehren sollst du, sollst entbehren."

They made their mistakes, those who planted Fisk and Howard and Atlanta before the smoke of battle had lifted; they made their mistakes, but those mistakes were not the things at which we lately laughed somewhat uproariously. They were right when they sought to found a new educational system upon the University: where, forsooth, shall we ground knowledge save on the broadest and deepest knowledge? The roots of the tree, rather than the leaves, are the sources of its life; and from the dawn of history, from Academus to Cambridge, the culture of the University has been the broad foundation-stone on which is built the kindergarten's A B C.

But these builders did make a mistake in minimizing the gravity of the problem before them; in thinking it a matter of years and decades; in therefore building quickly and laying their foundation carelessly, and lowering the standard of knowing, until they had scattered haphazard through the South some dozen poorly equipped high schools and miscalled them universities. They forgot, too, just as their successors are forgetting, the rule of inequality:—that of the million black youth, some were fitted to know and some to dig; that some had the talent and capacity of university men, and some the talent and capacity of blacksmiths; and that true training meant neither that all should be college men nor all artisans, but that the one should be made a missionary of culture to an untaught people, and the other a free workman among serfs. And to seek to make the blacksmith a scholar is almost as silly as the more modern scheme of making the scholar a blacksmith; almost, but not quite.

The function of the university is not simply to teach bread-winning, or to furnish teachers for the public schools or to be a centre of polite society; it is, above all, to be the organ of that fine adjustment between real life and the growing knowledge of life, an adjustment which forms the secret of civilization. Such an institution the South of to-day sorely needs. She has religion, earnest, bigoted:—religion that on both sides the Veil often omits the sixth, seventh, and eighth commandments, but substitutes a dozen supplementary ones. She has, as Atlanta shows, growing thrift and love of toil; but she lacks that broad knowledge of what the world knows and knew of human living and doing, which she may apply to the thousand problems of real life to-day confronting her. The need of the South is knowledge and culture,—not in dainty limited quantity, as before the war, but in broad busy abundance in the world of work; and until she has this, not all the Apples of Hesperides, be they golden and bejewelled, can save her from the curse of the Boeotian lovers.

The Wings of Atalanta are the coming universities of the South. They alone can bear the maiden past the temptation of golden fruit. They will not guide her flying feet away from the cotton and gold; for—ah, thoughtful Hippomenes!—do not the apples lie in the very

Way of Life? But they will guide her over and beyond them, and leave her kneeling in the Sanctuary of Truth and Freedom and broad Humanity, virgin and undefiled. Sadly did the Old South err in human education, despising the education of the masses, and niggardly in the support of colleges. Her ancient university foundations dwindled and withered under the foul breath of slavery; and even since the war they have fought a failing fight for life in the tainted air of social unrest and commercial selfishness, stunted by the death of criticism, and starving for lack of broadly cultured men. And if this is the white South's need and danger, how much heavier the danger and need of the freedmen's sons! how pressing here the need of broad ideals and true culture, the conservation of soul from sordid aims and petty passions! Let us build the Southern university—William and Mary, Trinity, Georgia, Texas, Tulane, Vanderbilt, and the others—fit to live; let us build, too, the Negro universities:—Fisk, whose foundation was ever broad; Howard, at the heart of the Nation; Atlanta at Atlanta, whose ideal of scholarship has been held above the temptation of numbers. Why not here, and perhaps elsewhere, plant deeply and for all time centres of learning and living, colleges that yearly would send into the life of the South a few white men and a few black men of broad culture, catholic tolerance, and trained ability, joining their hands to other hands, and giving to this squabble of the Races a decent and dignified peace?

Patience, Humility, Manners, and Taste, common schools and kindergartens, industrial and technical schools, literature and tolerance,—all these spring from knowledge and culture, the children of the university. So must men and nations build, not otherwise, not upside down.

Teach workers to work,—a wise saying; wise when applied to German boys and American girls; wiser when said of Negro boys, for they have less knowledge of working and none to teach them. Teach thinkers to think,—a needed knowledge in a day of loose and careless logic; and they whose lot is gravest must have the carefulest training to think aright. If these things are so, how foolish to ask what is the best education for one or seven or sixty million souls! shall we teach them trades, or train them in liberal arts? Neither and both: teach the workers to work and the thinkers to think; make carpenters of carpenters, and philosophers of philosophers, and fops of fools. Nor can we pause here. We are training not isolated men but a living group of men,—nay, a group within a group. And the final product of our training must be neither a psychologist nor a brickmason, but a man. And to make men, we must have ideals, broad, pure, and inspiring ends of living,—not sordid money-getting, not apples of gold. The worker must work for the glory of his handiwork, not simply for pay; the thinker must think for truth, not for fame. And all this is gained only by human strife and longing; by ceaseless training and education; by founding Right on righteousness and Truth on the unhampered search for Truth; by founding the common school on the university, and the industrial school on the common school; and weaving thus a system, not a distortion, and bringing a birth, not an abortion.

When night falls on the City of a Hundred Hills, a wind gathers itself from the seas and comes murmuring westward. And at its bidding, the smoke of the drowsy factories sweeps down upon the mighty city and covers it like a pall, while yonder at the University the stars twinkle above Stone Hall. And they say that yon gray mist is the tunic of Atalanta pausing over her golden apples. Fly, my maiden, fly, for yonder comes Hippomenes!

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Appendix Q

Excerpts from "Narrative of the Life of Frederick Douglass"

By Frederick Douglass

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Narrative
of the
Life
of
FREDERICK DOUGLASS

AN
AMERICAN SLAVE.
WRITTEN BY HIMSELF.

BOSTON

PUBLISHED AT THE ANTI-SLAVERY OFFICE,
NO. 25 CORNHILL
1845

**ENTERED, ACCORDING TO ACT OF CONGRESS,
IN THE YEAR 1845
BY FREDERICK DOUGLASS,
IN THE CLERK'S OFFICE OF THE DISTRICT COURT
OF MASSACHUSETTS.**

Frederick Douglass was born in slavery as Frederick Augustus Washington Bailey near Easton in Talbot County, Maryland. He was not sure of the exact year of his birth, but he knew that it was 1817 or 1818. As a young boy he was sent to Baltimore, to be a house servant, where he learned to read and write, with the assistance of his master's wife. In 1838 he escaped from slavery and went to New York City, where he married Anna Murray, a free colored woman whom he had met in Baltimore. Soon thereafter he changed his name to Frederick Douglass. In 1841 he addressed a convention of the Massachusetts Anti-Slavery Society in Nantucket and so greatly impressed the group that they immediately employed him as an agent. He was such an impressive orator that numerous persons doubted if he had ever been a slave, so he wrote *Narrative Of The Life Of Frederick Douglass*. During the Civil War he assisted in the recruiting of colored men for the 54th and 55th Massachusetts Regiments and consistently argued for the emancipation of slaves. After the war he was active in securing and protecting the rights of the freemen. In his later years, at different times, he was secretary of the Santo Domingo Commission, marshall and recorder of deeds of the District of Columbia, and United States Minister to Haiti. His other autobiographical works are *My Bondage And My Freedom* and *Life And Times Of Frederick Douglass*, published in 1855 and 1881 respectively. He died in 1895.

CHAPTER I

I was born in Tuckahoe, near Hillsborough, and about twelve miles from Easton, in Talbot county, Maryland. I have no accurate knowledge of my age, never having seen any authentic record containing it. By far the larger part of the slaves know as little of their ages as horses know of theirs, and it is the wish of most masters within my knowledge to keep their slaves thus ignorant. I do not remember to have ever met a slave who could tell of his birthday. They seldom come nearer to it than planting-time, harvest-time, cherry-time, spring-time, or fall-time. A want of information concerning my own was a source of unhappiness to me even during childhood. The white children could tell their ages. I could not tell why I ought to be deprived of the same privilege. I was not allowed to make any inquiries of my master concerning it. He deemed all such inquiries on the part of a slave improper and impertinent, and

evidence of a restless spirit. The nearest estimate I can give makes me now between twenty-seven and twenty-eight years of age. I come to this, from hearing my master say, some time during 1835, I was about seventeen years old.

My mother was named Harriet Bailey. She was the daughter of Isaac and Betsey Bailey, both colored, and quite dark. My mother was of a darker complexion than either my grandmother or grandfather.

My father was a white man. He was admitted to be such by all I ever heard speak of my parentage. The opinion was also whispered that my master was my father; but of the correctness of this opinion, I know nothing; the means of knowing was withheld from me. My mother and I were separated when I was but an infant—before I knew her as my mother. It is a common custom, in the part of Maryland from which I ran away, to part children from their mothers at a very early age. Frequently, before the child has reached its twelfth month, its mother is taken from it, and hired out on some farm a considerable distance off, and the child is placed under the care of an old woman, too old for field labor. For what this separation is done, I do not know, unless it be to hinder the development of the child's affection toward its mother, and to blunt and destroy the natural affection of the mother for the child. This is the inevitable result.

I never saw my mother, to know her as such, more than four or five times in my life; and each of these times was very short in duration, and at night. She was hired by a Mr. Stewart, who lived about twelve miles from my home. She made her journeys to see me in the night, travelling the whole distance on foot, after the performance of her day's work. She was a field hand, and a whipping is the penalty of not being in the field at sunrise, unless a slave has special permission from his or her master to the contrary—a permission which they seldom get, and one that gives to him that gives it the proud name of being a kind master. I do not recollect of ever seeing my mother by the light of day. She was with me in the night. She would lie down with me, and get me to sleep, but long before I waked she was gone. Very little communication ever took place between us. Death soon ended what little we could have while she lived, and with it her hardships and suffering. She died when I was about seven years old, on one of my master's farms, near Lee's Mill. I was not allowed to be present during her illness, at her death, or burial. She was gone long before I knew any thing about it. Never having enjoyed, to any considerable extent, her soothing presence, her tender and watchful care, I received the tidings of her death with much the same emotions I should have probably felt at the death of a stranger.

Called thus suddenly away, she left me without the slightest intimation of who my father was. The whisper that my master was my father, may or may not be true; and, true or false, it is of but little consequence to my purpose whilst the fact remains, in all its glaring odiousness, that slaveholders have ordained, and by law established, that the children of slave women shall in all cases follow the condition of their mothers; and this is done too obviously to administer to their own lusts, and make a gratification of their wicked desires profitable as well as pleasurable; for by this cunning arrangement, the slaveholder, in cases not a few, sustains to his slaves the double relation of master and father.

I know of such cases; and it is worthy of remark that such slaves invariably suffer greater hardships, and have more to contend with, than others. They are, in the first place, a constant offence to their mistress. She is ever disposed to find fault with them; they can seldom do any thing to please her; she is never better pleased than when she sees them under the lash, especially when she suspects her husband of showing to his mulatto children favors which he withholds from his black slaves. The master is frequently compelled to sell this class of his slaves, out of deference to the feelings of his white wife; and, cruel as the deed may strike any one to be, for a man to sell his own children to human flesh-mongers, it is often the dictate of humanity for him to do so; for, unless he does this, he must not only whip them himself, but must stand by and see one white son tie up his brother, of but few shades darker complexion than himself, and ply the gory lash to his naked back; and if he lisp one word of disapproval, it is set down to his parental partiality, and only makes a bad matter worse, both for himself and the slave whom he would protect and defend.

Every year brings with it multitudes of this class of slaves. It was doubtless in consequence of a knowledge of this fact, that one great statesman of the south predicted the downfall of slavery by the inevitable laws of population. Whether this prophecy is ever fulfilled or not, it is nevertheless plain that a very different-looking class of people are springing up at the south, and are now held in slavery, from those originally brought to this country from Africa; and if their increase do no other good, it will do away the force of the argument, that God cursed Ham, and therefore American slavery is right. If the lineal descendants of Ham are alone to be scripturally enslaved, it is certain that slavery at the south must soon become unscriptural; for thousands are ushered into the world, annually, who, like myself, owe their existence to white fathers, and those fathers most frequently their own masters.

I have had two masters. My first master's name was Anthony. I do not remember his first name. He was generally called Captain Anthony—a title which, I presume, he acquired by sailing a craft on the Chesapeake Bay. He was not considered a rich slaveholder. He owned two or three farms, and about thirty slaves. His farms and slaves were under the care of an overseer. The overseer's name was Plummer. Mr. Plummer was a miserable drunkard, a profane swearer, and a savage monster. He always went armed with a cowskin and a heavy cudgel. I have known him to cut and slash the women's heads so horribly, that even master would be enraged at his cruelty, and would threaten to whip him if he did not mind himself. Master, however, was not a humane slaveholder. It required extraordinary barbarity on the part of an overseer to affect him. He was a cruel man, hardened by a long life of slaveholding. He would at times seem to take great pleasure in whipping a slave. I have often been awakened at the dawn of day by the most heart-rending shrieks of an own aunt of mine, whom he used to tie up to a joist, and whip upon her naked back till she was literally covered with blood. No words, no tears, no prayers, from his gory victim, seemed to move his iron heart from its bloody purpose. The louder she screamed, the harder he whipped; and where the blood ran fastest, there he whipped longest. He would whip her to make her scream, and whip her to make her hush; and not until overcome by fatigue, would he cease to swing the blood-clotted cowskin. I remember the first time I ever witnessed this horrible exhibition. I was quite a child, but I well remember it. I never shall forget it whilst I remember any thing. It was the first of a long series of such outrages, of which I was doomed to be a witness and a participant. It struck me with awful force. It was the blood-

stained gate, the entrance to the hell of slavery, through which I was about to pass. It was a most terrible spectacle. I wish I could commit to paper the feelings with which I beheld it.

This occurrence took place very soon after I went to live with my old master, and under the following circumstances. Aunt Hester went out one night,—where or for what I do not know,—and happened to be absent when my master desired her presence. He had ordered her not to go out evenings, and warned her that she must never let him catch her in company with a young man, who was paying attention to her belonging to Colonel Lloyd. The young man's name was Ned Roberts, generally called Lloyd's Ned. Why master was so careful of her, may be safely left to conjecture. She was a woman of noble form, and of graceful proportions, having very few equals, and fewer superiors, in personal appearance, among the colored or white women of our neighborhood.

Aunt Hester had not only disobeyed his orders in going out, but had been found in company with Lloyd's Ned; which circumstance, I found, from what he said while whipping her, was the chief offence. Had he been a man of pure morals himself, he might have been thought interested in protecting the innocence of my aunt; but those who knew him will not suspect him of any such virtue. Before he commenced whipping Aunt Hester, he took her into the kitchen, and stripped her from neck to waist, leaving her neck, shoulders, and back, entirely naked. He then told her to cross her hands, calling her at the same time a d——d b—-h. After crossing her hands, he tied them with a strong rope, and led her to a stool under a large hook in the joist, put in for the purpose. He made her get upon the stool, and tied her hands to the hook. She now stood fair for his infernal purpose. Her arms were stretched up at their full length, so that she stood upon the ends of her toes. He then said to her, "Now, you d——d b—h, I'll learn you how to disobey my orders!" and after rolling up his sleeves, he commenced to lay on the heavy cowskin, and soon the warm, red blood (amid heart-rending shrieks from her, and horrid oaths from him) came dripping to the floor. I was so terrified and horror-stricken at the sight, that I hid myself in a closet, and dared not venture out till long after the bloody transaction was over. I expected it would be my turn next. It was all new to me. I had never seen any thing like it before. I had always lived with my grandmother on the outskirts of the plantation, where she was put to raise the children of the younger women. I had therefore been, until now, out of the way of the bloody scenes that often occurred on the plantation.

CHAPTER II

My master's family consisted of two sons, Andrew and Richard; one daughter, Lucretia, and her husband, Captain Thomas Auld. They lived in one house, upon the home plantation of Colonel Edward Lloyd. My master was Colonel Lloyd's clerk and superintendent. He was what might be called the overseer of the overseers. I spent two years of childhood on this plantation in my old master's family. It was here that I witnessed the bloody transaction recorded in the first chapter; and as I received my first impressions of slavery on this plantation, I will give some description of it, and of slavery as it there existed. The plantation is about twelve miles north of Easton, in Talbot county, and is situated on the border of Miles River. The principal products raised upon it were tobacco, corn, and wheat. These were raised in great abundance; so that, with the products of this and the other farms belonging to him, he was able to keep in almost constant employment a large sloop, in carrying them to market at Baltimore. This sloop was named Sally Lloyd, in honor of one of the colonel's daughters. My master's son-in-law, Captain Auld, was master of the vessel; she was otherwise manned by the colonel's own slaves. Their names were Peter, Isaac, Rich, and Jake. These were esteemed very highly by the other slaves, and looked upon as the privileged ones of the plantation; for it was no small affair, in the eyes of the slaves, to be allowed to see Baltimore.

Colonel Lloyd kept from three to four hundred slaves on his home plantation, and owned a large number more on the neighboring farms belonging to him. The names of the farms nearest to the home plantation were Wye Town and New Design. "Wye Town" was under the overseership of a man named Noah Willis. New Design was under the overseership of a Mr. Townsend. The overseers of these, and all the rest of the farms, numbering over twenty, received advice and direction from the managers of the home plantation. This was the great business place. It was the seat of government for the whole twenty farms. All disputes among the overseers were settled here. If a slave was convicted of any high misdemeanor, became unmanageable, or evinced a determination to run away, he was brought immediately here, severely whipped, put on board the sloop, carried to Baltimore, and sold to Austin Woolfolk, or some other slave-trader, as a warning to the slaves remaining.

Here, too, the slaves of all the other farms received their monthly allowance of food, and their yearly clothing. The men and women slaves received, as their monthly allowance of food, eight pounds of pork, or its equivalent in fish, and one bushel of corn meal. Their yearly clothing consisted of two coarse linen shirts, one pair of linen trousers, like the shirts, one jacket, one pair of trousers for winter, made of coarse negro cloth, one pair of stockings, and one pair of shoes; the whole of which could not have cost more than seven dollars. The allowance of the slave children was given to their mothers, or the old women having the care of them. The children unable to work in the field had neither shoes, stockings, jackets, nor trousers, given to them; their clothing consisted of two coarse linen shirts per year. When these failed them, they went naked until the next allowance-day. Children from seven to ten years old, of both sexes, almost naked, might be seen at all seasons of the year.

There were no beds given the slaves, unless one coarse blanket be considered such, and none but the men and women had these. This, however, is not considered a very great privation. They find less difficulty from the want of beds, than from the want of time to sleep; for when their day's work in the field is done, the most of them having their washing, mending, and cooking to do, and having few or none of the ordinary facilities for doing either of these, very many of their sleeping hours are consumed in preparing for the field the coming day; and when this is done, old and young, male and female, married and single, drop down side by side, on one common bed,—

the cold, damp floor,—each covering himself or herself with their miserable blankets; and here they sleep till they are summoned to the field by the driver's horn. At the sound of this, all must rise, and be off to the field. There must be no halting; every one must be at his or her post; and woe betides them who hear not this morning summons to the field; for if they are not awakened by the sense of hearing, they are by the sense of feeling: no age nor sex finds any favor. Mr. Severe, the overseer, used to stand by the door of the quarter, armed with a large hickory stick and heavy cowskin, ready to whip any one who was so unfortunate as not to hear, or, from any other cause, was prevented from being ready to start for the field at the sound of the horn.

Mr. Severe was rightly named: he was a cruel man. I have seen him whip a woman, causing the blood to run half an hour at the time; and this, too, in the midst of her crying children, pleading for their mother's release. He seemed to take pleasure in manifesting his fiendish barbarity. Added to his cruelty, he was a profane swearer. It was enough to chill the blood and stiffen the hair of an ordinary man to hear him talk. Scarce a sentence escaped him but that was commenced or concluded by some horrid oath. The field was the place to witness his cruelty and profanity. His presence made it both the field of blood and of blasphemy. From the rising till the going down of the sun, he was cursing, raving, cutting, and slashing among the slaves of the field, in the most frightful manner. His career was short. He died very soon after I went to Colonel Lloyd's; and he died as he lived, uttering, with his dying groans, bitter curses and horrid oaths. His death was regarded by the slaves as the result of a merciful providence.

Mr. Severe's place was filled by a Mr. Hopkins. He was a very different man. He was less cruel, less profane, and made less noise, than Mr. Severe. His course was characterized by no extraordinary demonstrations of cruelty. He whipped, but seemed to take no pleasure in it. He was called by the slaves a good overseer.

The home plantation of Colonel Lloyd wore the appearance of a country village. All the mechanical operations for all the farms were performed here. The shoemaking and mending, the blacksmithing, cartwrighting, coopering, weaving, and grain-grinding, were all performed by the slaves on the home plantation. The whole place wore a business-like aspect very unlike the neighboring farms. The number of houses, too, conspired to give it advantage over the neighboring farms. It was called by the slaves the *Great House Farm.* Few privileges were esteemed higher, by the slaves of the out-farms, than that of being selected to do errands at the Great House Farm. It was associated in their minds with greatness. A representative could not be prouder of his election to a seat in the American Congress, than a slave on one of the out-farms would be of his election to do errands at the Great House Farm. They regarded it as evidence of great confidence reposed in them by their overseers; and it was on this account, as well as a constant desire to be out of the field from under the driver's lash, that they esteemed it a high privilege, one worth careful living for. He was called the smartest and most trusty fellow, who had this honor conferred upon him the most frequently. The competitors for this office sought as diligently to please their overseers, as the office-seekers in the political parties seek to please and deceive the people. The same traits of character might be seen in Colonel Lloyd's slaves, as are seen in the slaves of the political parties.

The slaves selected to go to the Great House Farm, for the monthly allowance for themselves and their fellow-slaves, were peculiarly enthusiastic. While on their way, they would make the dense old woods, for miles around, reverberate with their wild songs, revealing at once the highest joy and the deepest sadness. They would compose and sing as they went along, consulting neither time nor tune. The thought that came up, came out—if not in the word, in the sound;—and as frequently in the one as in the other. They would sometimes sing the most pathetic sentiment in the most rapturous tone, and the most rapturous sentiment in the most pathetic tone. Into all of their songs they would manage to weave something of the Great House Farm. Especially would they do this, when leaving home. They would then sing most exultingly the following words:—

> "I am going away to the Great House Farm!
> O, yea! O, yea! O!"

This they would sing, as a chorus, to words which to many would seem unmeaning jargon, but which, nevertheless, were full of meaning to themselves. I have sometimes thought that the mere hearing of those songs would do more to impress some minds with the horrible character of slavery, than the reading of whole volumes of philosophy on the subject could do.

I did not, when a slave, understand the deep meaning of those rude and apparently incoherent songs. I was myself within the circle; so that I neither saw nor heard as those without might see and hear. They told a tale of woe which was then altogether beyond my feeble comprehension; they were tones loud, long, and deep; they breathed the prayer and complaint of souls boiling over with the bitterest anguish. Every tone was a testimony against slavery, and a prayer to God for deliverance from chains. The hearing of those wild notes always depressed my spirit, and filled me with ineffable sadness. I have frequently found myself in tears while hearing them. The mere recurrence to those songs, even now, afflicts me; and while I am writing these lines, an expression of feeling has already found its way down my cheek. To those songs I trace my first glimmering conception of the dehumanizing character of slavery. I can never get rid of that conception. Those songs still follow me, to deepen my hatred of slavery, and quicken my sympathies for my brethren in bonds. If any one wishes to be impressed with the soul-killing effects of slavery, let him go to Colonel Lloyd's plantation, and, on allowance-day, place himself in the deep pine woods, and there let him, in silence, analyze the sounds that shall pass through the chambers of his soul,—and if he is not thus impressed, it will only be because "there is no flesh in his obdurate heart."

I have often been utterly astonished, since I came to the north, to find persons who could speak of the singing, among slaves, as evidence of their contentment and happiness. It is impossible to conceive of a greater mistake. Slaves sing most when they are most unhappy. The songs of the slave represent the sorrows of his heart; and he is relieved by them, only as an aching heart is relieved by its tears. At least, such is my experience. I have often sung to drown my sorrow, but seldom to express my happiness. Crying for joy, and

singing for joy, were alike uncommon to me while in the jaws of slavery. The singing of a man cast away upon a desolate island might be as appropriately considered as evidence of contentment and happiness, as the singing of a slave; the songs of the one and of the other are prompted by the same emotion.

CHAPTER III

Colonel Lloyd kept a large and finely cultivated garden, which afforded almost constant employment for four men, besides the chief gardener, (Mr. M'Durmond.) This garden was probably the greatest attraction of the place. During the summer months, people came from far and near—from Baltimore, Easton, and Annapolis—to see it. It abounded in fruits of almost every description, from the hardy apple of the north to the delicate orange of the south. This garden was not the least source of trouble on the plantation. Its excellent fruit was quite a temptation to the hungry swarms of boys, as well as the older slaves, belonging to the colonel, few of whom had the virtue or the vice to resist it. Scarcely a day passed, during the summer, but that some slave had to take the lash for stealing fruit. The colonel had to resort to all kinds of stratagems to keep his slaves out of the garden. The last and most successful one was that of tarring his fence all around; after which, if a slave was caught with any tar upon his person, it was deemed sufficient proof that he had either been into the garden, or had tried to get in. In either case, he was severely whipped by the chief gardener. This plan worked well; the slaves became as fearful of tar as of the lash. They seemed to realize the impossibility of touching *tar* without being defiled.

The colonel also kept a splendid riding equipage. His stable and carriage-house presented the appearance of some of our large city livery establishments. His horses were of the finest form and noblest blood. His carriage-house contained three splendid coaches, three or four gigs, besides dearborns and barouches of the most fashionable style.

This establishment was under the care of two slaves—old Barney and young Barney—father and son. To attend to this establishment was their sole work. But it was by no means an easy employment; for in nothing was Colonel Lloyd more particular than in the management of his horses. The slightest inattention to these was unpardonable, and was visited upon those, under whose care they were placed, with the severest punishment; no excuse could shield them, if the colonel only suspected any want of attention to his horses—a supposition which he frequently indulged, and one which, of course, made the office of old and young Barney a very trying one. They never knew when they were safe from punishment. They were frequently whipped when least deserving, and escaped whipping when most deserving it. Every thing depended upon the looks of the horses, and the state of Colonel Lloyd's own mind when his horses were brought to him for use. If a horse did not move fast enough, or hold his head high enough, it was owing to some fault of his keepers. It was painful to stand near the stable-door, and hear the various complaints against the keepers when a horse was taken out for use. "This horse has not had proper attention. He has not been sufficiently rubbed and curried, or he has not been properly fed; his food was too wet or too dry; he got it too soon or too late; he was too hot or too cold; he had too much hay, and not enough of grain; or he had too much grain, and not enough of hay; instead of old Barney's attending to the horse, he had very improperly left it to his son." To all these complaints, no matter how unjust, the slave must answer never a word. Colonel Lloyd could not brook any contradiction from a slave. When he spoke, a slave must stand, listen, and tremble; and such was literally the case. I have seen Colonel Lloyd make old Barney, a man between fifty and sixty years of age, uncover his bald head, kneel down upon the cold, damp ground, and receive upon his naked and toil-worn shoulders more than thirty lashes at the time. Colonel Lloyd had three sons—Edward, Murray, and Daniel,—and three sons-in-law, Mr. Winder, Mr. Nicholson, and Mr. Lowndes. All of these lived at the Great House Farm, and enjoyed the luxury of whipping the servants when they pleased, from old Barney down to William Wilkes, the coach-driver. I have seen Winder make one of the house-servants stand off from him a suitable distance to be touched with the end of his whip, and at every stroke raise great ridges upon his back.

To describe the wealth of Colonel Lloyd would be almost equal to describing the riches of Job. He kept from ten to fifteen house-servants. He was said to own a thousand slaves, and I think this estimate quite within the truth. Colonel Lloyd owned so many that he did not know them when he saw them; nor did all the slaves of the out-farms know him. It is reported of him, that, while riding along the road one day, he met a colored man, and addressed him in the usual manner of speaking to colored people on the public highways of the south: "Well, boy, whom do you belong to?" "To Colonel Lloyd," replied the slave. "Well, does the colonel treat you well?" "No, sir," was the ready reply. "What, does he work you too hard?" "Yes, sir." "Well, don't he give you enough to eat?" "Yes, sir, he gives me enough, such as it is."

The colonel, after ascertaining where the slave belonged, rode on; the man also went on about his business, not dreaming that he had been conversing with his master. He thought, said, and heard nothing more of the matter, until two or three weeks afterwards. The poor man was then informed by his overseer that, for having found fault with his master, he was now to be sold to a Georgia trader. He was immediately chained and handcuffed; and thus, without a moment's warning, he was snatched away, and forever sundered, from his family and friends, by a hand more unrelenting than death. This is the penalty of telling the truth, of telling the simple truth, in answer to a series of plain questions.

It is partly in consequence of such facts, that slaves, when inquired of as to their condition and the character of their masters, almost universally say they are contented, and that their masters are kind. The slaveholders have been known to send in spies among their slaves, to ascertain their views and feelings in regard to their condition. The frequency of this has had the effect to establish among the slaves the maxim, that a still tongue makes a wise head. They suppress the truth rather than take the consequences of telling it, and in so doing prove themselves a part of the human family. If they have any thing to say of their masters, it is generally in their masters'

favor, especially when speaking to an untried man. I have been frequently asked, when a slave, if I had a kind master, and do not remember ever to have given a negative answer; nor did I, in pursuing this course, consider myself as uttering what was absolutely false; for I always measured the kindness of my master by the standard of kindness set up among slaveholders around us. Moreover, slaves are like other people, and imbibe prejudices quite common to others. They think their own better than that of others. Many, under the influence of this prejudice, think their own masters are better than the masters of other slaves; and this, too, in some cases, when the very reverse is true. Indeed, it is not uncommon for slaves even to fall out and quarrel among themselves about the relative goodness of their masters, each contending for the superior goodness of his own over that of the others. At the very same time, they mutually execrate their masters when viewed separately. It was so on our plantation. When Colonel Lloyd's slaves met the slaves of Jacob Jepson, they seldom parted without a quarrel about their masters; Colonel Lloyd's slaves contending that he was the richest, and Mr. Jepson's slaves that he was the smartest, and most of a man. Colonel Lloyd's slaves would boast his ability to buy and sell Jacob Jepson. Mr. Jepson's slaves would boast his ability to whip Colonel Lloyd. These quarrels would almost always end in a fight between the parties, and those that whipped were supposed to have gained the point at issue. They seemed to think that the greatness of their masters was transferable to themselves. It was considered as being bad enough to be a slave; but to be a poor man's slave was deemed a disgrace indeed!

CHAPTER IV

Mr. Hopkins remained but a short time in the office of overseer. Why his career was so short, I do not know, but suppose he lacked the necessary severity to suit Colonel Lloyd. Mr. Hopkins was succeeded by Mr. Austin Gore, a man possessing, in an eminent degree, all those traits of character indispensable to what is called a first-rate overseer. Mr. Gore had served Colonel Lloyd, in the capacity of overseer, upon one of the out-farms, and had shown himself worthy of the high station of overseer upon the home or Great House Farm.

Mr. Gore was proud, ambitious, and persevering. He was artful, cruel, and obdurate. He was just the man for such a place, and it was just the place for such a man. It afforded scope for the full exercise of all his powers, and he seemed to be perfectly at home in it. He was one of those who could torture the slightest look, word, or gesture, on the part of the slave, into impudence, and would treat it accordingly. There must be no answering back to him; no explanation was allowed a slave, showing himself to have been wrongfully accused. Mr. Gore acted fully up to the maxim laid down by slaveholders,—"It is better that a dozen slaves should suffer under the lash, than that the overseer should be convicted, in the presence of the slaves, of having been at fault." No matter how innocent a slave might be—it availed him nothing, when accused by Mr. Gore of any misdemeanor. To be accused was to be convicted, and to be convicted was to be punished; the one always following the other with immutable certainty. To escape punishment was to escape accusation; and few slaves had the fortune to do either, under the overseership of Mr. Gore. He was just proud enough to demand the most debasing homage of the slave, and quite servile enough to crouch, himself, at the feet of the master. He was ambitious enough to be contented with nothing short of the highest rank of overseers, and persevering enough to reach the height of his ambition. He was cruel enough to inflict the severest punishment, artful enough to descend to the lowest trickery, and obdurate enough to be insensible to the voice of a reproving conscience. He was, of all the overseers, the most dreaded by the slaves. His presence was painful; his eye flashed confusion; and seldom was his sharp, shrill voice heard, without producing horror and trembling in their ranks.

Mr. Gore was a grave man, and, though a young man, he indulged in no jokes, said no funny words, seldom smiled. His words were in perfect keeping with his looks, and his looks were in perfect keeping with his words. Overseers will sometimes indulge in a witty word, even with the slaves; not so with Mr. Gore. He spoke but to command, and commanded but to be obeyed; he dealt sparingly with his words, and bountifully with his whip, never using the former where the latter would answer as well. When he whipped, he seemed to do so from a sense of duty, and feared no consequences. He did nothing reluctantly, no matter how disagreeable; always at his post, never inconsistent. He never promised but to fulfil. He was, in a word, a man of the most inflexible firmness and stone-like coolness.

His savage barbarity was equalled only by the consummate coolness with which he committed the grossest and most savage deeds upon the slaves under his charge. Mr. Gore once undertook to whip one of Colonel Lloyd's slaves, by the name of Demby. He had given Demby but few stripes, when, to get rid of the scourging, he ran and plunged himself into a creek, and stood there at the depth of his shoulders, refusing to come out. Mr. Gore told him that he would give him three calls, and that, if he did not come out at the third call, he would shoot him. The first call was given. Demby made no response, but stood his ground. The second and third calls were given with the same result. Mr. Gore then, without consultation or deliberation with any one, not even giving Demby an additional call, raised his musket to his face, taking deadly aim at his standing victim, and in an instant poor Demby was no more. His mangled body sank out of sight, and blood and brains marked the water where he had stood.

A thrill of horror flashed through every soul upon the plantation, excepting Mr. Gore. He alone seemed cool and collected. He was asked by Colonel Lloyd and my old master, why he resorted to this extraordinary expedient. His reply was, (as well as I can remember,) that Demby had become unmanageable. He was setting a dangerous example to the other slaves,—one which, if suffered to pass without some such demonstration on his part, would finally lead to the total subversion of all rule and order upon the plantation. He argued that if one slave refused to be corrected, and escaped with his life, the other slaves would soon copy the example; the result of which would be, the freedom of the slaves, and the enslavement of the whites. Mr. Gore's defence was satisfactory. He was continued in his station as overseer upon the home plantation. His fame as an overseer went abroad. His horrid crime was not even submitted to judicial investigation. It was committed in the presence of slaves, and they of course could neither institute a suit, nor testify against him; and thus the guilty perpetrator of one of the bloodiest and most foul murders goes unwhipped of justice, and uncensured by the community in which he lives. Mr. Gore lived in St. Michael's, Talbot county, Maryland, when I left there; and if he is still alive, he very probably

lives there now; and if so, he is now, as he was then, as highly esteemed and as much respected as though his guilty soul had not been stained with his brother's blood.

I speak advisedly when I say this,—that killing a slave, or any colored person, in Talbot county, Maryland, is not treated as a crime, either by the courts or the community. Mr. Thomas Lanman, of St. Michael's, killed two slaves, one of whom he killed with a hatchet, by knocking his brains out. He used to boast of the commission of the awful and bloody deed. I have heard him do so laughingly, saying, among other things, that he was the only benefactor of his country in the company, and that when others would do as much as he had done, we should be relieved of "the d——d niggers."

The wife of Mr. Giles Hicks, living but a short distance from where I used to live, murdered my wife's cousin, a young girl between fifteen and sixteen years of age, mangling her person in the most horrible manner, breaking her nose and breastbone with a stick, so that the poor girl expired in a few hours afterward. She was immediately buried, but had not been in her untimely grave but a few hours before she was taken up and examined by the coroner, who decided that she had come to her death by severe beating. The offence for which this girl was thus murdered was this:—She had been set that night to mind Mrs. Hicks's baby, and during the night she fell asleep, and the baby cried. She, having lost her rest for several nights previous, did not hear the crying. They were both in the room with Mrs. Hicks. Mrs. Hicks, finding the girl slow to move, jumped from her bed, seized an oak stick of wood by the fireplace, and with it broke the girl's nose and breastbone, and thus ended her life. I will not say that this most horrid murder produced no sensation in the community. It did produce sensation, but not enough to bring the murderess to punishment. There was a warrant issued for her arrest, but it was never served. Thus she escaped not only punishment, but even the pain of being arraigned before a court for her horrid crime.

Whilst I am detailing bloody deeds which took place during my stay on Colonel Lloyd's plantation, I will briefly narrate another, which occurred about the same time as the murder of Demby by Mr. Gore.

Colonel Lloyd's slaves were in the habit of spending a part of their nights and Sundays in fishing for oysters, and in this way made up the deficiency of their scanty allowance. An old man belonging to Colonel Lloyd, while thus engaged, happened to get beyond the limits of Colonel Lloyd's, and on the premises of Mr. Beal Bondly. At this trespass, Mr. Bondly took offence, and with his musket came down to the shore, and blew its deadly contents into the poor old man.

Mr. Bondly came over to see Colonel Lloyd the next day, whether to pay him for his property, or to justify himself in what he had done, I know not. At any rate, this whole fiendish transaction was soon hushed up. There was very little said about it at all, and nothing done. It was a common saying, even among little white boys, that it was worth a half-cent to kill a "nigger," and a half-cent to bury one.

CHAPTER V

As to my own treatment while I lived on Colonel Lloyd's plantation, it was very similar to that of the other slave children. I was not old enough to work in the field, and there being little else than field work to do, I had a great deal of leisure time. The most I had to do was to drive up the cows at evening, keep the fowls out of the garden, keep the front yard clean, and run of errands for my old master's daughter, Mrs. Lucretia Auld. The most of my leisure time I spent in helping Master Daniel Lloyd in finding his birds, after he had shot them. My connection with Master Daniel was of some advantage to me. He became quite attached to me, and was a sort of protector of me. He would not allow the older boys to impose upon me, and would divide his cakes with me.

I was seldom whipped by my old master, and suffered little from any thing else than hunger and cold. I suffered much from hunger, but much more from cold. In hottest summer and coldest winter, I was kept almost naked—no shoes, no stockings, no jacket, no trousers, nothing on but a coarse tow linen shirt, reaching only to my knees. I had no bed. I must have perished with cold, but that, the coldest nights, I used to steal a bag which was used for carrying corn to the mill. I would crawl into this bag, and there sleep on the cold, damp, clay floor, with my head in and feet out. My feet have been so cracked with the frost, that the pen with which I am writing might be laid in the gashes.

We were not regularly allowanced. Our food was coarse corn meal boiled. This was called *mush*. It was put into a large wooden tray or trough, and set down upon the ground. The children were then called, like so many pigs, and like so many pigs they would come and devour the mush; some with oyster-shells, others with pieces of shingle, some with naked hands, and none with spoons. He that ate fastest got most; he that was strongest secured the best place; and few left the trough satisfied.

I was probably between seven and eight years old when I left Colonel Lloyd's plantation. I left it with joy. I shall never forget the ecstasy with which I received the intelligence that my old master (Anthony) had determined to let me go to Baltimore, to live with Mr. Hugh Auld, brother to my old master's son-in-law, Captain Thomas Auld. I received this information about three days before my departure. They were three of the happiest days I ever enjoyed. I spent the most part of all these three days in the creek, washing off the plantation scurf, and preparing myself for my departure.

The pride of appearance which this would indicate was not my own. I spent the time in washing, not so much because I wished to, but because Mrs. Lucretia had told me I must get all the dead skin off my feet and knees before I could go to Baltimore; for the people in Baltimore were very cleanly, and would laugh at me if I looked dirty. Besides, she was going to give me a pair of trousers, which I should not put on unless I got all the dirt off me. The thought of owning a pair of trousers was great indeed! It was almost a sufficient motive, not only to make me take off what would be called by pig-drovers the mange, but the skin itself. I went at it in good earnest, working for the first time with the hope of reward.

The ties that ordinarily bind children to their homes were all suspended in my case. I found no severe trial in my departure. My home was charmless; it was not home to me; on parting from it, I could not feel that I was leaving any thing which I could have enjoyed by staying. My mother was dead, my grandmother lived far off, so that I seldom saw her. I had two sisters and one brother, that lived in the same house with me; but the early separation of us from our mother had well nigh blotted the fact of our relationship from our memories. I looked for home elsewhere, and was confident of finding none which I should relish less than the one which I was leaving. If, however, I found in my new home hardship, hunger, whipping, and nakedness, I had the consolation that I should not have escaped any one of them by staying. Having already had more than a taste of them in the house of my old master, and having endured them there, I very naturally inferred my ability to endure them elsewhere, and especially at Baltimore; for I had something of the feeling about Baltimore that is expressed in the proverb, that "being hanged in England is preferable to dying a natural death in Ireland." I had the strongest desire to see Baltimore. Cousin Tom, though not fluent in speech, had inspired me with that desire by his eloquent description of the place. I could never point out any thing at the Great House, no matter how beautiful or powerful, but that he had seen something at Baltimore far exceeding, both in beauty and strength, the object which I pointed out to him. Even the Great House itself, with all its pictures, was far inferior to many buildings in Baltimore. So strong was my desire, that I thought a gratification of it would fully compensate for whatever loss of comforts I should sustain by the exchange. I left without a regret, and with the highest hopes of future happiness.

We sailed out of Miles River for Baltimore on a Saturday morning. I remember only the day of the week, for at that time I had no knowledge of the days of the month, nor the months of the year. On setting sail, I walked aft, and gave to Colonel Lloyd's plantation what I hoped would be the last look. I then placed myself in the bows of the sloop, and there spent the remainder of the day in looking ahead, interesting myself in what was in the distance rather than in things near by or behind.

In the afternoon of that day, we reached Annapolis, the capital of the State. We stopped but a few moments, so that I had no time to go on shore. It was the first large town that I had ever seen, and though it would look small compared with some of our New England factory villages, I thought it a wonderful place for its size—more imposing even than the Great House Farm!

We arrived at Baltimore early on Sunday morning, landing at Smith's Wharf, not far from Bowley's Wharf. We had on board the sloop a large flock of sheep; and after aiding in driving them to the slaughterhouse of Mr. Curtis on Louden Slater's Hill, I was conducted by Rich, one of the hands belonging on board of the sloop, to my new home in Alliciana Street, near Mr. Gardner's ship-yard, on Fells Point.

Mr. and Mrs. Auld were both at home, and met me at the door with their little son Thomas, to take care of whom I had been given. And here I saw what I had never seen before; it was a white face beaming with the most kindly emotions; it was the face of my new mistress, Sophia Auld. I wish I could describe the rapture that flashed through my soul as I beheld it. It was a new and strange sight to me, brightening up my pathway with the light of happiness. Little Thomas was told, there was his Freddy,—and I was told to take care of little Thomas; and thus I entered upon the duties of my new home with the most cheering prospect ahead.

I look upon my departure from Colonel Lloyd's plantation as one of the most interesting events of my life. It is possible, and even quite probable, that but for the mere circumstance of being removed from that plantation to Baltimore, I should have to-day, instead of being here seated by my own table, in the enjoyment of freedom and the happiness of home, writing this Narrative, been confined in the galling chains of slavery. Going to live at Baltimore laid the foundation, and opened the gateway, to all my subsequent prosperity. I have ever regarded it as the first plain manifestation of that kind providence which has ever since attended me, and marked my life with so many favors. I regarded the selection of myself as being somewhat remarkable. There were a number of slave children that might have been sent from the plantation to Baltimore. There were those younger, those older, and those of the same age. I was chosen from among them all, and was the first, last, and only choice.

I may be deemed superstitious, and even egotistical, in regarding this event as a special interposition of divine Providence in my favor. But I should be false to the earliest sentiments of my soul, if I suppressed the opinion. I prefer to be true to myself, even at the hazard of incurring the ridicule of others, rather than to be false, and incur my own abhorrence. From my earliest recollection, I date the entertainment of a deep conviction that slavery would not always be able to hold me within its foul embrace; and in the darkest hours of my career in slavery, this living word of faith and spirit of hope departed not from me, but remained like ministering angels to cheer me through the gloom. This good spirit was from God, and to him I offer thanksgiving and praise.

CHAPTER VI

My new mistress proved to be all she appeared when I first met her at the door,—a woman of the kindest heart and finest feelings. She had never had a slave under her control previously to myself, and prior to her marriage she had been dependent upon her own industry for a living. She was by trade a weaver; and by constant application to her business, she had been in a good degree preserved from the blighting and dehumanizing effects of slavery. I was utterly astonished at her goodness. I scarcely knew how to behave towards her. She was entirely unlike any other white woman I had ever seen. I could not approach her as I was accustomed to approach other white ladies. My early instruction was all out of place. The crouching servility, usually so acceptable a quality in a slave, did not answer when manifested toward her. Her favor was not gained by it; she seemed to be disturbed by it. She did not deem it impudent or unmannerly for a slave to look her in the face. The meanest slave was put fully at ease in her presence, and none left without feeling better for having seen her. Her face was made of heavenly smiles, and her voice of tranquil music.

But, alas! this kind heart had but a short time to remain such. The fatal poison of irresponsible power was already in her hands, and soon commenced its infernal work. That cheerful eye, under the influence of slavery, soon became red with rage; that voice, made all of sweet accord, changed to one of harsh and horrid discord; and that angelic face gave place to that of a demon.

Very soon after I went to live with Mr. and Mrs. Auld, she very kindly commenced to teach me the A, B, C. After I had learned this, she assisted me in learning to spell words of three or four letters. Just at this point of my progress, Mr. Auld found out what was going on, and at once forbade Mrs. Auld to instruct me further, telling her, among other things, that it was unlawful, as well as unsafe, to teach a slave to read. To use his own words, further, he said, "If you give a nigger an inch, he will take an ell. A nigger should know nothing but to obey his master—to do as he is told to do. Learning would *spoil* the best nigger in the world. Now," said he, "if you teach that nigger (speaking of myself) how to read, there would be no keeping him. It would forever unfit him to be a slave. He would at once become unmanageable, and of no value to his master. As to himself, it could do him no good, but a great deal of harm. It would make him discontented and unhappy." These words sank deep into my heart, stirred up sentiments within that lay slumbering, and called into existence an entirely new train of thought. It was a new and special revelation, explaining dark and mysterious things, with which my youthful understanding had struggled, but struggled in vain. I now understood what had been to me a most perplexing difficulty—to wit, the white man's power to enslave the black man. It was a grand achievement, and I prized it highly. From that moment, I understood the pathway from slavery to freedom. It was just what I wanted, and I got it at a time when I the least expected it. Whilst I was saddened by the thought of losing the aid of my kind mistress, I was gladdened by the invaluable instruction which, by the merest accident, I had gained from my master. Though conscious of the difficulty of learning without a teacher, I set out with high hope, and a fixed purpose, at whatever cost of trouble, to learn how to read. The very decided manner with which he spoke, and strove to impress his wife with the evil consequences of giving me instruction, served to convince me that he was deeply sensible of the truths he was uttering. It gave me the best assurance that I might rely with the utmost confidence on the results which, he said, would flow from teaching me to read. What he most dreaded, that I most desired. What he most loved, that I most hated. That which to him was a great evil, to be carefully shunned, was to me a great good, to be diligently sought; and the argument which he so warmly urged, against my learning to read, only served to inspire me with a desire and determination to learn. In learning to read, I owe almost as much to the bitter opposition of my master, as to the kindly aid of my mistress. I acknowledge the benefit of both.

I had resided but a short time in Baltimore before I observed a marked difference, in the treatment of slaves, from that which I had witnessed in the country. A city slave is almost a freeman, compared with a slave on the plantation. He is much better fed and clothed, and enjoys privileges altogether unknown to the slave on the plantation. There is a vestige of decency, a sense of shame, that does much to curb and check those outbreaks of atrocious cruelty so commonly enacted upon the plantation. He is a desperate slaveholder, who will shock the humanity of his non-slaveholding neighbors with the cries of his lacerated slave. Few are willing to incur the odium attaching to the reputation of being a cruel master; and above all things, they would not be known as not giving a slave enough to eat. Every city slaveholder is anxious to have it known of him, that he feeds his slaves well; and it is due to them to say, that most of them do give their slaves enough to eat. There are, however, some painful exceptions to this rule. Directly opposite to us, on Philpot Street, lived Mr. Thomas Hamilton. He owned two slaves. Their names were Henrietta and Mary. Henrietta was about twenty-two years of age, Mary was about fourteen; and of all the mangled and emaciated creatures I ever looked upon, these two were the most so. His heart must be harder than stone, that could look upon these unmoved. The head, neck, and shoulders of Mary were literally cut to pieces. I have frequently felt her head, and found it nearly covered with festering sores, caused by the lash of her cruel mistress. I do not know that her master ever whipped her, but I have been an eye-witness to the cruelty of Mrs. Hamilton. I used to be in Mr. Hamilton's house nearly every day. Mrs. Hamilton used to sit in a large chair in the middle of the room, with a heavy cowskin always by her side, and scarce an hour passed during the day but was marked by the blood of one of these slaves. The girls seldom passed her without her saying, "Move faster, you *black gip!*" at the same time giving them a blow with the cowskin over the head or shoulders, often drawing the blood. She would then say, "Take that, you *black gip!*" continuing, "If you don't move faster, I'll move you!" Added to the cruel lashings to which these slaves were subjected, they were kept nearly half-starved. They seldom knew what it was to eat a full meal. I have seen Mary contending with the pigs for the offal thrown into the street. So much was Mary kicked and cut to pieces, that she was oftener called "*pecked*" than by her name.

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Appendix R

Excerpts from "*Up from Slavery: An Autobiography*" and "*The Atlanta Exposition Address*" by Booker T. Washington

Up From Slavery: Chapter I. A Slave Among Slaves

I was born a slave on a plantation in Franklin County, Virginia. I am not quite sure of the exact place or exact date of my birth, but at any rate I suspect I must have been born somewhere and at some time. As nearly as I have been able to learn, I was born near a cross-roads post-office called Hale's Ford, and the year was 1858 or 1859. I do not know the month or the day. The earliest impressions I can now recall are of the plantation and the slave quarters—the latter being the part of the plantation where the slaves had their cabins.

My life had its beginning in the midst of the most miserable, desolate, and discouraging surroundings. This was so, however, not because my owners were especially cruel, for they were not, as compared with many others. I was born in a typical log cabin, about fourteen by sixteen feet square. In this cabin I lived with my mother and a brother and sister till after the Civil War, when we were all declared free.

Of my ancestry I know almost nothing. In the slave quarters, and even later, I heard whispered conversations among the coloured people of the tortures which the slaves, including, no doubt, my ancestors on my mother's side, suffered in the middle passage of the slave ship while being conveyed from Africa to America. I have been unsuccessful in securing any information that would throw any accurate light upon the history of my family beyond my mother. She, I remember, had a half-brother and a half-sister. In the days of slavery not very much attention was given to family history and family records—that is, black family records. My mother, I suppose, attracted the attention of a purchaser who was afterward my owner and hers. Her addition to the slave family attracted about as much attention as the purchase of a new horse or cow. Of my father I know even less than of my mother. I do not even know his name. I have heard reports to the effect that he was a white man who lived on one of the near-by plantations. Whoever he was, I never heard of his taking the least interest in me or providing in any way for my rearing. But I do not find especial fault with him. He was simply another unfortunate victim of the institution which the Nation unhappily had engrafted upon it at that time.

The cabin was not only our living-place, but was also used as the kitchen for the plantation. My mother was the plantation cook. The cabin was without glass windows; it had only openings in the side which let in the light, and also the cold, chilly air of winter. There was a door to the cabin—that is, something that was called a door—but the uncertain hinges by which it was hung, and the large cracks in it, to say nothing of the fact that it was too small, made the room a very uncomfortable one. In addition to these openings there was, in the lower right-hand corner of the room, the "cat-hole,"—a contrivance which almost every mansion or cabin in Virginia possessed during the ante-bellum period. The "cat-hole" was a square opening, about seven by eight inches, provided for the purpose of letting the cat pass in and out of the house at will during the night. In the case of our particular cabin I could never understand the necessity for this convenience, since there were at least a half-dozen other places in the cabin that would have accommodated the cats. There was no wooden floor in our cabin, the naked earth being used as a floor. In the centre of the earthen floor there was a large, deep opening covered with boards, which was used as a place in which to store sweet potatoes during the winter. An impression of this potato-hole is very distinctly engraved upon my memory, because I recall that during the process of putting the potatoes in or taking them out I would often come into possession of one or two, which I roasted and thoroughly enjoyed. There was no cooking-stove on our plantation, and all the cooking for the whites and slaves my mother had to do over an open fireplace, mostly in pots and "skillets." While the poorly built cabin caused us to suffer with cold in the winter, the heat from the open fireplace in summer was equally trying.

The early years of my life, which were spent in the little cabin, were not very different from those of thousands of other slaves. My mother, of course, had little time in which to give attention to the training of her children during the day. She snatched a few moments for our care in the early morning before her work began, and at night after the day's work was done. One of my earliest recollections is that of my mother cooking a chicken late at night, and awakening her children for the purpose of feeding them. How or where she got it I do not know. I presume, however, it was procured from our owner's farm. Some people may call this theft. If such a thing were to happen now, I should condemn it as theft myself. But taking place at the time it did, and for the reason that it did, no one could ever make me believe that my mother was guilty of thieving. She was simply a victim of the system of slavery. I cannot remember having slept in a bed until after our family was declared free by the Emancipation Proclamation. Three children—John, my older brother, Amanda, my sister, and myself—had a pallet on the dirt floor, or, to be more correct, we slept in and on a bundle of filthy rags laid upon the dirt floor.

I was asked not long ago to tell something about the sports and pastimes that I engaged in during my youth. Until that question was asked it had never occurred to me that there was no period of my life that was devoted to play. From the time that I can remember anything, almost every day of my life had been occupied in some kind of labour; though I think I would now be a more useful man if I

had had time for sports. During the period that I spent in slavery I was not large enough to be of much service, still I was occupied most of the time in cleaning the yards, carrying water to the men in the fields, or going to the mill to which I used to take the corn, once a week, to be ground. The mill was about three miles from the plantation. This work I always dreaded. The heavy bag of corn would be thrown across the back of the horse, and the corn divided about evenly on each side; but in some way, almost without exception, on these trips, the corn would so shift as to become unbalanced and would fall off the horse, and often I would fall with it. As I was not strong enough to reload the corn upon the horse, I would have to wait, sometimes for many hours, till a chance passer-by came along who would help me out of my trouble. The hours while waiting for some one were usually spent in crying. The time consumed in this way made me late in reaching the mill, and by the time I got my corn ground and reached home it would be far into the night. The road was a lonely one, and often led through dense forests. I was always frightened. The woods were said to be full of soldiers who had deserted from the army, and I had been told that the first thing a deserter did to a Negro boy when he found him alone was to cut off his ears. Besides, when I was late in getting home I knew I would always get a severe scolding or a flogging.

I had no schooling whatever while I was a slave, though I remember on several occasions I went as far as the schoolhouse door with one of my young mistresses to carry her books. The picture of several dozen boys and girls in a schoolroom engaged in study made a deep impression upon me, and I had the feeling that to get into a schoolhouse and study in this way would be about the same as getting into paradise.

So far as I can now recall, the first knowledge that I got of the fact that we were slaves, and that freedom of the slaves was being discussed, was early one morning before day, when I was awakened by my mother kneeling over her children and fervently praying that Lincoln and his armies might be successful, and that one day she and her children might be free. In this connection I have never been able to understand how the slaves throughout the South, completely ignorant as were the masses so far as books or newspapers were concerned, were able to keep themselves so accurately and completely informed about the great National questions that were agitating the country. From the time that Garrison, Lovejoy, and others began to agitate for freedom, the slaves throughout the South kept in close touch with the progress of the movement. Though I was a mere child during the preparation for the Civil War and during the war itself, I now recall the many late-at-night whispered discussions that I heard my mother and the other slaves on the plantation indulge in. These discussions showed that they understood the situation, and that they kept themselves informed of events by what was termed the "grape-vine" telegraph.

During the campaign when Lincoln was first a candidate for the Presidency, the slaves on our far-off plantation, miles from any railroad or large city or daily newspaper, knew what the issues involved were. When war was begun between the North and the South, every slave on our plantation felt and knew that, though other issues were discussed, the primal one was that of slavery. Even the most ignorant members of my race on the remote plantations felt in their hearts, with a certainty that admitted of no doubt, that the freedom of the slaves would be the one great result of the war, if the Northern armies conquered. Every success of the Federal armies and every defeat of the Confederate forces was watched with the keenest and most intense interest. Often the slaves got knowledge of the results of great battles before the white people received it. This news was usually gotten from the coloured man who was sent to the post-office for the mail. In our case the post-office was about three miles from the plantation, and the mail came once or twice a week. The man who was sent to the office would linger about the place long enough to get the drift of the conversation from the group of white people who naturally congregated there, after receiving their mail, to discuss the latest news. The mail-carrier on his way back to our master's house would as naturally retail the news that he had secured among the slaves, and in this way they often heard of important events before the white people at the "big house," as the master's house was called.

I cannot remember a single instance during my childhood or early boyhood when our entire family sat down to the table together, and God's blessing was asked, and the family ate a meal in a civilized manner. On the plantation in Virginia, and even later, meals were gotten by the children very much as dumb animals get theirs. It was a piece of bread here and a scrap of meat there. It was a cup of milk at one time and some potatoes at another. Sometimes a portion of our family would eat out of the skillet or pot, while some one else would eat from a tin plate held on the knees, and often using nothing but the hands with which to hold the food. When I had grown to sufficient size, I was required to go to the "big house" at meal-times to fan the flies from the table by means of a large set of paper fans operated by a pulley. Naturally much of the conversation of the white people turned upon the subject of freedom and the war, and I absorbed a good deal of it. I remember that at one time I saw two of my young mistresses and some lady visitors eating ginger-cakes, in the yard. At that time those cakes seemed to me to be absolutely the most tempting and desirable things that I had ever seen; and I then and there resolved that, if I ever got free, the height of my ambition would be reached if I could get to the point where I could secure and eat ginger-cakes in the way that I saw those ladies doing.

Of course as the war was prolonged the white people, in many cases, often found it difficult to secure food for themselves. I think the slaves felt the deprivation less than the whites, because the usual diet for slaves was corn bread and pork, and these could be raised on the plantation; but coffee, tea, sugar, and other articles which the whites had been accustomed to use could not be raised on the plantation, and the conditions brought about by the war frequently made it impossible to secure these things. The whites were often in great straits. Parched corn was used for coffee, and a kind of black molasses was used instead of sugar. Many times nothing was used to sweeten the so-called tea and coffee.

The first pair of shoes that I recall wearing were wooden ones. They had rough leather on the top, but the bottoms, which were about an inch thick, were of wood. When I walked they made a fearful noise, and besides this they were very inconvenient, since there was no yielding to the natural pressure of the foot. In wearing them one presented an exceedingly awkward appearance. The most trying ordeal that I was forced to endure as a slave boy, however, was the wearing of a flax shirt. In the portion of Virginia where I lived it was

common to use flax as part of the clothing for the slaves. That part of the flax from which our clothing was made was largely the refuse, which of course was the cheapest and roughest part. I can scarcely imagine any torture, except, perhaps, the pulling of a tooth, that is equal to that caused by putting on a new flax shirt for the first time. It is almost equal to the feeling that one would experience if he had a dozen or more chestnut burrs, or a hundred small pin-points, in contact with his flesh. Even to this day I can recall accurately the tortures that I underwent when putting on one of these garments. The fact that my flesh was soft and tender added to the pain. But I had no choice. I had to wear the flax shirt or none; and had it been left to me to choose, I should have chosen to wear no covering. In connection with the flax shirt, my brother John, who is several years older than I am, performed one of the most generous acts that I ever heard of one slave relative doing for another. On several occasions when I was being forced to wear a new flax shirt, he generously agreed to put it on in my stead and wear it for several days, till it was "broken in." Until I had grown to be quite a youth this single garment was all that I wore.

One may get the idea, from what I have said, that there was bitter feeling toward the white people on the part of my race, because of the fact that most of the white population was away fighting in a war which would result in keeping the Negro in slavery if the South was successful. In the case of the slaves on our place this was not true, and it was not true of any large portion of the slave population in the South where the Negro was treated with anything like decency. During the Civil War one of my young masters was killed, and two were severely wounded. I recall the feeling of sorrow which existed among the slaves when they heard of the death of "Mars' Billy." It was no sham sorrow, but real. Some of the slaves had nursed "Mars' Billy"; others had played with him when he was a child. "Mars' Billy" had begged for mercy in the case of others when the overseer or master was thrashing them. The sorrow in the slave quarter was only second to that in the "big house." When the two young masters were brought home wounded, the sympathy of the slaves was shown in many ways. They were just as anxious to assist in the nursing as the family relatives of the wounded. Some of the slaves would even beg for the privilege of sitting up at night to nurse their wounded masters. This tenderness and sympathy on the part of those held in bondage was a result of their kindly and generous nature. In order to defend and protect the women and children who were left on the plantations when the white males went to war, the slaves would have laid down their lives. The slave who was selected to sleep in the "big house" during the absence of the males was considered to have the place of honour. Any one attempting to harm "young Mistress" or "old Mistress" during the night would have had to cross the dead body of the slave to do so. I do not know how many have noticed it, but I think that it will be found to be true that there are few instances, either in slavery or freedom, in which a member of my race has been known to betray a specific trust.

As a rule, not only did the members of my race entertain no feelings of bitterness against the whites before and during the war, but there are many instances of Negroes tenderly caring for their former masters and mistresses who for some reason have become poor and dependent since the war. I know of instances where the former masters of slaves have for years been supplied with money by their former slaves to keep them from suffering. I have known of still other cases in which the former slaves have assisted in the education of the descendants of their former owners. I know of a case on a large plantation in the South in which a young white man, the son of the former owner of the estate, has become so reduced in purse and self-control by reason of drink that he is a pitiable creature; and yet, notwithstanding the poverty of the coloured people themselves on this plantation, they have for years supplied this young white man with the necessities of life. One sends him a little coffee or sugar, another a little meat, and so on. Nothing that the coloured people possess is too good for the son of "old Mars' Tom," who will perhaps never be permitted to suffer while any remain on the place who knew directly or indirectly of "old Mars' Tom."

I have said that there are few instances of a member of my race betraying a specific trust. One of the best illustrations of this which I know of is in the case of an ex-slave from Virginia whom I met not long ago in a little town in the state of Ohio. I found that this man had made a contract with his master, two or three years previous to the Emancipation Proclamation, to the effect that the slave was to be permitted to buy himself, by paying so much per year for his body; and while he was paying for himself, he was to be permitted to labour where and for whom he pleased. Finding that he could secure better wages in Ohio, he went there. When freedom came, he was still in debt to his master some three hundred dollars. Notwithstanding that the Emancipation Proclamation freed him from any obligation to his master, this black man walked the greater portion of the distance back to where his old master lived in Virginia, and placed the last dollar, with interest, in his hands. In talking to me about this, the man told me that he knew that he did not have to pay the debt, but that he had given his word to the master, and his word he had never broken. He felt that he could not enjoy his freedom till he had fulfilled his promise.

From some things that I have said one may get the idea that some of the slaves did not want freedom. This is not true. I have never seen one who did not want to be free, or one who would return to slavery.

I pity from the bottom of my heart any nation or body of people that is so unfortunate as to get entangled in the net of slavery. I have long since ceased to cherish any spirit of bitterness against the Southern white people on account of the enslavement of my race. No one section of our country was wholly responsible for its introduction, and, besides, it was recognized and protected for years by the General Government. Having once got its tentacles fastened on to the economic and social life of the Republic, it was no easy matter for the country to relieve itself of the institution. Then, when we rid ourselves of prejudice, or racial feeling, and look facts in the face, we must acknowledge that, notwithstanding the cruelty and moral wrong of slavery, the ten million Negroes inhabiting this country, who themselves or whose ancestors went through the school of American slavery, are in a stronger and more hopeful condition, materially, intellectually, morally, and religiously, than is true of an equal number of black people in any other portion of the globe. This is so to such an extent that Negroes in this country, who themselves or whose forefathers went through the school of slavery, are constantly returning to Africa as missionaries to enlighten those who remained in the fatherland. This I say, not to justify slavery—on the other

hand, I condemn it as an institution, as we all know that in America it was established for selfish and financial reasons, and not from a missionary motive—but to call attention to a fact, and to show how Providence so often uses men and institutions to accomplish a purpose. When persons ask me in these days how, in the midst of what sometimes seem hopelessly discouraging conditions, I can have such faith in the future of my race in this country, I remind them of the wilderness through which and out of which, a good Providence has already led us.

Ever since I have been old enough to think for myself, I have entertained the idea that, notwithstanding the cruel wrongs inflicted upon us, the black man got nearly as much out of slavery as the white man did. The hurtful influences of the institution were not by any means confined to the Negro. This was fully illustrated by the life upon our own plantation. The whole machinery of slavery was so constructed as to cause labour, as a rule, to be looked upon as a badge of degradation, of inferiority. Hence labour was something that both races on the slave plantation sought to escape. The slave system on our place, in a large measure, took the spirit of self-reliance and self-help out of the white people. My old master had many boys and girls, but not one, so far as I know, ever mastered a single trade or special line of productive industry. The girls were not taught to cook, sew, or to take care of the house. All of this was left to the slaves. The slaves, of course, had little personal interest in the life of the plantation, and their ignorance prevented them from learning how to do things in the most improved and thorough manner. As a result of the system, fences were out of repair, gates were hanging half off the hinges, doors creaked, window-panes were out, plastering had fallen but was not replaced, weeds grew in the yard. As a rule, there was food for whites and blacks, but inside the house, and on the dining-room table, there was wanting that delicacy and refinement of touch and finish which can make a home the most convenient, comfortable, and attractive place in the world. Withal there was a waste of food and other materials which was sad. When freedom came, the slaves were almost as well fitted to begin life anew as the master, except in the matter of book-learning and ownership of property. The slave owner and his sons had mastered no special industry. They unconsciously had imbibed the feeling that manual labour was not the proper thing for them. On the other hand, the slaves, in many cases, had mastered some handicraft, and none were ashamed, and few unwilling, to labour.

Finally the war closed, and the day of freedom came. It was a momentous and eventful day to all upon our plantation. We had been expecting it. Freedom was in the air, and had been for months. Deserting soldiers returning to their homes were to be seen every day. Others who had been discharged, or whose regiments had been paroled, were constantly passing near our place. The "grape-vine telegraph" was kept busy night and day. The news and mutterings of great events were swiftly carried from one plantation to another. In the fear of "Yankee" invasions, the silverware and other valuables were taken from the "big house," buried in the woods, and guarded by trusted slaves. Woe be to any one who would have attempted to disturb the buried treasure. The slaves would give the Yankee soldiers food, drink, clothing—anything but that which had been specifically intrusted to their care and honour. As the great day drew nearer, there was more singing in the slave quarters than usual. It was bolder, had more ring, and lasted later into the night. Most of the verses of the plantation songs had some reference to freedom. True, they had sung those same verses before, but they had been careful to explain that the "freedom" in these songs referred to the next world, and had no connection with life in this world. Now they gradually threw off the mask, and were not afraid to let it be known that the "freedom" in their songs meant freedom of the body in this world. The night before the eventful day, word was sent to the slave quarters to the effect that something unusual was going to take place at the "big house" the next morning. There was little, if any, sleep that night. All as excitement and expectancy. Early the next morning word was sent to all the slaves, old and young, to gather at the house. In company with my mother, brother, and sister, and a large number of other slaves, I went to the master's house. All of our master's family were either standing or seated on the veranda of the house, where they could see what was to take place and hear what was said. There was a feeling of deep interest, or perhaps sadness, on their faces, but not bitterness. As I now recall the impression they made upon me, they did not at the moment seem to be sad because of the loss of property, but rather because of parting with those whom they had reared and who were in many ways very close to them. The most distinct thing that I now recall in connection with the scene was that some man who seemed to be a stranger (a United States officer, I presume) made a little speech and then read a rather long paper—the Emancipation Proclamation, I think. After the reading we were told that we were all free, and could go when and where we pleased. My mother, who was standing by my side, leaned over and kissed her children, while tears of joy ran down her cheeks. She explained to us what it all meant, that this was the day for which she had been so long praying, but fearing that she would never live to see.

For some minutes there was great rejoicing, and thanksgiving, and wild scenes of ecstasy. But there was no feeling of bitterness. In fact, there was pity among the slaves for our former owners. The wild rejoicing on the part of the emancipated coloured people lasted but for a brief period, for I noticed that by the time they returned to their cabins there was a change in their feelings. The great responsibility of being free, of having charge of themselves, of having to think and plan for themselves and their children, seemed to take possession of them. It was very much like suddenly turning a youth of ten or twelve years out into the world to provide for himself. In a few hours the great questions with which the Anglo-Saxon race had been grappling for centuries had been thrown upon these people to be solved. These were the questions of a home, a living, the rearing of children, education, citizenship, and the establishment and support of churches. Was it any wonder that within a few hours the wild rejoicing ceased and a feeling of deep gloom seemed to pervade the slave quarters? To some it seemed that, now that they were in actual possession of it, freedom was a more serious thing than they had expected to find it. Some of the slaves were seventy or eighty years old; their best days were gone. They had no strength with which to earn a living in a strange place and among strange people, even if they had been sure where to find a new place of abode. To this class the problem seemed especially hard. Besides, deep down in their hearts there was a strange and peculiar attachment to "old Marster" and "old Missus," and to their children, which they found it hard to think of breaking off. With these they had spent in some cases nearly a half-century, and it was no light thing to think of parting. Gradually, one by one, stealthily at first, the older slaves began to wander from the slave quarters back to the "big house" to have a whispered conversation with their former owners as to the future.

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The Atlanta Exposition Speech

The following is a transcript of Dr. Washington's most famous speech. It was presented in Atlanta, Georgia on September 18, 1895. (Credit: National Park Service at nps.gov/bowa/learn/historyculture/atlanta1-1.htm)

Mr. President and Gentlemen of the Board of Directors and Citizens: One-third of the South is of the Negro race. No enterprise seeking the material, civil, or moral welfare of this section can disregard this element of our population and reach the highest success. I but convey to you, Mr. President and Directors, the sentiment of the masses of my race when I say that in no way have the value and manhood of the American Negro been more fittingly and generously recognized than by the managers of this magnificent Exposition at every stage of its progress. It is a recognition that will do more to cement the friendship of the two races than any occurrence since the dawn of our freedom.

Not only this, but the opportunity here afforded will awaken among us a new era of industrial progress. Ignorant and inexperienced, it is not strange that in the first years of our new life we began at the top instead of at the bottom; that a seat in Congress or the state legislature was more sought than real estate or Industrial skill; that the political convention or stump speaking had more attractions than starting a dairy farm or truck garden.

A ship lost at sea for many days suddenly sighted a friendly vessel. From the mast of the unfortunate vessel was seen a signal, "Water, water; we die of thirst!" The answer from the friendly vessel at once came back, "Cast down you bucket where you are." A second time the signal, "Water, water; send us water!" ran up from the distressed vessel, and was answered, "Cast down your bucket where you are." And a third and fourth signal for water was answered, "Cast down your bucket where you are." The Captain of the distressed vessel, at last heeding the injunction, cast down his bucket, and it came up full of fresh, sparkling water from the mouth of the Amazon River. To those of my race who depend of bettering their condition in a foreign land or who underestimate the importance of cultivating friendly relations with the Southern white man, who is their next-door neighbor, I would say: "Cast down your bucket where you are"--cast it down in making friends in every manly way of the people of all races by whom we are surrounded.

Cast it down in agriculture, mechanics, in commerce, in domestic service, and in the professions. And in this connection it is well to bear in mind that whatever other sins the South may be called to bear, when it comes to business, pure and simple, it is in the South that the Negro is given a man's chance in the commercial world, and in nothing is this exposition more eloquent than in emphasizing this chance. Our greatest danger is that in the great leap from slavery to freedom we may overlook the fact that the masses of us are to live by the productions of our hands, and fail to keep in mind that we shall prosper in proportions we learn to dignify and glorify common labor and put brains and skill into the common occupations of life; shall prosper in proportion as we learn to draw the line between the superficial and the substantial, the ornamental gewgaws of life and the useful. No race can prosper till it learns that there is as much dignity in tilling a field as in writing a poem. It is at the bottom of life we must begin, and not at the top. Nor should we permit our grievances to overshadow our opportunities.

To those of the white race who look to the incoming of those of foreign birth and strange tongue and habits for the prosperity of the South, were I permitted I would repeat what I say to my own race, "Cast down your bucket where you are." Cast it down among the eight millions of Negroes whose habits you know, whose fidelity and love you have tested in days when to have proved treacherous meant the ruin of your firesides. Cast down your bucket among these people who have, without strikes and labour wars, tilled your fields, cleared your forests, builded your railroads and cities, and brought forth treasures from the bowels of the earth, and helped make possible this magnificent representation of the progress of the South. Casting down your bucket among my people, helping and encouraging them as you are doing on these grounds, and to education of head, hand, and heart, you will find that they will buy your surplus land, make blossom the waste places in your fields, and run your factories. While doing this, you can be sure in the future, as in the past, that you and your families will be surrounded by the most patient, faithful, law-abiding, and unresentful people that the world has seen. As we have proved our loyalty to you in the past, in nursing your children, watching by the sickbed of your mothers and fathers, and often following them with tear-dimmed eyes to their graves, so in the future, in our humble way, we shall stand by you with a devotion that no foreigner can approach, ready to lay down our lives, if need be, in defense of yours, interlacing our industrial, commercial, civil, and religious life with yours in a way that shall make the interest of both races one. In all things that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress.

There is no defense or security for any of us except in the highest intelligence and development of all. If anywhere there are efforts tending to curtail the fullest growth of the Negro, let these efforts be turned into stimulating, encouraging, and making him the most useful and intelligent citizen. Effort or means so invested will pay a thousand per cent interest. These efforts will be twice blessed--"blessing him that gives and him that takes."

There is no escape through law of man or God from the inevitable:
The laws of changeless justice bind
Oppressor with oppressed;
And close as sin and suffering joined
We march to fate abreast.

Nearly sixteen millions of hands will aid you in pulling the load upward, or they will pull against you the load downward. We shall constitute one-third and more of the ignorance and crime of the South, or one-third its intelligence and progress; we shall contribute one-third to the business and industrial prosperity of the South, or we shall prove a veritable body of death, stagnating, depressing, retarding every effort to advance the body politic.

Gentlemen of the Exposition, as we present to you our humble effort at an exhibition of our progress, you must not expect overmuch. Starting thirty years ago with ownership here and there in a few quilts and pumpkins and chickens (gathered from miscellaneous sources), remember the path that has led from these to the inventions and production of agricultural implements, buggies, steam engines, newspapers, books, statuary, carving, painting, the management of drugstores and banks, has not been trodden without contact with thorns and thistles. While we take pride in what we exhibit as a result of our independent efforts, we do not for a moment forget that our part in this exhibition would fall far short of your expectations but for the constant help that has come to our educational life, not only from the Southern states, but especially from Northern philanthropists, who have made their gifts a constant stream of blessing and encouragement.

The wisest among my race understand that the agitation of questions of social equality is the extremest folly, and that progress in the enjoyment of all the privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing. No race that has anything to contribute to the markets of the world is long in any degree ostracized. It is important and right that all privileges of the law be ours, but it is vastly more important that we be prepared for the exercises of these privileges. The opportunity to earn a dollar in a factory just now is worth infinitely more than the opportunity to spend a dollar in an opera house.

In conclusion, may I repeat that nothing in thirty years has given us more hope and encouragement, and drawn us so near to you of the white race, as this opportunity offered by the exposition; and here bending, as it were, over the altar that represents the results of the struggles of your race and mine, both starting practically empty-handed three decades ago, I pledge that in your effort to work out the great and intricate problem which God has laid at the doors of the South, you shall have at all times the patient, sympathetic help of my race; only let this be constantly in mind, that while from representations in these building of the product of field, of forest, of mine, of factory, letters and art, much good will come, yet far above and beyond material benefits will be that higher good, that, let us pray God, will come, in a blotting out as sectional differences and racial animosities and suspicions, in a determination to administer absolute justice, in a willing obedience among all classes to the mandates of law. This, this, coupled with our material prosperity, will bring into our beloved South a new heaven and a new earth.

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Appendix S

Second Treatise of Government by John Locke, Chs. 2 & 9

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SECOND TREATISE OF GOVERNMENT

by JOHN LOCKE

Digitized by Dave Gowan. John Locke's "Second Treatise of Government" was published in 1690. The complete unabridged text has been republished several times in edited commentaries. This text is recovered entire from the paperback book, "John Locke Second Treatise of Government", Edited, with an Introduction, By C.B. McPherson, Hackett Publishing Company, Indianapolis and Cambridge, 1980. None of the McPherson edition is included in the Etext below; only the original words contained in the 1690 Locke text is included. The 1690 edition text is free of copyright.

TWO TREATISES OF GOVERNMENT

BY IOHN LOCKE

SALUS POPULI SUPREMA LEX ESTO

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MDCCLXIII

TWO TREATISES OF GOVERNMENT. IN THE FORMER THE FALSE PRINCIPLES AND FOUNDATION OF SIR ROBERT FILMER AND HIS FOLLOWERS ARE DETECTED AND OVERTHROWN. THE LATTER IS AN ESSAY CONCERNING THE TRUE ORIGINAL EXTENT AND END OF CIVIL GOVERNMENT.

1764 EDITOR'S NOTE The present Edition of this Book has not only been collated with the first three Editions, which were published during the Author's Life, but also has the Advantage of his last Corrections and Improvements, from a Copy delivered by him to Mr. Peter Coste, communicated to the Editor, and now lodged in Christ College, Cambridge.

CHAPTER. II.

OF THE STATE OF NATURE.

Sect. 4. TO understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of

the same faculties, should also be equal one amongst another without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.

Sect. 5. This equality of men by nature, the judicious Hooker looks upon as so evident in itself, and beyond all question, that he makes it the foundation of that obligation to mutual love amongst men, on which he builds the duties they owe one another, and from whence he derives the great maxims of justice and charity. His words are,

The like natural inducement hath brought men to know that it is no less their duty, to love others than themselves; for seeing those things which are equal, must needs all have one measure; if I cannot but wish to receive good, even as much at every man's hands, as any man can wish unto his own soul, how should I look to have any part of my desire herein satisfied, unless myself be careful to satisfy the like desire, which is undoubtedly in other men, being of one and the same nature? To have any thing offered them repugnant to this desire, must needs in all respects grieve them as much as me; so that if I do harm, I must look to suffer, there being no reason that others should shew greater measure of love to me, than they have by me shewed unto them: my desire therefore to be loved of my equals in nature as much as possible may be, imposeth upon me a natural duty of bearing to them-ward fully the like affection; from which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason hath drawn, for direction of life, no man is ignorant, Eccl. Pol. Lib. 1.

Sect. 6. But though this be a state of liberty, yet it is not a state of licence: though man in that state have an uncontroulable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's. Every one, as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

Sect. 7. And that all men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of nature is, in that state, put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree, as may hinder its violation: for the law of nature would, as all other laws that concern men in this world be in vain, if there were no body that in the state of nature had a power to execute that law, and thereby preserve the innocent and restrain offenders. And if any one in the state of nature may punish another for any evil he has done, every one may do so: for in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.

Sect. 8. And thus, in the state of nature, one man comes by a power over another; but yet no absolute or arbitrary power, to use a criminal, when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own will; but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint: for these two are the only reasons, why one man may lawfully do harm to another, which is that we call punishment. In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men, for their mutual security; and so he becomes dangerous to mankind, the tye, which is to secure them from injury and violence, being slighted and broken by him. Which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring such evil on any one, who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief. And in the case, and upon this ground, EVERY MAN HATH A RIGHT TO PUNISH THE OFFENDER, AND BE EXECUTIONER OF THE LAW OF NATURE.

Sect. 9. I doubt not but this will seem a very strange doctrine to some men: but before they condemn it, I desire them to resolve me, by what right any prince or state can put to death, or punish an alien, for any crime he commits in their country. It is certain their laws, by virtue of any sanction they receive from the promulgated will of the legislative, reach not a stranger: they speak not to him, nor, if they did, is he bound to hearken to them. The legislative authority, by which they are in force over the subjects of that commonwealth, hath no power over him. Those who have the supreme power of making laws in England, France or Holland, are to an Indian, but like the rest of the world, men without authority: and therefore, if by the law of nature every man hath not a power to punish offences against it, as he soberly judges the case to require, I see not how the magistrates of any community can punish an alien of another country; since, in reference to him, they can have no more power than what every man naturally may have over another.

Sect, 10. Besides the crime which consists in violating the law, and varying from the right rule of reason, whereby a man so far becomes degenerate, and declares himself to quit the principles of human nature, and to be a noxious creature, there is commonly injury done to some person or other, and some other man receives damage by his transgression: in which case he who hath received any damage, has, besides the right of punishment common to him with other men, a particular right to seek reparation from him that has

done it: and any other person, who finds it just, may also join with him that is injured, and assist him in recovering from the offender so much as may make satisfaction for the harm he has suffered.

Sect. 11. From these two distinct rights, the one of punishing the crime for restraint, and preventing the like offence, which right of punishing is in every body; the other of taking reparation, which belongs only to the injured party, comes it to pass that the magistrate, who by being magistrate hath the common right of punishing put into his hands, can often, where the public good demands not the execution of the law, remit the punishment of criminal offences by his own authority, but yet cannot remit the satisfaction due to any private man for the damage he has received. That, he who has suffered the damage has a right to demand in his own name, and he alone can remit: the damnified person has this power of appropriating to himself the goods or service of the offender, by right of self-preservation, as every man has a power to punish the crime, to prevent its being committed again, by the right he has of preserving all mankind, and doing all reasonable things he can in order to that end: and thus it is, that every man, in the state of nature, has a power to kill a murderer, both to deter others from doing the like injury, which no reparation can compensate, by the example of the punishment that attends it from every body, and also to secure men from the attempts of a criminal, who having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tyger, one of those wild savage beasts, with whom men can have no society nor security: and upon this is grounded that great law of nature, Whoso sheddeth man's blood, by man shall his blood be shed. And Cain was so fully convinced, that every one had a right to destroy such a criminal, that after the murder of his brother, he cries out, Every one that findeth me, shall slay me; so plain was it writ in the hearts of all mankind.

Sect. 12. By the same reason may a man in the state of nature punish the lesser breaches of that law. It will perhaps be demanded, with death? I answer, each transgression may be punished to that degree, and with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like. Every offence, that can be committed in the state of nature, may in the state of nature be also punished equally, and as far forth as it may, in a commonwealth: for though it would be besides my present purpose, to enter here into the particulars of the law of nature, or its measures of punishment; yet, it is certain there is such a law, and that too, as intelligible and plain to a rational creature, and a studier of that law, as the positive laws of commonwealths; nay, possibly plainer; as much as reason is easier to be understood, than the fancies and intricate contrivances of men, following contrary and hidden interests put into words; for so truly are a great part of the municipal laws of countries, which are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted.

Sect. 13. To this strange doctrine, viz. That in the state of nature every one has the executive power of the law of nature, I doubt not but it will be objected, that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends: and on the other side, that ill nature, passion and revenge will carry them too far in punishing others; and hence nothing but confusion and disorder will follow, and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant, that civil government is the proper remedy for the inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it: but I shall desire those who make this objection, to remember, that absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or controul those who execute his pleasure? and in whatsoever he doth, whether led by reason, mistake or passion, must be submitted to? much better it is in the state of nature, wherein men are not bound to submit to the unjust will of another: and if he that judges, judges amiss in his own, or any other case, he is answerable for it to the rest of mankind.

Sect. 14. It is often asked as a mighty objection, where are, or ever were there any men in such a state of nature? To which it may suffice as an answer at present, that since all princes and rulers of independent governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state. I have named all governors of independent communities, whether they are, or are not, in league with others: for it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic; other promises, and compacts, men may make one with another, and yet still be in the state of nature. The promises and bargains for truck, &c. between the two men in the desert island, mentioned by Garcilasso de la Vega, in his history of Peru; or between a Swiss and an Indian, in the woods of America, are binding to them, though they are perfectly in a state of nature, in reference to one another: for truth and keeping of faith belongs to men, as men, and not as members of society.

Sect. 15. To those that say, there were never any men in the state of nature, I will not only oppose the authority of the judicious Hooker, Eccl. Pol. lib. i. sect. 10, where he says,

The laws which have been hitherto mentioned, i.e. the laws of nature, do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do, or not to do: but forasmuch as we are not by ourselves sufficient to furnish ourselves with competent store of things, needful for such a life as our nature doth desire, a life fit for the dignity of man; therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others: this was the cause of men's uniting themselves at first in politic societies.

But I moreover affirm, that all men are naturally in that state, and remain so, till by their own consents they make themselves members of some politic society; and I doubt not in the sequel of this discourse, to make it very clear.

CHAPTER. IX.

OF THE ENDS OF POLITICAL SOCIETY AND GOVERNMENT.

Sect. 123. IF man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, why will he part with his freedom? why will he give up this empire, and subject himself to the dominion and controul of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates, which I call by the general name, property.

Sect. 124. The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property. To which in the state of nature there are many things wanting.

First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

Sect. 125. Secondly, In the state of nature there wants a known and indifferent judge, with authority to determine all differences according to the established law: for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat, in their own cases; as well as negligence, and unconcernedness, to make them too remiss in other men's.

Sect. 126. Thirdly, In the state of nature there often wants power to back and support the sentence when right, and to give it due execution, They who by any injustice offended, will seldom fail, where they are able, by force to make good their injustice; such resistance many times makes the punishment dangerous, and frequently destructive, to those who attempt it.

Sect. 127. Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition, while they remain in it, are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property. It is this makes them so willingly give up every one his single power of punishing, to be exercised by such alone, as shall be appointed to it amongst them; and by such rules as the community, or those authorized by them to that purpose, shall agree on. And in this we have the original right and rise of both the legislative and executive power, as well as of the governments and societies themselves.

Sect. 128. For in the state of nature, to omit the liberty he has of innocent delights, a man has two powers.

The first is to do whatsoever he thinks fit for the preservation of himself, and others within the permission of the law of nature: by which law, common to them all, he and all the rest of mankind are one community, make up one society, distinct from all other creatures. And were it not for the corruption and vitiousness of degenerate men, there would be no need of any other; no necessity that men should separate from this great and natural community, and by positive agreements combine into smaller and divided associations.

The other power a man has in the state of nature, is the power to punish the crimes committed against that law. Both these he gives up, when he joins in a private, if I may so call it, or particular politic society, and incorporates into any commonwealth, separate from the rest of mankind.

Sect. 129. The first power, viz. of doing whatsoever he thought for the preservation of himself, and the rest of mankind, he gives up to be regulated by laws made by the society, so far forth as the preservation of himself, and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of nature.

Sect. 130. Secondly, The power of punishing he wholly gives up, and engages his natural force, (which he might before employ in the execution of the law of nature, by his own single authority, as he thought fit) to assist the executive power of the society, as the law thereof shall require: for being now in a new state, wherein he is to enjoy many conveniencies, from the labour, assistance, and society of others in the same community, as well as protection from its whole strength; he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require; which is not only necessary, but just, since the other members of the society do the like.

Sect. 131. But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society, to be so far disposed of by the legislative, as the good of the society shall require; yet it being only with an intention in every one the better to preserve himself, his liberty and property; (for no rational creature can be supposed to change his condition with an intention to be worse) the power of the society, or legislative constituted by them, can never be supposed to extend farther, than the common good; but is obliged to secure every one's property, by providing against those three defects above mentioned, that made the state of nature so unsafe and uneasy. And so whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees; by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home, only in the execution of such laws, or abroad to prevent or redress foreign injuries, and secure the community from inroads and invasion. And all this to be directed to no other end, but the peace, safety, and public good of the people.

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Appendix T

Apology by Plato

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Apology

by Plato

Translated by Benjamin Jowett

Contents

INTRODUCTION.

In what relation the "Apology" of Plato stands to the real defence of Socrates, there are no means of determining. It certainly agrees in tone and character with the description of Xenophon, who says in the "Memorabilia" that Socrates might have been acquitted "if in any moderate degree he would have conciliated the favour of the dicasts;" and who informs us in another passage, on the testimony of Hermogenes, the friend of Socrates, that he had no wish to live; and that the divine sign refused to allow him to prepare a defence, and also that Socrates himself declared this to be unnecessary, on the ground that all his life long he had been preparing against that hour. For the speech breathes throughout a spirit of defiance, "*ut non supplex aut reus sed magister aut dominus videretur esse judicum*" (Cic. "de Orat." i. 54); and the loose and desultory style is an imitation of the "accustomed manner" in which Socrates spoke in "the *agora* and among the tables of the money-changers." The allusion in the "Crito" (45 B) may, perhaps, be adduced as a further evidence of the literal accuracy of some parts (37 C, D). But in the main it must be regarded as the ideal of Socrates, according to Plato's conception of him, appearing in the greatest and most public scene of his life, and in the height of his triumph, when he is weakest, and yet his mastery over mankind is greatest, and his habitual irony acquires a new meaning and a sort of tragic pathos in the face of death. The facts of his life are summed up, and the features of his character are brought out as if by accident in the course of the defence. The conversational manner, the seeming want of arrangement, the ironical simplicity, are found to result in a perfect work of art, which is the portrait of Socrates.

Yet some of the topics may have been actually used by Socrates; and the recollection of his very words may have rung in the ears of his disciple. The "Apology" of Plato may be compared generally with those speeches of Thucydides in which he has embodied his conception of the lofty character and policy of the great Pericles, and which at the same time furnish a commentary on the situation of affairs from the point of view of the historian. So in the "Apology" there is an ideal rather than a literal truth; much is said which was not said, and is only Plato's view of the situation. Plato was not, like Xenophon, a chronicler of facts; he does not appear in any of his writings to have aimed at literal accuracy. He is not therefore to be supplemented from the Memorabilia and Symposium of Xenophon, who belongs to an entirely different class of writers. The Apology of Plato is not the report of what Socrates said, but an elaborate composition, quite as much so in fact as one of the Dialogues. And we may perhaps even indulge in the fancy that the actual defence of Socrates was as much greater than the Platonic defence as the master was greater than the disciple. But in any case, some of the words used by him must have been remembered, and some of the facts recorded must have actually occurred. It is significant that Plato is said to have been present at the defence (Apol.), as he is also said to have been absent at the last scene in the "Phædo". Is it fanciful to suppose that he meant to give the stamp of authenticity to the one and not to the other?—especially when we consider that these two passages are the only ones in which Plato makes mention of himself. The circumstance that Plato was to be one of his sureties for the payment of the fine which he proposed has the appearance of truth. More suspicious is the statement that Socrates received the first impulse to his favourite calling of cross-examining the world from the Oracle of Delphi; for he must already have been famous before

Chaerephon went to consult the Oracle (Riddell), and the story is of a kind which is very likely to have been invented. On the whole we arrive at the conclusion that the "Apology" is true to the character of Socrates, but we cannot show that any single sentence in it was actually spoken by him. It breathes the spirit of Socrates, but has been cast anew in the mould of Plato.

There is not much in the other Dialogues which can be compared with the "Apology". The same recollection of his master may have been present to the mind of Plato when depicting the sufferings of the Just in the "Republic". The "Crito" may also be regarded as a sort of appendage to the "Apology", in which Socrates, who has defied the judges, is nevertheless represented as scrupulously obedient to the laws. The idealization of the sufferer is carried still further in the "Georgias", in which the thesis is maintained, that "to suffer is better than to do evil;" and the art of rhetoric is described as only useful for the purpose of self-accusation. The parallelisms which occur in the so-called "Apology" of Xenophon are not worth noticing, because the writing in which they are contained is manifestly spurious. The statements of the "Memorabilia" respecting the trial and death of Socrates agree generally with Plato; but they have lost the flavour of Socratic irony in the narrative of Xenophon.

The "Apology" or Platonic defence of Socrates is divided into three parts: 1st. The defence properly so called; 2nd. The shorter address in mitigation of the penalty; 3rd. The last words of prophetic rebuke and exhortation.

The first part commences with an apology for his colloquial style; he is, as he has always been, the enemy of rhetoric, and knows of no rhetoric but truth; he will not falsify his character by making a speech. Then he proceeds to divide his accusers into two classes; first, there is the nameless accuser—public opinion. All the world from their earliest years had heard that he was a corrupter of youth, and had seen him caricatured in the "Clouds" of Aristophanes. Secondly, there are the professed accusers, who are but the mouth-piece of the others. The accusations of both might be summed up in a formula. The first say, "Socrates is an evil-doer and a curious person, searching into things under the earth and above the heaven; and making the worse appear the better cause, and teaching all this to others." The second, "Socrates is an evil-doer and corrupter of the youth, who does not receive the gods whom the state receives, but introduces other new divinities." These last words appear to have been the actual indictment (compare Xen. Mem.); and the previous formula, which is a summary of public opinion, assumes the same legal style.

The answer begins by clearing up a confusion. In the representations of the Comic poets, and in the opinion of the multitude, he had been identified with the teachers of physical science and with the Sophists. But this was an error. For both of them he professes a respect in the open court, which contrasts with his manner of speaking about them in other places. (Compare for Anaxagoras, Phædo, Laws; for the Sophists, Meno, Republic, Tim., Theaet., Soph., etc.) But at the same time he shows that he is not one of them. Of natural philosophy he knows nothing; not that he despises such pursuits, but the fact is that he is ignorant of them, and never says a word about them. Nor is he paid for giving instruction—that is another mistaken notion:—he has nothing to teach. But he commends Evenus for teaching virtue at such a "moderate" rate as five minæ. Something of the "accustomed irony," which may perhaps be expected to sleep in the ear of the multitude, is lurking here.

He then goes on to explain the reason why he is in such an evil name. That had arisen out of a peculiar mission which he had taken upon himself. The enthusiastic Chaerephon (probably in anticipation of the answer which he received) had gone to Delphi and asked the oracle if there was any man wiser than Socrates; and the answer was, that there was no man wiser. What could be the meaning of this—that he who knew nothing, and knew that he knew nothing, should be declared by the oracle to be the wisest of men? Reflecting upon the answer, he determined to refute it by finding "a wiser;" and first he went to the politicians, and then to the poets, and then to the craftsmen, but always with the same result—he found that they knew nothing, or hardly anything more than himself; and that the little advantage which in some cases they possessed was more than counter-balanced by their conceit of knowledge. He knew nothing, and knew that he knew nothing: they knew little or nothing, and imagined that they knew all things. Thus he had passed his life as a sort of missionary in detecting the pretended wisdom of mankind; and this occupation had quite absorbed him and taken him away both from public and private affairs. Young men of the richer sort had made a pastime of the same pursuit, "which was not unamusing." And hence bitter enmities had arisen; the professors of knowledge had revenged themselves by calling him a villainous corrupter of youth, and by repeating the commonplaces about atheism and materialism and sophistry, which are the stock-accusations against all philosophers when there is nothing else to be said of them.

The second accusation he meets by interrogating Meletus, who is present and can be interrogated. "If he is the corrupter, who is the improver of the citizens?" (Compare Meno.) "All men everywhere." But how absurd, how contrary to analogy is this! How inconceivable too, that he should make the citizens worse when he has to live with them. This surely cannot be intentional; and if unintentional, he ought to have been instructed by Meletus, and not accused in the court.

But there is another part of the indictment which says that he teaches men not to receive the gods whom the city receives, and has other new gods. "Is that the way in which he is supposed to corrupt the youth?" "Yes, it is." "Has he only new gods, or none at all?" "None at all." "What, not even the sun and moon?" "No; why, he says that the sun is a stone, and the moon earth." That, replies Socrates, is the old confusion about Anaxagoras; the Athenian people are not so ignorant as to attribute to the influence of Socrates notions which have found their way into the drama, and may be learned at the theatre. Socrates undertakes to show that Meletus (rather unjustifiably) has been compounding a riddle in this part of the indictment: "There are no gods, but Socrates believes in the existence of the sons of gods, which is absurd."

Leaving Meletus, who has had enough words spent upon him, he returns to the original accusation. The question may be asked, Why will he persist in following a profession which leads him to death? Why?—because he must remain at his post where the god has placed him, as he remained at Potidaea, and Amphipolis, and Delium, where the generals placed him. Besides, he is not so overwise as to imagine that he knows whether death is a good or an evil; and he is certain that desertion of his duty is an evil. Anytus is quite right in

saying that they should never have indicted him if they meant to let him go. For he will certainly obey God rather than man; and will continue to preach to all men of all ages the necessity of virtue and improvement; and if they refuse to listen to him he will still persevere and reprove them. This is his way of corrupting the youth, which he will not cease to follow in obedience to the god, even if a thousand deaths await him.

He is desirous that they should let him live—not for his own sake, but for theirs; because he is their heaven-sent friend (and they will never have such another), or, as he may be ludicrously described, he is the gadfly who stirs the generous steed into motion. Why then has he never taken part in public affairs? Because the familiar divine voice has hindered him; if he had been a public man, and had fought for the right, as he would certainly have fought against the many, he would not have lived, and could therefore have done no good. Twice in public matters he has risked his life for the sake of justice—once at the trial of the generals; and again in resistance to the tyrannical commands of the Thirty.

But, though not a public man, he has passed his days in instructing the citizens without fee or reward—this was his mission. Whether his disciples have turned out well or ill, he cannot justly be charged with the result, for he never promised to teach them anything. They might come if they liked, and they might stay away if they liked: and they did come, because they found an amusement in hearing the pretenders to wisdom detected. If they have been corrupted, their elder relatives (if not themselves) might surely come into court and witness against him, and there is an opportunity still for them to appear. But their fathers and brothers all appear in court (including "this" Plato), to witness on his behalf; and if their relatives are corrupted, at least they are uncorrupted; "and they are my witnesses. For they know that I am speaking the truth, and that Meletus is lying."

This is about all that he has to say. He will not entreat the judges to spare his life; neither will he present a spectacle of weeping children, although he, too, is not made of "rock or oak." Some of the judges themselves may have complied with this practice on similar occasions, and he trusts that they will not be angry with him for not following their example. But he feels that such conduct brings discredit on the name of Athens: he feels too, that the judge has sworn not to give away justice; and he cannot be guilty of the impiety of asking the judge to break his oath, when he is himself being tried for impiety.

As he expected, and probably intended, he is convicted. And now the tone of the speech, instead of being more conciliatory, becomes more lofty and commanding. Anytus proposes death as the penalty: and what counter-proposition shall he make? He, the benefactor of the Athenian people, whose whole life has been spent in doing them good, should at least have the Olympic victor's reward of maintenance in the Prytaneum. Or why should he propose any counter-penalty when he does not know whether death, which Anytus proposes, is a good or an evil? And he is certain that imprisonment is an evil, exile is an evil. Loss of money might be an evil, but then he has none to give; perhaps he can make up a mina. Let that be the penalty, or, if his friends wish, thirty minæ; for which they will be excellent securities.

[*He is condemned to death.*]

He is an old man already, and the Athenians will gain nothing but disgrace by depriving him of a few years of life. Perhaps he could have escaped, if he had chosen to throw down his arms and entreat for his life. But he does not at all repent of the manner of his defence; he would rather die in his own fashion than live in theirs. For the penalty of unrighteousness is swifter than death; that penalty has already overtaken his accusers as death will soon overtake him.

And now, as one who is about to die, he will prophesy to them. They have put him to death in order to escape the necessity of giving an account of their lives. But his death "will be the seed" of many disciples who will convince them of their evil ways, and will come forth to reprove them in harsher terms, because they are younger and more inconsiderate.

He would like to say a few words, while there is time, to those who would have acquitted him. He wishes them to know that the divine sign never interrupted him in the course of his defence; the reason of which, as he conjectures, is that the death to which he is going is a good and not an evil. For either death is a long sleep, the best of sleeps, or a journey to another world in which the souls of the dead are gathered together, and in which there may be a hope of seeing the heroes of old—in which, too, there are just judges; and as all are immortal, there can be no fear of any one suffering death for his opinions.

Nothing evil can happen to the good man either in life or death, and his own death has been permitted by the gods, because it was better for him to depart; and therefore he forgives his judges because they have done him no harm, although they never meant to do him any good.

He has a last request to make to them—that they will trouble his sons as he has troubled them, if they appear to prefer riches to virtue, or to think themselves something when they are nothing.

"Few persons will be found to wish that Socrates should have defended himself otherwise,"—if, as we must add, his defence was that with which Plato has provided him. But leaving this question, which does not admit of a precise solution, we may go on to ask what was the impression which Plato in the "Apology" intended to give of the character and conduct of his master in the last great scene? Did

he intend to represent him (1) as employing sophistries; (2) as designedly irritating the judges? Or are these sophistries to be regarded as belonging to the age in which he lived and to his personal character, and this apparent haughtiness as flowing from the natural elevation of his position?

For example, when he says that it is absurd to suppose that one man is the corrupter and all the rest of the world the improvers of the youth; or, when he argues that he never could have corrupted the men with whom he had to live; or, when he proves his belief in the gods because he believes in the sons of gods, is he serious or jesting? It may be observed that these sophisms all occur in his cross-examination of Meletus, who is easily foiled and mastered in the hands of the great dialectician. Perhaps he regarded these answers as good enough for his accuser, of whom he makes very light. Also there is a touch of irony in them, which takes them out of the category of sophistry. (Compare Euthyph.)

That the manner in which he defends himself about the lives of his disciples is not satisfactory, can hardly be denied. Fresh in the memory of the Athenians, and detestable as they deserved to be to the newly restored democracy, were the names of Alcibiades, Critias, Charmides. It is obviously not a sufficient answer that Socrates had never professed to teach them anything, and is therefore not justly chargeable with their crimes. Yet the defence, when taken out of this ironical form, is doubtless sound: that his teaching had nothing to do with their evil lives. Here, then, the sophistry is rather in form than in substance, though we might desire that to such a serious charge Socrates had given a more serious answer.

Truly characteristic of Socrates is another point in his answer, which may also be regarded as sophistical. He says that "if he has corrupted the youth, he must have corrupted them involuntarily." But if, as Socrates argues, all evil is involuntary, then all criminals ought to be admonished and not punished. In these words the Socratic doctrine of the involuntariness of evil is clearly intended to be conveyed. Here again, as in the former instance, the defence of Socrates is untrue practically, but may be true in some ideal or transcendental sense. The commonplace reply, that if he had been guilty of corrupting the youth their relations would surely have witnessed against him, with which he concludes this part of his defence, is more satisfactory.

Again, when Socrates argues that he must believe in the gods because he believes in the sons of gods, we must remember that this is a refutation not of the original indictment, which is consistent enough—"Socrates does not receive the gods whom the city receives, and has other new divinities"—but of the interpretation put upon the words by Meletus, who has affirmed that he is a downright atheist. To this Socrates fairly answers, in accordance with the ideas of the time, that a downright atheist cannot believe in the sons of gods or in divine things. The notion that demons or lesser divinities are the sons of gods is not to be regarded as ironical or sceptical. He is arguing "ad hominem" according to the notions of mythology current in his age. Yet he abstains from saying that he believed in the gods whom the State approved. He does not defend himself, as Xenophon has defended him, by appealing to his practice of religion. Probably he neither wholly believed, nor disbelieved, in the existence of the popular gods; he had no means of knowing about them. According to Plato (compare Phædo; Symp.), as well as Xenophon (Memor.), he was punctual in the performance of the least religious duties; and he must have believed in his own oracular sign, of which he seemed to have an internal witness. But the existence of Apollo or Zeus, or the other gods whom the State approves, would have appeared to him both uncertain and unimportant in comparison of the duty of self-examination, and of those principles of truth and right which he deemed to be the foundation of religion. (Compare Phaedr.; Euthyph.; Republic.)

The second question, whether Plato meant to represent Socrates as braving or irritating his judges, must also be answered in the negative. His irony, his superiority, his audacity, "regarding not the person of man," necessarily flow out of the loftiness of his situation. He is not acting a part upon a great occasion, but he is what he has been all his life long, "a king of men." He would rather not appear insolent, if he could avoid it (ouch os authadizomenos touto lego). Neither is he desirous of hastening his own end, for life and death are simply indifferent to him. But such a defence as would be acceptable to his judges and might procure an acquittal, it is not in his nature to make. He will not say or do anything that might pervert the course of justice; he cannot have his tongue bound even "in the throat of death." With his accusers he will only fence and play, as he had fenced with other "improvers of youth," answering the Sophist according to his sophistry all his life long. He is serious when he is speaking of his own mission, which seems to distinguish him from all other reformers of mankind, and originates in an accident. The dedication of himself to the improvement of his fellow-citizens is not so remarkable as the ironical spirit in which he goes about doing good only in vindication of the credit of the oracle, and in the vain hope of finding a wiser man than himself. Yet this singular and almost accidental character of his mission agrees with the divine sign which, according to our notions, is equally accidental and irrational, and is nevertheless accepted by him as the guiding principle of his life. Socrates is nowhere represented to us as a freethinker or sceptic. There is no reason to doubt his sincerity when he speculates on the possibility of seeing and knowing the heroes of the Trojan war in another world. On the other hand, his hope of immortality is uncertain;—he also conceives of death as a long sleep (in this respect differing from the Phædo), and at last falls back on resignation to the divine will, and the certainty that no evil can happen to the good man either in life or death. His absolute truthfulness seems to hinder him from asserting positively more than this; and he makes no attempt to veil his ignorance in mythology and figures of speech. The gentleness of the first part of the speech contrasts with the aggravated, almost threatening, tone of the conclusion. He characteristically remarks that he will not speak as a rhetorician, that is to say, he will not make a regular defence such as Lysias or one of the orators might have composed for him, or, according to some accounts, did compose for him. But he first procures himself a hearing by conciliatory words. He does not attack the Sophists; for they were open to the same charges as himself; they were equally ridiculed by the Comic poets, and almost equally hateful to Anytus and Meletus. Yet incidentally the antagonism between Socrates and the Sophists is allowed to appear. He is poor and they are rich; his profession that he teaches nothing is opposed to their readiness to teach all things; his talking in the marketplace to their private instructions; his tarry-at-home life to their wandering from city to city. The tone which he

assumes towards them is one of real friendliness, but also of concealed irony. Towards Anaxagoras, who had disappointed him in his hopes of learning about mind and nature, he shows a less kindly feeling, which is also the feeling of Plato in other passages (Laws). But Anaxagoras had been dead thirty years, and was beyond the reach of persecution.

It has been remarked that the prophecy of a new generation of teachers who would rebuke and exhort the Athenian people in harsher and more violent terms was, as far as we know, never fulfilled. No inference can be drawn from this circumstance as to the probability of the words attributed to him having been actually uttered. They express the aspiration of the first martyr of philosophy, that he would leave behind him many followers, accompanied by the not unnatural feeling that they would be fiercer and more inconsiderate in their words when emancipated from his control.

The above remarks must be understood as applying with any degree of certainty to the Platonic Socrates only. For, although these or similar words may have been spoken by Socrates himself, we cannot exclude the possibility, that like so much else, *e.g.* the wisdom of Critias, the poem of Solon, the virtues of Charmides, they may have been due only to the imagination of Plato. The arguments of those who maintain that the Apology was composed during the process, resting on no evidence, do not require a serious refutation. Nor are the reasonings of Schleiermacher, who argues that the Platonic defence is an exact or nearly exact reproduction of the words of Socrates, partly because Plato would not have been guilty of the impiety of altering them, and also because many points of the defence might have been improved and strengthened, at all more conclusive. (See English Translation.) What effect the death of Socrates produced on the mind of Plato, we cannot certainly determine; nor can we say how he would or must have written under the circumstances. We observe that the enmity of Aristophanes to Socrates does not prevent Plato from introducing them together in the Symposium engaged in friendly intercourse. Nor is there any trace in the Dialogues of an attempt to make Anytus or Meletus personally odious in the eyes of the Athenian public.

APOLOGY

How you, O Athenians, have been affected by my accusers, I cannot tell; but I know that they almost made me forget who I was—so persuasively did they speak; and yet they have hardly uttered a word of truth. But of the many falsehoods told by them, there was one which quite amazed me;—I mean when they said that you should be upon your guard and not allow yourselves to be deceived by the force of my eloquence. To say this, when they were certain to be detected as soon as I opened my lips and proved myself to be anything but a great speaker, did indeed appear to me most shameless—unless by the force of eloquence they mean the force of truth; for if such is their meaning, I admit that I am eloquent. But in how different a way from theirs! Well, as I was saying, they have scarcely spoken the truth at all; but from me you shall hear the whole truth: not, however, delivered after their manner in a set oration duly ornamented with words and phrases. No, by heaven! but I shall use the words and arguments which occur to me at the moment; for I am confident in the justice of my cause (Or, I am certain that I am right in taking this course.): at my time of life I ought not to be appearing before you, O men of Athens, in the character of a juvenile orator—let no one expect it of me. And I must beg of you to grant me a favour:—If I defend myself in my accustomed manner, and you hear me using the words which I have been in the habit of using in the agora, at the tables of the money-changers, or anywhere else, I would ask you not to be surprised, and not to interrupt me on this account. For I am more than seventy years of age, and appearing now for the first time in a court of law, I am quite a stranger to the language of the place; and therefore I would have you regard me as if I were really a stranger, whom you would excuse if he spoke in his native tongue, and after the fashion of his country:—Am I making an unfair request of you? Never mind the manner, which may or may not be good; but think only of the truth of my words, and give heed to that: let the speaker speak truly and the judge decide justly.

And first, I have to reply to the older charges and to my first accusers, and then I will go on to the later ones. For of old I have had many accusers, who have accused me falsely to you during many years; and I am more afraid of them than of Anytus and his associates, who are dangerous, too, in their own way. But far more dangerous are the others, who began when you were children, and took possession of your minds with their falsehoods, telling of one Socrates, a wise man, who speculated about the heaven above, and searched into the earth beneath, and made the worse appear the better cause. The disseminators of this tale are the accusers whom I dread; for their hearers are apt to fancy that such enquirers do not believe in the existence of the gods. And they are many, and their charges against me are of ancient date, and they were made by them in the days when you were more impressible than you are now—in childhood, or it may have been in youth—and the cause when heard went by default, for there was none to answer. And hardest of all, I do not know and cannot tell the names of my accusers; unless in the chance case of a Comic poet. All who from envy and malice have persuaded you—some of them having first convinced themselves—all this class of men are most difficult to deal with; for I cannot have them up here, and cross-examine them, and therefore I must simply fight with shadows in my own defence, and argue when there is no one who answers. I will ask you then to assume with me, as I was saying, that my opponents are of two kinds; one recent, the other ancient: and I hope that you will see the propriety of my answering the latter first, for these accusations you heard long before the others, and much oftener.

Well, then, I must make my defence, and endeavour to clear away in a short time, a slander which has lasted a long time. May I succeed, if to succeed be for my good and yours, or likely to avail me in my cause! The task is not an easy one; I quite understand the nature of it. And so leaving the event with God, in obedience to the law I will now make my defence.

I will begin at the beginning, and ask what is the accusation which has given rise to the slander of me, and in fact has encouraged Meletus to proof this charge against me. Well, what do the slanderers say? They shall be my prosecutors, and I will sum up their words in an affidavit: “Socrates is an evil-doer, and a curious person, who searches into things under the earth and in heaven, and he makes

the worse appear the better cause; and he teaches the aforesaid doctrines to others." Such is the nature of the accusation: it is just what you have yourselves seen in the comedy of Aristophanes (Aristoph., Clouds.), who has introduced a man whom he calls Socrates, going about and saying that he walks in air, and talking a deal of nonsense concerning matters of which I do not pretend to know either much or little—not that I mean to speak disparagingly of any one who is a student of natural philosophy. I should be very sorry if Meletus could bring so grave a charge against me. But the simple truth is, O Athenians, that I have nothing to do with physical speculations. Very many of those here present are witnesses to the truth of this, and to them I appeal. Speak then, you who have heard me, and tell your neighbours whether any of you have ever known me hold forth in few words or in many upon such matters...You hear their answer. And from what they say of this part of the charge you will be able to judge of the truth of the rest.

As little foundation is there for the report that I am a teacher, and take money; this accusation has no more truth in it than the other. Although, if a man were really able to instruct mankind, to receive money for giving instruction would, in my opinion, be an honour to him. There is Gorgias of Leontium, and Prodicus of Ceos, and Hippias of Elis, who go the round of the cities, and are able to persuade the young men to leave their own citizens by whom they might be taught for nothing, and come to them whom they not only pay, but are thankful if they may be allowed to pay them. There is at this time a Parian philosopher residing in Athens, of whom I have heard; and I came to hear of him in this way:—I came across a man who has spent a world of money on the Sophists, Callias, the son of Hipponicus, and knowing that he had sons, I asked him: "Callias," I said, "if your two sons were foals or calves, there would be no difficulty in finding some one to put over them; we should hire a trainer of horses, or a farmer probably, who would improve and perfect them in their own proper virtue and excellence; but as they are human beings, whom are you thinking of placing over them? Is there any one who understands human and political virtue? You must have thought about the matter, for you have sons; is there any one?" "There is," he said. "Who is he?" said I; "and of what country? and what does he charge?" "Evenus the Parian," he replied; "he is the man, and his charge is five minæ." Happy is Evenus, I said to myself, if he really has this wisdom, and teaches at such a moderate charge. Had I the same, I should have been very proud and conceited; but the truth is that I have no knowledge of the kind.

I dare say, Athenians, that some one among you will reply, "Yes, Socrates, but what is the origin of these accusations which are brought against you; there must have been something strange which you have been doing? All these rumours and this talk about you would never have arisen if you had been like other men: tell us, then, what is the cause of them, for we should be sorry to judge hastily of you." Now I regard this as a fair challenge, and I will endeavour to explain to you the reason why I am called wise and have such an evil fame. Please to attend then. And although some of you may think that I am joking, I declare that I will tell you the entire truth. Men of Athens, this reputation of mine has come of a certain sort of wisdom which I possess. If you ask me what kind of wisdom, I reply, wisdom such as may perhaps be attained by man, for to that extent I am inclined to believe that I am wise; whereas the persons of whom I was speaking have a superhuman wisdom which I may fail to describe, because I have it not myself; and he who says that I have, speaks falsely, and is taking away my character. And here, O men of Athens, I must beg you not to interrupt me, even if I seem to say something extravagant. For the word which I will speak is not mine. I will refer you to a witness who is worthy of credit; that witness shall be the God of Delphi—he will tell you about my wisdom, if I have any, and of what sort it is. You must have known Chaerephon; he was early a friend of mine, and also a friend of yours, for he shared in the recent exile of the people, and returned with you. Well, Chaerephon, as you know, was very impetuous in all his doings, and he went to Delphi and boldly asked the oracle to tell him whether—as I was saying, I must beg you not to interrupt—he asked the oracle to tell him whether anyone was wiser than I was, and the Pythian prophetess answered, that there was no man wiser. Chaerephon is dead himself; but his brother, who is in court, will confirm the truth of what I am saying.

Why do I mention this? Because I am going to explain to you why I have such an evil name. When I heard the answer, I said to myself, What can the god mean? and what is the interpretation of his riddle? for I know that I have no wisdom, small or great. What then can he mean when he says that I am the wisest of men? And yet he is a god, and cannot lie; that would be against his nature. After long consideration, I thought of a method of trying the question. I reflected that if I could only find a man wiser than myself, then I might go to the god with a refutation in my hand. I should say to him, "Here is a man who is wiser than I am; but you said that I was the wisest." Accordingly I went to one who had the reputation of wisdom, and observed him—his name I need not mention; he was a politician whom I selected for examination—and the result was as follows: When I began to talk with him, I could not help thinking that he was not really wise, although he was thought wise by many, and still wiser by himself; and thereupon I tried to explain to him that he thought himself wise, but was not really wise; and the consequence was that he hated me, and his enmity was shared by several who were present and heard me. So I left him, saying to myself, as I went away: Well, although I do not suppose that either of us knows anything really beautiful and good, I am better off than he is,—for he knows nothing, and thinks that he knows; I neither know nor think that I know. In this latter particular, then, I seem to have slightly the advantage of him. Then I went to another who had still higher pretensions to wisdom, and my conclusion was exactly the same. Whereupon I made another enemy of him, and of many others besides him.

Then I went to one man after another, being not unconscious of the enmity which I provoked, and I lamented and feared this: but necessity was laid upon me,—the word of God, I thought, ought to be considered first. And I said to myself, Go I must to all who appear to know, and find out the meaning of the oracle. And I swear to you, Athenians, by the dog I swear!—for I must tell you the truth—the result of my mission was just this: I found that the men most in repute were all but the most foolish; and that others less esteemed were really wiser and better. I will tell you the tale of my wanderings and of the "Herculean" labours, as I may call them, which I endured only to find at last the oracle irrefutable. After the politicians, I went to the poets; tragic, dithyrambic, and all sorts. And there, I said to myself, you will be instantly detected; now you will find out that you are more ignorant than they are. Accordingly, I took them some of the most elaborate passages in their own writings, and asked what was the meaning of them—thinking that they would teach me

something. Will you believe me? I am almost ashamed to confess the truth, but I must say that there is hardly a person present who would not have talked better about their poetry than they did themselves. Then I knew that not by wisdom do poets write poetry, but by a sort of genius and inspiration; they are like diviners or soothsayers who also say many fine things, but do not understand the meaning of them. The poets appeared to me to be much in the same case; and I further observed that upon the strength of their poetry they believed themselves to be the wisest of men in other things in which they were not wise. So I departed, conceiving myself to be superior to them for the same reason that I was superior to the politicians.

At last I went to the artisans. I was conscious that I knew nothing at all, as I may say, and I was sure that they knew many fine things; and here I was not mistaken, for they did know many things of which I was ignorant, and in this they certainly were wiser than I was. But I observed that even the good artisans fell into the same error as the poets;—because they were good workmen they thought that they also knew all sorts of high matters, and this defect in them overshadowed their wisdom; and therefore I asked myself on behalf of the oracle, whether I would like to be as I was, neither having their knowledge nor their ignorance, or like them in both; and I made answer to myself and to the oracle that I was better off as I was.

This inquisition has led to my having many enemies of the worst and most dangerous kind, and has given occasion also to many calumnies. And I am called wise, for my hearers always imagine that I myself possess the wisdom which I find wanting in others: but the truth is, O men of Athens, that God only is wise; and by his answer he intends to show that the wisdom of men is worth little or nothing; he is not speaking of Socrates, he is only using my name by way of illustration, as if he said, He, O men, is the wisest, who, like Socrates, knows that his wisdom is in truth worth nothing. And so I go about the world, obedient to the god, and search and make enquiry into the wisdom of any one, whether citizen or stranger, who appears to be wise; and if he is not wise, then in vindication of the oracle I show him that he is not wise; and my occupation quite absorbs me, and I have no time to give either to any public matter of interest or to any concern of my own, but I am in utter poverty by reason of my devotion to the god.

There is another thing:—young men of the richer classes, who have not much to do, come about me of their own accord; they like to hear the pretenders examined, and they often imitate me, and proceed to examine others; there are plenty of persons, as they quickly discover, who think that they know something, but really know little or nothing; and then those who are examined by them instead of being angry with themselves are angry with me: This confounded Socrates, they say; this villainous misleader of youth!—and then if somebody asks them, Why, what evil does he practise or teach? they do not know, and cannot tell; but in order that they may not appear to be at a loss, they repeat the ready-made charges which are used against all philosophers about teaching things up in the clouds and under the earth, and having no gods, and making the worse appear the better cause; for they do not like to confess that their pretence of knowledge has been detected—which is the truth; and as they are numerous and ambitious and energetic, and are drawn up in battle array and have persuasive tongues, they have filled your ears with their loud and inveterate calumnies. And this is the reason why my three accusers, Meletus and Anytus and Lycon, have set upon me; Meletus, who has a quarrel with me on behalf of the poets; Anytus, on behalf of the craftsmen and politicians; Lycon, on behalf of the rhetoricians: and as I said at the beginning, I cannot expect to get rid of such a mass of calumny all in a moment. And this, O men of Athens, is the truth and the whole truth; I have concealed nothing, I have dissembled nothing. And yet, I know that my plainness of speech makes them hate me, and what is their hatred but a proof that I am speaking the truth?—Hence has arisen the prejudice against me; and this is the reason of it, as you will find out either in this or in any future enquiry.

I have said enough in my defence against the first class of my accusers; I turn to the second class. They are headed by Meletus, that good man and true lover of his country, as he calls himself. Against these, too, I must try to make a defence:—Let their affidavit be read: it contains something of this kind: It says that Socrates is a doer of evil, who corrupts the youth; and who does not believe in the gods of the state, but has other new divinities of his own. Such is the charge; and now let us examine the particular counts. He says that I am a doer of evil, and corrupt the youth; but I say, O men of Athens, that Meletus is a doer of evil, in that he pretends to be in earnest when he is only in jest, and is so eager to bring men to trial from a pretended zeal and interest about matters in which he really never had the smallest interest. And the truth of this I will endeavour to prove to you.

Come hither, Meletus, and let me ask a question of you. You think a great deal about the improvement of youth?

Yes, I do.

Tell the judges, then, who is their improver; for you must know, as you have taken the pains to discover their corrupter, and are citing and accusing me before them. Speak, then, and tell the judges who their improver is.—Observe, Meletus, that you are silent, and have nothing to say. But is not this rather disgraceful, and a very considerable proof of what I was saying, that you have no interest in the matter? Speak up, friend, and tell us who their improver is.

The laws.

But that, my good sir, is not my meaning. I want to know who the person is, who, in the first place, knows the laws.

The judges, Socrates, who are present in court.

What, do you mean to say, Meletus, that they are able to instruct and improve youth?

Certainly they are.

What, all of them, or some only and not others?

All of them.

By the goddess Here, that is good news! There are plenty of improvers, then. And what do you say of the audience,—do they improve them?

Yes, they do.

And the senators?

Yes, the senators improve them.

But perhaps the members of the assembly corrupt them?—or do they too improve them?

They improve them.

Then every Athenian improves and elevates them; all with the exception of myself; and I alone am their corrupter? Is that what you affirm?

That is what I stoutly affirm.

I am very unfortunate if you are right. But suppose I ask you a question: How about horses? Does one man do them harm and all the world good? Is not the exact opposite the truth? One man is able to do them good, or at least not many;—the trainer of horses, that is to say, does them good, and others who have to do with them rather injure them? Is not that true, Meletus, of horses, or of any other animals? Most assuredly it is; whether you and Anytus say yes or no. Happy indeed would be the condition of youth if they had one corrupter only, and all the rest of the world were their improvers. But you, Meletus, have sufficiently shown that you never had a thought about the young: your carelessness is seen in your not caring about the very things which you bring against me.

And now, Meletus, I will ask you another question—by Zeus I will: Which is better, to live among bad citizens, or among good ones? Answer, friend, I say; the question is one which may be easily answered. Do not the good do their neighbours good, and the bad do them evil?

Certainly.

And is there anyone who would rather be injured than benefited by those who live with him? Answer, my good friend, the law requires you to answer—does any one like to be injured?

Certainly not.

And when you accuse me of corrupting and deteriorating the youth, do you allege that I corrupt them intentionally or unintentionally?

Intentionally, I say.

But you have just admitted that the good do their neighbours good, and the evil do them evil. Now, is that a truth which your superior wisdom has recognized thus early in life, and am I, at my age, in such darkness and ignorance as not to know that if a man with whom I have to live is corrupted by me, I am very likely to be harmed by him; and yet I corrupt him, and intentionally, too—so you say, although neither I nor any other human being is ever likely to be convinced by you. But either I do not corrupt them, or I corrupt them unintentionally; and on either view of the case you lie. If my offence is unintentional, the law has no cognizance of unintentional offences: you ought to have taken me privately, and warned and admonished me; for if I had been better advised, I should have left off doing what I only did unintentionally—no doubt I should; but you would have nothing to say to me and refused to teach me. And now you bring me up in this court, which is a place not of instruction, but of punishment.

It will be very clear to you, Athenians, as I was saying, that Meletus has no care at all, great or small, about the matter. But still I should like to know, Meletus, in what I am affirmed to corrupt the young. I suppose you mean, as I infer from your indictment, that I teach them not to acknowledge the gods which the state acknowledges, but some other new divinities or spiritual agencies in their stead. These are the lessons by which I corrupt the youth, as you say.

Yes, that I say emphatically.

Then, by the gods, Meletus, of whom we are speaking, tell me and the court, in somewhat plainer terms, what you mean! for I do not as yet understand whether you affirm that I teach other men to acknowledge some gods, and therefore that I do believe in gods, and am not an entire atheist—this you do not lay to my charge,—but only you say that they are not the same gods which the city recognizes—the charge is that they are different gods. Or, do you mean that I am an atheist simply, and a teacher of atheism?

I mean the latter—that you are a complete atheist.

What an extraordinary statement! Why do you think so, Meletus? Do you mean that I do not believe in the godhead of the sun or moon, like other men?

I assure you, judges, that he does not: for he says that the sun is stone, and the moon earth.

Friend Meletus, you think that you are accusing Anaxagoras: and you have but a bad opinion of the judges, if you fancy them illiterate to such a degree as not to know that these doctrines are found in the books of Anaxagoras the Clazomenian, which are full of them. And so, forsooth, the youth are said to be taught them by Socrates, when there are not unfrequently exhibitions of them at the theatre (Probably in allusion to Aristophanes who caricatured, and to Euripides who borrowed the notions of Anaxagoras, as well as to other dramatic poets.) (price of admission one drachma at the most); and they might pay their money, and laugh at Socrates if he pretends to father these extraordinary views. And so, Meletus, you really think that I do not believe in any god?

I swear by Zeus that you believe absolutely in none at all.

Nobody will believe you, Meletus, and I am pretty sure that you do not believe yourself. I cannot help thinking, men of Athens, that Meletus is reckless and impudent, and that he has written this indictment in a spirit of mere wantonness and youthful bravado. Has he not compounded a riddle, thinking to try me? He said to himself:—I shall see whether the wise Socrates will discover my facetious contradiction, or whether I shall be able to deceive him and the rest of them. For he certainly does appear to me to contradict himself in the indictment as much as if he said that Socrates is guilty of not believing in the gods, and yet of believing in them—but this is not like a person who is in earnest.

I should like you, O men of Athens, to join me in examining what I conceive to be his inconsistency; and do you, Meletus, answer. And I must remind the audience of my request that they would not make a disturbance if I speak in my accustomed manner:

Did ever man, Meletus, believe in the existence of human things, and not of human beings?...I wish, men of Athens, that he would answer, and not be always trying to get up an interruption. Did ever any man believe in horsemanship, and not in horses? or in flute-playing, and not in flute-players? No, my friend; I will answer to you and to the court, as you refuse to answer for yourself. There is no man who ever did. But now please to answer the next question: Can a man believe in spiritual and divine agencies, and not in spirits or demigods?

He cannot.

How lucky I am to have extracted that answer, by the assistance of the court! But then you swear in the indictment that I teach and believe in divine or spiritual agencies (new or old, no matter for that); at any rate, I believe in spiritual agencies,—so you say and swear in the affidavit; and yet if I believe in divine beings, how can I help believing in spirits or demigods;—must I not? To be sure I must; and therefore I may assume that your silence gives consent. Now what are spirits or demigods? Are they not either gods or the sons of gods?

Certainly they are.

But this is what I call the facetious riddle invented by you: the demigods or spirits are gods, and you say first that I do not believe in gods, and then again that I do believe in gods; that is, if I believe in demigods. For if the demigods are the illegitimate sons of gods, whether by the nymphs or by any other mothers, of whom they are said to be the sons—what human being will ever believe that there are no gods if they are the sons of gods? You might as well affirm the existence of mules, and deny that of horses and asses. Such nonsense, Meletus, could only have been intended by you to make trial of me. You have put this into the indictment because you had nothing real of which to accuse me. But no one who has a particle of understanding will ever be convinced by you that the same men can believe in divine and superhuman things, and yet not believe that there are gods and demigods and heroes.

I have said enough in answer to the charge of Meletus: any elaborate defence is unnecessary, but I know only too well how many are the enmities which I have incurred, and this is what will be my destruction if I am destroyed;—not Meletus, nor yet Anytus, but the envy and detraction of the world, which has been the death of many good men, and will probably be the death of many more; there is no danger of my being the last of them.

Some one will say: And are you not ashamed, Socrates, of a course of life which is likely to bring you to an untimely end? To him I may fairly answer: There you are mistaken: a man who is good for anything ought not to calculate the chance of living or dying; he ought only to consider whether in doing anything he is doing right or wrong—acting the part of a good man or of a bad. Whereas, upon your view, the heroes who fell at Troy were not good for much, and the son of Thetis above all, who altogether despised danger in comparison with disgrace; and when he was so eager to slay Hector, his goddess mother said to him, that if he avenged his companion Patroclus, and slew Hector, he would die himself—"Fate," she said, in these or the like words, "waits for you next after Hector;" he, receiving this warning, utterly despised danger and death, and instead of fearing them, feared rather to live in dishonour, and not to avenge his friend. "Let me die forthwith," he replies, "and be avenged of my enemy, rather than abide here by the beaked ships, a laughing-stock and a burden of the earth." Had Achilles any thought of death and danger? For wherever a man's place is, whether the place which he has chosen or that in which he has been placed by a commander, there he ought to remain in the hour of danger; he should not think of death or of anything but of disgrace. And this, O men of Athens, is a true saying.

Strange, indeed, would be my conduct, O men of Athens, if I who, when I was ordered by the generals whom you chose to command me at Potidaea and Amphipolis and Delium, remained where they placed me, like any other man, facing death—if now, when, as I conceive and imagine, God orders me to fulfil the philosopher's mission of searching into myself and other men, I were to desert my post through fear of death, or any other fear; that would indeed be strange, and I might justly be arraigned in court for denying the existence of the gods, if I disobeyed the oracle because I was afraid of death, fancying that I was wise when I was not wise. For the fear of death is indeed the pretence of wisdom, and not real wisdom, being a pretence of knowing the unknown; and no one knows whether death, which men in their fear apprehend to be the greatest evil, may not be the greatest good. Is not this ignorance of a disgraceful sort, the ignorance which is the conceit that a man knows what he does not know? And in this respect only I believe myself to differ from men in general, and may perhaps claim to be wiser than they are:—that whereas I know but little of the world below, I do not suppose that I know: but I do know that injustice and disobedience to a better, whether God or man, is evil and dishonourable, and I will never fear or avoid a possible good rather than a certain evil. And therefore if you let me go now, and are not convinced by Anytus, who said that since I had been prosecuted I must be put to death; (or if not that I ought never to have been prosecuted at all); and that if I escape now, your sons will all be utterly ruined by listening to my words—if you say to me, Socrates, this time we will not mind Anytus, and you shall be let off, but upon one condition, that you are not to enquire and speculate in this way any more, and that if you are caught doing so again you shall die;—if this was the condition on which you let me go, I should reply: Men of Athens, I honour and love you;

but I shall obey God rather than you, and while I have life and strength I shall never cease from the practice and teaching of philosophy, exhorting any one whom I meet and saying to him after my manner: You, my friend,—a citizen of the great and mighty and wise city of Athens,—are you not ashamed of heaping up the greatest amount of money and honour and reputation, and caring so little about wisdom and truth and the greatest improvement of the soul, which you never regard or heed at all? And if the person with whom I am arguing, says: Yes, but I do care; then I do not leave him or let him go at once; but I proceed to interrogate and examine and cross-examine him, and if I think that he has no virtue in him, but only says that he has, I reproach him with undervaluing the greater, and overvaluing the less. And I shall repeat the same words to every one whom I meet, young and old, citizen and alien, but especially to the citizens, inasmuch as they are my brethren. For know that this is the command of God; and I believe that no greater good has ever happened in the state than my service to the God. For I do nothing but go about persuading you all, old and young alike, not to take thought for your persons or your properties, but first and chiefly to care about the greatest improvement of the soul. I tell you that virtue is not given by money, but that from virtue comes money and every other good of man, public as well as private. This is my teaching, and if this is the doctrine which corrupts the youth, I am a mischievous person. But if any one says that this is not my teaching, he is speaking an untruth. Wherefore, O men of Athens, I say to you, do as Anytus bids or not as Anytus bids, and either acquit me or not; but whichever you do, understand that I shall never alter my ways, not even if I have to die many times.

Men of Athens, do not interrupt, but hear me; there was an understanding between us that you should hear me to the end: I have something more to say, at which you may be inclined to cry out; but I believe that to hear me will be good for you, and therefore I beg that you will not cry out. I would have you know, that if you kill such an one as I am, you will injure yourselves more than you will injure me. Nothing will injure me, not Meletus nor yet Anytus—they cannot, for a bad man is not permitted to injure a better than himself. I do not deny that Anytus may, perhaps, kill him, or drive him into exile, or deprive him of civil rights; and he may imagine, and others may imagine, that he is inflicting a great injury upon him: but there I do not agree. For the evil of doing as he is doing—the evil of unjustly taking away the life of another—is greater far.

And now, Athenians, I am not going to argue for my own sake, as you may think, but for yours, that you may not sin against the God by condemning me, who am his gift to you. For if you kill me you will not easily find a successor to me, who, if I may use such a ludicrous figure of speech, am a sort of gadfly, given to the state by God; and the state is a great and noble steed who is tardy in his motions owing to his very size, and requires to be stirred into life. I am that gadfly which God has attached to the state, and all day long and in all places am always fastening upon you, arousing and persuading and reproaching you. You will not easily find another like me, and therefore I would advise you to spare me. I dare say that you may feel out of temper (like a person who is suddenly awakened from sleep), and you think that you might easily strike me dead as Anytus advises, and then you would sleep on for the remainder of your lives, unless God in his care of you sent you another gadfly. When I say that I am given to you by God, the proof of my mission is this:—if I had been like other men, I should not have neglected all my own concerns or patiently seen the neglect of them during all these years, and have been doing yours, coming to you individually like a father or elder brother, exhorting you to regard virtue; such conduct, I say, would be unlike human nature. If I had gained anything, or if my exhortations had been paid, there would have been some sense in my doing so; but now, as you will perceive, not even the impudence of my accusers dares to say that I have ever exacted or sought pay of any one; of that they have no witness. And I have a sufficient witness to the truth of what I say—my poverty.

Some one may wonder why I go about in private giving advice and busying myself with the concerns of others, but do not venture to come forward in public and advise the state. I will tell you why. You have heard me speak at sundry times and in divers places of an oracle or sign which comes to me, and is the divinity which Meletus ridicules in the indictment. This sign, which is a kind of voice, first began to come to me when I was a child; it always forbids but never commands me to do anything which I am going to do. This is what deters me from being a politician. And rightly, as I think. For I am certain, O men of Athens, that if I had engaged in politics, I should have perished long ago, and done no good either to you or to myself. And do not be offended at my telling you the truth: for the truth is, that no man who goes to war with you or any other multitude, honestly striving against the many lawless and unrighteous deeds which are done in a state, will save his life; he who will fight for the right, if he would live even for a brief space, must have a private station and not a public one.

I can give you convincing evidence of what I say, not words only, but what you value far more—actions. Let me relate to you a passage of my own life which will prove to you that I should never have yielded to injustice from any fear of death, and that "as I should have refused to yield" I must have died at once. I will tell you a tale of the courts, not very interesting perhaps, but nevertheless true. The only office of state which I ever held, O men of Athens, was that of senator: the tribe Antiochis, which is my tribe, had the presidency at the trial of the generals who had not taken up the bodies of the slain after the battle of Arginusae; and you proposed to try them in a body, contrary to law, as you all thought afterwards; but at the time I was the only one of the Prytanes who was opposed to the illegality, and I gave my vote against you; and when the orators threatened to impeach and arrest me, and you called and shouted, I made up my mind that I would run the risk, having law and justice with me, rather than take part in your injustice because I feared imprisonment and death. This happened in the days of the democracy. But when the oligarchy of the Thirty was in power, they sent for me and four others into the rotunda, and bade us bring Leon the Salaminian from Salamis, as they wanted to put him to death. This was a specimen of the sort of commands which they were always giving with the view of implicating as many as possible in their crimes; and then I showed, not in word only but in deed, that, if I may be allowed to use such an expression, I cared not a straw for death, and that my great and only care was lest I should do an unrighteous or unholy thing. For the strong arm of that oppressive power did not frighten me into doing wrong; and when we came out of the rotunda the other four went to Salamis and fetched Leon, but I went quietly home. For which I might have lost my life, had not the power of the Thirty shortly afterwards come to an end. And many will witness to my words.

Now do you really imagine that I could have survived all these years, if I had led a public life, supposing that like a good man I had always maintained the right and had made justice, as I ought, the first thing? No indeed, men of Athens, neither I nor any other man. But I have been always the same in all my actions, public as well as private, and never have I yielded any base compliance to those who are slanderously termed my disciples, or to any other. Not that I have any regular disciples. But if any one likes to come and hear me while I am pursuing my mission, whether he be young or old, he is not excluded. Nor do I converse only with those who pay; but any one, whether he be rich or poor, may ask and answer me and listen to my words; and whether he turns out to be a bad man or a good one, neither result can be justly imputed to me; for I never taught or professed to teach him anything. And if any one says that he has ever learned or heard anything from me in private which all the world has not heard, let me tell you that he is lying.

But I shall be asked, Why do people delight in continually conversing with you? I have told you already, Athenians, the whole truth about this matter: they like to hear the cross-examination of the pretenders to wisdom; there is amusement in it. Now this duty of cross-examining other men has been imposed upon me by God; and has been signified to me by oracles, visions, and in every way in which the will of divine power was ever intimated to any one. This is true, O Athenians, or, if not true, would be soon refuted. If I am or have been corrupting the youth, those of them who are now grown up and have become sensible that I gave them bad advice in the days of their youth should come forward as accusers, and take their revenge; or if they do not like to come themselves, some of their relatives, fathers, brothers, or other kinsmen, should say what evil their families have suffered at my hands. Now is their time. Many of them I see in the court. There is Crito, who is of the same age and of the same deme with myself, and there is Critobulus his son, whom I also see. Then again there is Lysanias of Sphettus, who is the father of Aeschines—he is present; and also there is Antiphon of Cephisus, who is the father of Epigenes; and there are the brothers of several who have associated with me. There is Nicostratus the son of Theosdotides, and the brother of Theodotus (now Theodotus himself is dead, and therefore he, at any rate, will not seek to stop him); and there is Paralus the son of Demodocus, who had a brother Theages; and Adeimantus the son of Ariston, whose brother Plato is present; and Aeantodorus, who is the brother of Apollodorus, whom I also see. I might mention a great many others, some of whom Meletus should have produced as witnesses in the course of his speech; and let him still produce them, if he has forgotten—I will make way for him. And let him say, if he has any testimony of the sort which he can produce. Nay, Athenians, the very opposite is the truth. For all these are ready to witness on behalf of the corrupter, of the injurer of their kindred, as Meletus and Anytus call me; not the corrupted youth only—there might have been a motive for that—but their uncorrupted elder relatives. Why should they too support me with their testimony? Why, indeed, except for the sake of truth and justice, and because they know that I am speaking the truth, and that Meletus is a liar.

Well, Athenians, this and the like of this is all the defence which I have to offer. Yet a word more. Perhaps there may be some one who is offended at me, when he calls to mind how he himself on a similar, or even a less serious occasion, prayed and entreated the judges with many tears, and how he produced his children in court, which was a moving spectacle, together with a host of relations and friends; whereas I, who am probably in danger of my life, will do none of these things. The contrast may occur to his mind, and he may be set against me, and vote in anger because he is displeased at me on this account. Now if there be such a person among you,—mind, I do not say that there is,—to him I may fairly reply: My friend, I am a man, and like other men, a creature of flesh and blood, and not "of wood or stone," as Homer says; and I have a family, yes, and sons, O Athenians, three in number, one almost a man, and two others who are still young; and yet I will not bring any of them hither in order to petition you for an acquittal. And why not? Not from any self-assertion or want of respect for you. Whether I am or am not afraid of death is another question, of which I will not now speak. But, having regard to public opinion, I feel that such conduct would be discreditable to myself, and to you, and to the whole state. One who has reached my years, and who has a name for wisdom, ought not to demean himself. Whether this opinion of me be deserved or not, at any rate the world has decided that Socrates is in some way superior to other men. And if those among you who are said to be superior in wisdom and courage, and any other virtue, demean themselves in this way, how shameful is their conduct! I have seen men of reputation, when they have been condemned, behaving in the strangest manner: they seemed to fancy that they were going to suffer something dreadful if they died, and that they could be immortal if you only allowed them to live; and I think that such are a dishonour to the state, and that any stranger coming in would have said of them that the most eminent men of Athens, to whom the Athenians themselves give honour and command, are no better than women. And I say that these things ought not to be done by those of us who have a reputation; and if they are done, you ought not to permit them; you ought rather to show that you are far more disposed to condemn the man who gets up a doleful scene and makes the city ridiculous, than him who holds his peace.

But, setting aside the question of public opinion, there seems to be something wrong in asking a favour of a judge, and thus procuring an acquittal, instead of informing and convincing him. For his duty is, not to make a present of justice, but to give judgment; and he has sworn that he will judge according to the laws, and not according to his own good pleasure; and we ought not to encourage you, nor should you allow yourselves to be encouraged, in this habit of perjury—there can be no piety in that. Do not then require me to do what I consider dishonourable and impious and wrong, especially now, when I am being tried for impiety on the indictment of Meletus. For if, O men of Athens, by force of persuasion and entreaty I could overpower your oaths, then I should be teaching you to believe that there are no gods, and in defending should simply convict myself of the charge of not believing in them. But that is not so—far otherwise. For I do believe that there are gods, and in a sense higher than that in which any of my accusers believe in them. And to you and to God I commit my cause, to be determined by you as is best for you and me.

There are many reasons why I am not grieved, O men of Athens, at the vote of condemnation. I expected it, and am only surprised that the votes are so nearly equal; for I had thought that the majority against me would have been far larger; but now, had thirty votes gone over to the other side, I should have been acquitted. And I may say, I think, that I have escaped Meletus. I may say more; for without the assistance of Anytus and Lycon, any one may see that he would not have had a fifth part of the votes, as the law requires, in which case he would have incurred a fine of a thousand drachmae.

And so he proposes death as the penalty. And what shall I propose on my part, O men of Athens? Clearly that which is my due. And what is my due? What return shall be made to the man who has never had the wit to be idle during his whole life; but has been careless of what the many care for—wealth, and family interests, and military offices, and speaking in the assembly, and magistracies, and plots, and parties. Reflecting that I was really too honest a man to be a politician and live, I did not go where I could do no good to you or to myself; but where I could do the greatest good privately to every one of you, thither I went, and sought to persuade every man among you that he must look to himself, and seek virtue and wisdom before he looks to his private interests, and look to the state before he looks to the interests of the state; and that this should be the order which he observes in all his actions. What shall be done to such an one? Doubtless some good thing, O men of Athens, if he has his reward; and the good should be of a kind suitable to him. What would be a reward suitable to a poor man who is your benefactor, and who desires leisure that he may instruct you? There can be no reward so fitting as maintenance in the Prytaneum, O men of Athens, a reward which he deserves far more than the citizen who has won the prize at Olympia in the horse or chariot race, whether the chariots were drawn by two horses or by many. For I am in want, and he has enough; and he only gives you the appearance of happiness, and I give you the reality. And if I am to estimate the penalty fairly, I should say that maintenance in the Prytaneum is the just return.

Perhaps you think that I am braving you in what I am saying now, as in what I said before about the tears and prayers. But this is not so. I speak rather because I am convinced that I never intentionally wronged any one, although I cannot convince you—the time has been too short; if there were a law at Athens, as there is in other cities, that a capital cause should not be decided in one day, then I believe that I should have convinced you. But I cannot in a moment refute great slanders; and, as I am convinced that I never wronged another, I will assuredly not wrong myself. I will not say of myself that I deserve any evil, or propose any penalty. Why should I? because I am afraid of the penalty of death which Meletus proposes? When I do not know whether death is a good or an evil, why should I propose a penalty which would certainly be an evil? Shall I say imprisonment? And why should I live in prison, and be the slave of the magistrates of the year—of the Eleven? Or shall the penalty be a fine, and imprisonment until the fine is paid? There is the same objection. I should have to lie in prison, for money I have none, and cannot pay. And if I say exile (and this may possibly be the penalty which you will affix), I must indeed be blinded by the love of life, if I am so irrational as to expect that when you, who are my own citizens, cannot endure my discourses and words, and have found them so grievous and odious that you will have no more of them, others are likely to endure me. No indeed, men of Athens, that is not very likely. And what a life should I lead, at my age, wandering from city to city, ever changing my place of exile, and always being driven out! For I am quite sure that wherever I go, there, as here, the young men will flock to me; and if I drive them away, their elders will drive me out at their request; and if I let them come, their fathers and friends will drive me out for their sakes.

Some one will say: Yes, Socrates, but cannot you hold your tongue, and then you may go into a foreign city, and no one will interfere with you? Now I have great difficulty in making you understand my answer to this. For if I tell you that to do as you say would be a disobedience to the God, and therefore that I cannot hold my tongue, you will not believe that I am serious; and if I say again that daily to discourse about virtue, and of those other things about which you hear me examining myself and others, is the greatest good of man, and that the unexamined life is not worth living, you are still less likely to believe me. Yet I say what is true, although a thing of which it is hard for me to persuade you. Also, I have never been accustomed to think that I deserve to suffer any harm. Had I money I might have estimated the offence at what I was able to pay, and not have been much the worse. But I have none, and therefore I must ask you to proportion the fine to my means. Well, perhaps I could afford a mina, and therefore I propose that penalty: Plato, Crito, Critobulus, and Apollodorus, my friends here, bid me say thirty minæ, and they will be the sureties. Let thirty minæ be the penalty; for which sum they will be ample security to you.

Not much time will be gained, O Athenians, in return for the evil name which you will get from the detractors of the city, who will say that you killed Socrates, a wise man; for they will call me wise, even although I am not wise, when they want to reproach you. If you had waited a little while, your desire would have been fulfilled in the course of nature. For I am far advanced in years, as you may perceive, and not far from death. I am speaking now not to all of you, but only to those who have condemned me to death. And I have another thing to say to them: you think that I was convicted because I had no words of the sort which would have procured my acquittal—I mean, if I had thought fit to leave nothing undone or unsaid. Not so; the deficiency which led to my conviction was not of words—certainly not. But I had not the boldness or impudence or inclination to address you as you would have liked me to do, weeping and wailing and lamenting, and saying and doing many things which you have been accustomed to hear from others, and which, as I maintain, are unworthy of me. I thought at the time that I ought not to do anything common or mean when in danger: nor do I now repent of the style of my defence; I would rather die having spoken after my manner, than speak in your manner and live. For neither in war nor yet at law ought I or any man to use every way of escaping death. Often in battle there can be no doubt that if a man will throw away his

arms, and fall on his knees before his pursuers, he may escape death; and in other dangers there are other ways of escaping death, if a man is willing to say and do anything. The difficulty, my friends, is not to avoid death, but to avoid unrighteousness; for that runs faster than death. I am old and move slowly, and the slower runner has overtaken me, and my accusers are keen and quick, and the faster runner, who is unrighteousness, has overtaken them. And now I depart hence condemned by you to suffer the penalty of death,—they too go their ways condemned by the truth to suffer the penalty of villainy and wrong; and I must abide by my award—let them abide by theirs. I suppose that these things may be regarded as fated,—and I think that they are well.

And now, O men who have condemned me, I would fain prophesy to you; for I am about to die, and in the hour of death men are gifted with prophetic power. And I prophesy to you who are my murderers, that immediately after my departure punishment far heavier than you have inflicted on me will surely await you. Me you have killed because you wanted to escape the accuser, and not to give an account of your lives. But that will not be as you suppose: far otherwise. For I say that there will be more accusers of you than there are now; accusers whom hitherto I have restrained: and as they are younger they will be more inconsiderate with you, and you will be more offended at them. If you think that by killing men you can prevent some one from censuring your evil lives, you are mistaken; that is not a way of escape which is either possible or honourable; the easiest and the noblest way is not to be disabling others, but to be improving yourselves. This is the prophecy which I utter before my departure to the judges who have condemned me.

Friends, who would have acquitted me, I would like also to talk with you about the thing which has come to pass, while the magistrates are busy, and before I go to the place at which I must die. Stay then a little, for we may as well talk with one another while there is time. You are my friends, and I should like to show you the meaning of this event which has happened to me. O my judges—for you I may truly call judges—I should like to tell you of a wonderful circumstance. Hitherto the divine faculty of which the internal oracle is the source has constantly been in the habit of opposing me even about trifles, if I was going to make a slip or error in any matter; and now as you see there has come upon me that which may be thought, and is generally believed to be, the last and worst evil. But the oracle made no sign of opposition, either when I was leaving my house in the morning, or when I was on my way to the court, or while I was speaking, at anything which I was going to say; and yet I have often been stopped in the middle of a speech, but now in nothing I either said or did touching the matter in hand has the oracle opposed me. What do I take to be the explanation of this silence? I will tell you. It is an intimation that what has happened to me is a good, and that those of us who think that death is an evil are in error. For the customary sign would surely have opposed me had I been going to evil and not to good.

Let us reflect in another way, and we shall see that there is great reason to hope that death is a good; for one of two things—either death is a state of nothingness and utter unconsciousness, or, as men say, there is a change and migration of the soul from this world to another. Now if you suppose that there is no consciousness, but a sleep like the sleep of him who is undisturbed even by dreams, death will be an unspeakable gain. For if a person were to select the night in which his sleep was undisturbed even by dreams, and were to compare with this the other days and nights of his life, and then were to tell us how many days and nights he had passed in the course of his life better and more pleasantly than this one, I think that any man, I will not say a private man, but even the great king will not find many such days or nights, when compared with the others. Now if death be of such a nature, I say that to die is gain; for eternity is then only a single night. But if death is the journey to another place, and there, as men say, all the dead abide, what good, O my friends and judges, can be greater than this? If indeed when the pilgrim arrives in the world below, he is delivered from the professors of justice in this world, and finds the true judges who are said to give judgment there, Minos and Rhadamanthus and Aeacus and Triptolemus, and other sons of God who were righteous in their own life, that pilgrimage will be worth making. What would not a man give if he might converse with Orpheus and Musaeus and Hesiod and Homer? Nay, if this be true, let me die again and again. I myself, too, shall have a wonderful interest in there meeting and conversing with Palamedes, and Ajax the son of Telamon, and any other ancient hero who has suffered death through an unjust judgment; and there will be no small pleasure, as I think, in comparing my own sufferings with theirs. Above all, I shall then be able to continue my search into true and false knowledge; as in this world, so also in the next; and I shall find out who is wise, and who pretends to be wise, and is not. What would not a man give, O judges, to be able to examine the leader of the great Trojan expedition; or Odysseus or Sisyphus, or numberless others, men and women too! What infinite delight would there be in conversing with them and asking them questions! In another world they do not put a man to death for asking questions: assuredly not. For besides being happier than we are, they will be immortal, if what is said is true.

Wherefore, O judges, be of good cheer about death, and know of a certainty, that no evil can happen to a good man, either in life or after death. He and his are not neglected by the gods; nor has my own approaching end happened by mere chance. But I see clearly that the time had arrived when it was better for me to die and be released from trouble; wherefore the oracle gave no sign. For which reason, also, I am not angry with my condemners, or with my accusers; they have done me no harm, although they did not mean to do me any good; and for this I may gently blame them.

Still I have a favour to ask of them. When my sons are grown up, I would ask you, O my friends, to punish them; and I would have you trouble them, as I have troubled you, if they seem to care about riches, or anything, more than about virtue; or if they pretend to be something when they are really nothing,—then reprove them, as I have reproved you, for not caring about that for which they ought to care, and thinking that they are something when they are really nothing. And if you do this, both I and my sons will have received justice at your hands.

The hour of departure has arrived, and we go our ways—I to die, and you to live. Which is better God only knows.

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Appendix U

Scott v. Sandford, Plessy v. Ferguson, Brown et al. v. Board of Education of Topeka, Kansas and *Griswold et al. v. Connecticut*

Dred Scott v. Sandford (1857) Full Transcript at archives.gov/milestone-documents/dred-scott-v-sandford

Citation: Judgment in the U.S. Supreme Court Case *Dred Scott* v. *John F. A. Sandford*; 3/6/1857; *Dred Scott, Plaintiff in Error*, v. *John F. A. Sandford*; Appellate Jurisdiction Case Files, 1792 - 2010; Records of the Supreme Court of the United States, Record Group 267; National Archives Building, Washington, DC.

In this ruling, the U.S. Supreme Court stated that enslaved people were not citizens of the United States and, therefore, could not expect any protection from the federal government or the courts. The opinion also stated that Congress had no authority to ban slavery from a Federal territory.

In 1846, an enslaved Black man named Dred Scott and his wife, Harriet, sued for their freedom in St. Louis Circuit Court. They claimed that they were free due to their residence in a free territory where slavery was prohibited.

The odds were in their favor. They had lived with their enslaver, an army surgeon, at Fort Snelling, then in the free Territory of Wisconsin. The Scotts' freedom could be established on the grounds that they had been held in bondage for extended periods in a free territory and were then returned to a slave state. Courts had ruled this way in the past.

However, what appeared to be a straightforward lawsuit between two private parties became an 11-year legal struggle that culminated in one of the most notorious decisions ever issued by the United States Supreme Court. Scott lost his case, which worked its way through the Missouri state courts; he then filed a new federal suit which ultimately reached the Supreme Court.

On its way to the Supreme Court, the *Dred Scott* case grew in scope and significance as slavery became the single most explosive issue in American politics. By the time the case reached the high court, it had come to have enormous political implications for the entire nation.

On March 6, 1857, Chief Justice Roger B. Taney read the majority opinion of the Court, which stated that enslaved people were not citizens of the United States and, therefore, could not expect any protection from the federal government or the courts. The opinion also stated that Congress had no authority to ban slavery from a federal territory. This decision moved the nation a step closer to the Civil War.

The decision of *Scott v. Sandford*, considered by many legal scholars to be the worst ever rendered by the Supreme Court, was overturned by the 13th and 14th amendments to the Constitution, which abolished slavery and declared all persons born in the United States to be citizens of the United States.

Supreme Court of the United States,
No. 210, October Term, 1895.

Homer Adolph Plessy,
Plaintiff in Error,
vs.
J.H. Ferguson, Judge of Section "A"
Criminal District Court for the Parish of Orleans

In Error to the Supreme Court of the State of Louisiana

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Louisiana, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgement of the said Supreme Court, in this cause, be and the same is hereby, affirmed with costs.

per Mr. Justice Brown,
May 18, 1896.

Dissenting:
Mr. Justice Harlan

(Transcription of Opinion of the Supreme Court of the United States in *Plessy v. Ferguson*.)

U.S. Supreme Court
PLESSY v. FERGUSON, 163 U.S. 537 (1896)

163 U.S. 537
PLESSY
v.
FERGUSON.
No. 210.

May 18, 1896.
This was a petition for writs of prohibition and certiorari originally filed in the supreme court of the state by Plessy, the plaintiff in error, against the Hon. John H. Ferguson, judge of the criminal district court for the parish of Orleans, and setting forth, in substance, the following facts:

That petitioner was a citizen of the United States and a resident of the state of Louisiana, of mixed descent, in the proportion of seven-eighths Caucasian and one-eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every recognition, right, privilege, and immunity secured to the citizens of the United States of the white race by its constitution and laws; that on June 7, 1892, he engaged and paid for a first-class passage on the East Louisiana Railway, from New Orleans to Covington, in the same state, and thereupon entered a passenger train, and took possession of a vacant seat in a coach where passengers of the white race were accommodated; that such railroad company was incorporated by the laws of Louisiana as a common carrier, and was not authorized to distinguish between citizens according to their race, but, notwithstanding this, petitioner was required by the conductor, under penalty of ejection from said train and imprisonment, to vacate said coach, and occupy another seat, in a coach assigned by said company for persons not of the white race, and for no other reason than that petitioner was of the colored race; that, upon petitioner's refusal to comply with such order, he was, with the aid of a police officer, forcibly ejected from said coach, and hurried off to, and imprisoned in, the parish jail of New Orleans, and there held to answer a charge made by such officer to the effect that he was guilty of having criminally violated an act of the general assembly of the state, approved July 10, 1890, in such case made and provided.

The petitioner was subsequently brought before the recorder of the city for preliminary examination, and committed for trial to the criminal district court for the parish of Orleans, where an information was filed against him in the matter above set forth, for a violation of the above act, which act the petitioner affirmed to be null and void, because in conflict with the constitution of the United States; that petitioner interposed a plea to such information, based upon the unconstitutionality of the act of the general assembly, to which the district attorney, on behalf of the state, filed a demurrer; that, upon issue being joined upon such demurrer and plea, the court sustained the demurrer, overruled the plea, and ordered petitioner to plead over to the facts set forth in the information, and that, unless the judge of the said court be enjoined by a writ of prohibition from further proceeding in such case, the court will proceed to fine and sentence petitioner to imprisonment, and thus deprive him of his constitutional rights set forth in his said plea, notwithstanding the unconstitutionality of the act under which he was being prosecuted; that no appeal lay from such sentence, and petitioner was without relief or remedy except by writs of prohibition and certiorari. Copies of the information and other proceedings in the criminal district court were annexed to the petition as an exhibit.

Upon the filing of this petition, an order was issued upon the respondent to show cause why a writ of prohibition should not issue, and be made perpetual, and a further order that the record of the proceedings had in the criminal cause be certified and transmitted to the supreme court.

To this order the respondent made answer, transmitting a certified copy of the proceedings, asserting the constitutionality of the law, and averring that, instead of pleading or admitting that he belonged to the colored race, the said Plessy declined and refused, either by pleading or otherwise, to admit that he was in any sense or in any proportion a colored man.

The case coming on for hearing before the supreme court, that court was of opinion that the law under which the prosecution was had was constitutional and denied the relief prayed for by the petitioner (Ex parte Plessy, 45 La. Ann. 80, 11 South. 948); whereupon petitioner prayed for a writ of error from this court, which was allowed by the chief justice of the supreme court of Louisiana.

Mr. Justice Harlan dissenting.

A. W. Tourgee and S. F. Phillips, for plaintiff in error.

Alex. Porter Morse, for defendant in error.

Mr. Justice BROWN, after stating the facts in the foregoing language, delivered the opinion of the court.

This case turns upon the constitutionality of an act of the general assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. Acts 1890, No. 111, p. 152.

The first section of the statute enacts 'that all railway companies carrying passengers in their coaches in this state, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: provided, that this section shall not be construed to apply to street railroads. No person or persons shall be permitted to occupy seats in coaches, other than the ones assigned to them, on account of the race they belong to.'

By the second section it was enacted 'that the officers of such passenger trains shall have power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passenger belongs; any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison, and any officer of any railroad insisting on assigning a passenger to a coach or compartment other than the one set aside for the race to which said passenger belongs, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison; and should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this state.'

The third section provides penalties for the refusal or neglect of the officers, directors, conductors, and employees of railway companies to comply with the act, with a proviso that 'nothing in this act shall be construed as applying to nurses attending children of the other race.' The fourth section is immaterial.

The information filed in the criminal district court charged, in substance, that Plessy, being a passenger between two stations within the state of Louisiana, was assigned by officers of the company to the coach used for the race to which he belonged, but he insisted upon going into a coach used by the race to which he did not belong. Neither in the information nor plea was his particular race or color averred.

The petition for the writ of prohibition averred that petitioner was seven-eights Caucasian and one-eighth African blood; that the mixture of colored blood was not discernible in him; and that he was entitled to every right, privilege, and immunity secured to citizens of the United States of the white race; and that, upon such theory, he took possession of a vacant seat in a coach where passengers of the white race were accommodated, and was ordered by the conductor to vacate said coach, and take a seat in another, assigned to persons of the colored race, and, having refused to comply with such demand, he was forcibly ejected, with the aid of a police officer, and imprisoned in the parish jail to answer a charge of having violated the above act.

The constitutionality of this act is attacked upon the ground that it conflicts both with the thirteenth amendment of the constitution, abolishing slavery, and the fourteenth amendment, which prohibits certain restrictive legislation on the part of the states.

1. That it does not conflict with the thirteenth amendment, which abolished slavery and involuntary servitude, except a punishment for crime, is too clear for argument. Slavery implies involuntary servitude,-a state of bondage; the ownership of mankind as a chattel, or, at least, the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. This amendment was said in the Slaughter-House Cases, 16 Wall. 36, to have been intended primarily to abolish slavery, as it had been previously known in this country, and that it equally forbade Mexican peonage or the Chinese coolie trade, when they amounted to slavery or involuntary servitude, and that the use of the word 'servitude' was intended to prohibit the use of all forms of involuntary slavery, of whatever class or name. It was intimated, however, in that case, that this amendment was regarded by the statesmen of that day as insufficient to protect the colored race from certain laws which had been enacted in the Southern states, imposing upon the colored race onerous disabilities and burdens, and curtailing their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value; and that the fourteenth amendment was devised to meet this exigency.

So, too, in the Civil Rights Cases, 109 U.S. 3, 3 Sup. Ct. 18, it was said that the act of a mere individual, the owner of an inn, a public conveyance or place of amusement, refusing accommodations to colored people, cannot be justly regarded as imposing any badge of

slavery or servitude upon the applicant, but only as involving an ordinary civil injury, properly cognizable by the laws of the state, and presumably subject to redress by those laws until the contrary appears. 'It would be running the slavery question into the ground,' said Mr. Justice Bradley, 'to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theater, or deal with in other matters of intercourse or business.'

A statute which implies merely a legal distinction between the white and colored races-a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color-has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. Indeed, we do not understand that the thirteenth amendment is strenuously relied upon by the plaintiff in error in this connection.

2. By the fourteenth amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the state wherein they reside; and the states are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty, or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws.

The proper construction of this amendment was first called to the attention of this court in the Slaughter-House Cases, 16 Wall. 36, which involved, however, not a question of race, but one of exclusive privileges. The case did not call for any expression of opinion as to the exact rights it was intended to secure to the colored race, but it was said generally that its main purpose was to establish the citizenship of the negro, to give definitions of citizenship of the United States and of the states, and to protect from the hostile legislation of the states the privileges and immunities of citizens of the United States, as distinguished from those of citizens of the states. The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguish d from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

One of the earliest of these cases is that of Roberts v. City of Boston, 5 Cush. 198, in which the supreme judicial court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in separate schools established exclusively for them, and to prohibit their attendance upon the other schools. 'The great principle,' said Chief Justice Shaw, 'advanced by the learned and eloquent advocate for the plaintiff [Mr. Charles Sumner], is that, by the constitution and laws of Massachusetts, all persons, without distinction of age or sex, birth or color, origin or condition, are equal before the law. ... But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security.' It was held that the powers of the committee extended to the establish- ment of separate schools for children of different ages, sexes and colors, and that they might also establish special schools for poor and neglected children, who have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools. Similar laws have been enacted by congress under its general power of legislation over the District of Columbia (sections 281- 283, 310, 319, Rev. St. D. C.), as well as by the legislatures of many of the states, and have been generally, if not uniformly, sustained by the courts. State v. McCann, 21 Ohio St. 210; Lehew v. Brummell (Mo. Sup.) 15 S. W. 765; Ward v. Flood, 48 Cal. 36; Bertonneau v. Directors of City Schools, 3 Woods, 177, Fed. Cas. No. 1,361; People v. Gallagher, 93 N. Y. 438; Cory v. Carter, 48 Ind. 337; Dawson v. Lee, 83 Ky. 49.

Laws forbidding the intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the state. State v. Gibson, 36 Ind. 389.

The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theaters, and railway carriages has been frequently drawn by this court. Thus, in Strauder v. West Virginia, 100 U.S. 303, it was held that a law of West Virginia limiting to white male persons 21 years of age, and citizens of the state, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race, and was a step towards reducing them to a condition of servility. Indeed, the right of a colored man that, in the selection of jurors to pass upon his life, liberty, and property, there shall be no exclusion of his race, and no discrimination against them because of color, has been asserted in a number of cases. Virginia v. Rivers, 100 U.S. 313 ; Neal v. Delaware, 103 U.S. 370 ; ush v. Com., 107 U.S. 110 , 1 Sup. Ct. 625; Gibson v. Mississippi, 162 U.S. 565 , 16 Sup. Ct. 904. So, where the laws of a particular locality or the charter of a particular railway corporation has provided that no person shall be excluded from the cars on account of color, we have held that this meant that persons of color should travel in the same car as white ones, and that the enactment was not satisfied by the company providing cars assigned exclusively to people of color, though they were as good as those which they assigned exclusively to white persons. Railroad Co. v. Brown, 17 Wall. 445.

Upon the other hand, where a statute of Louisiana required those engaged in the transportation of passengers among the states to give to all persons traveling within that state, upon vessels employed in that business, equal rights and privileges in all parts of the vessel, without distinction on account of race or color, and subjected to an action for damages the owner of such a vessel who excluded colored passengers on account of their color from the cabin set aside by him for the use of whites, it was held to be, so far as it applied to interstate commerce, unconstitutional and void. Hall v. De Cuir, 95 U.S. 485 . The court in this case, however, expressly disclaimed that it had anything whatever to do with the statute as a regulation of internal commerce, or affecting anything else than commerce among the states.

In the Civil Rights Cases, 109 U.S. 3 , 3 Sup. Ct. 18, it was held that an act of congress entitling all persons within the jurisdiction of the United States to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theaters, and other places of public amusement, and made applicable to citizens of every race and color, regardless of any previous condition of servitude, was unconstitutional and void, upon the ground that the fourteenth amendment was prohibitory upon the states only, and the legislation authorized to be adopted by congress for enforcing it was not direct legislation on matters respecting which the states were prohibited from making or enforcing certain laws, or doing certain acts, but was corrective legislation, such as might be necessary or proper for counter-acting and redressing the effect of such laws or acts. In delivering the opinion of the court, Mr. Justice Bradley observed that the fourteenth amendment 'does not invest congress with power to legislate upon subjects that are within the domain of state legislation, but to provide modes of relief against state legislation or state action of the kind referred to. It does not authorize congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of state laws, and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges, and by power given to congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed state laws or state proceedings, and be directed to the correction of their operation and effect.'

Much nearer, and, indeed, almost directly in point, is the case of the Louisville, N. O. & T. Ry. Co. v. State, 133 U.S. 587 , 10 Sup. Ct. 348, wherein the railway company was indicted for a violation of a statute of Mississippi, enacting that all railroads carrying passengers should provide equal, but separate, accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition, so as to secure separate accommodations. The case was presented in a different aspe t from the one under consideration, inasmuch as it was an indictment against the railway company for failing to provide the separate accommodations, but the question considered was the constitutionality of the law. In that case, the supreme court of Mississippi (66 Miss. 662, 6 South. 203) had held that the statute applied solely to commerce within the state, and, that being the construction of the state statute by its highest court, was accepted as conclusive. 'If it be a matter,' said the court (page 591, 133 U. S., and page 348, 10 Sup. Ct.), 'respecting commerce wholly within a state, and not interfering with commerce between the states, then, obviously, there is no violation of the commerce clause of the federal constitution. ... No question arises under this section as to the power of the state to separate in different compartments interstate pas- sengers, or affect, in any manner, the privileges and rights of such passengers. All that we can consider is whether the state has the power to require that railroad trains within her limits shall have separate accommodations for the two races. That affecting only commerce within the state is no invasion of the power given to congress by the commerce clause.'

A like course of reasoning applies to the case under consideration, since the supreme court of Louisiana, in the case of State v. Judge, 44 La. Ann. 770, 11 South. 74, held that the statute in question did not apply to interstate passengers, but was confined in its application to passengers traveling exclusively within the borders of the state. The case was decided largely upon the authority of Louisville, N. O. & T. Ry. Co. v. State, 66 Miss. 662, 6 South, 203, and affirmed by this court in 133 U.S. 587 , 10 Sup. Ct. 348. In the present case no question of interference with interstate commerce can possibly arise, since the East Louisiana Railway appears to have been purely a local line, with both its termini within the state of Louisiana. Similar statutes for the separation of the two races upon public conveyances were held to be constitutional in Railroad v. Miles, 55 Pa. St. 209; Day v. Owen 5 Mich. 520; Railway Co. v. Williams, 55 Ill. 185; Railroad Co. v. Wells, 85 Tenn. 613; 4 S. W. 5; Railroad Co. v. Benson, 85 Tenn. 627, 4 S. W. 5; The Sue, 22 Fed. 843; Logwood v. Railroad Co., 23 Fed. 318; McGuinn v. Forbes, 37 Fed. 639; People v. King (N. Y. App.) 18 N. E. 245; Houck v. Railway Co., 38 Fed. 226; Heard v. Railroad Co., 3 Inter St. Commerce Com. R. 111, 1 Inter St. Commerce Com. R. 428.

While we think the enforced separation of the races, as applied to the internal commerce of the state, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws, within the meaning of the fourteenth amendment, we are not prepared to say that the conductor, in assigning passengers to the coaches according to their race, does not act at his peril, or that the provision of the second section of the act that denies to the passenger compensation in damages for a refusal to receive him into the coach in which he properly belongs is a valid exercise of the legislative power. Indeed, we understand it to be conceded by the state's attorney that such part of the act as exempts from liability the railway company and its officers is unconstitutional. The power to assign to a particular coach obviously implies the power to determine to which race the passenger belongs, as well as the power to determine who, under the laws of the particular state, is to be deemed a white, and who a colored, person. This question, though indicated in the brief of the plaintiff in error, does not properly arise

upon the record in this case, since the only issue made is as to the unconstitutionality of the act, so far as it requires the railway to provide separate accommodations, and the conductor to assign passengers according to their race.

It is claimed by the plaintiff in error that, in an mixed community, the reputation of belonging to the dominant race, in this instance the white race, is 'property,' in the same sense that a right of action or of inheritance is property. Conceding this to be so, for the purposes of this case, we are unable to see how this statute deprives him of, or in any way affects his right to, such property. If he be a white man, and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so-called 'property.' Upon the other hand, if he be a colored man, and be so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man.

In this connection, it is also suggested by the learned counsel for the plaintiff in error that the same argument that will justify the state legislature in requiring railways to provide separate accommodations for the two races will also authorize them to require separate cars to be provided for people whose hair is of a certain color, or who are aliens, or who belong to certain nationalities, or to enact laws requiring colored people to walk upon one side of the street, and white people upon the other, or requiring white men's houses to be painted white, and colored men's black, or their vehicles or business signs to be of different colors, upon the theory that one side of the street is as good as the other, or that a house or vehicle of one color is as good as one of another color. The reply to all this is that every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class. Thus, in Yick Wo v. Hopkins, 118 U.S. 356 , 6 Sup. Ct. 1064, it was held by this court that a municipal ordinance of the city of San Francisco, to regulate the carrying on of public laundries within the limits of the municipality, violated the provisions of the constitution of the United States, if it conferred upon the municipal authorities arbitrary power, at their own will, and without regard to discretion, in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying or the propriety of the places selected for the carrying on of the business. It was held to be a covert attempt on the part of the municipality to make an arbitrary and unjust discrimination against the Chinese race. While this was the case of a municipal ordinance, a like principle has been held to apply to acts of a state legislature passed in the exercise of the police power. Railroad Co. v. Husen, 95 U.S. 465 ; Louisville & N. R. Co. v. Kentucky, 161 U.S. 677 , 16 Sup. Ct. 714, and cases cited on page 700, 161 U. S., and page 714, 16 Sup. Ct.; Daggett v. Hudson, 43 Ohio St. 548, 3 N. E. 538; Capen v. Foster, 12 Pick. 485; State v. Baker, 38 Wis. 71; Monroe v. Collins, 17 Ohio St. 665; Hulseman v. Rems, 41 Pa. St. 396; Osman v. Riley, 15 Cal. 48.

So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the fourteenth amendment than the acts of congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. As was said by the court of appeals of New York in People v. Gallagher, 93 N. Y. 438, 448: 'This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed.' Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane.

It is true that the question of the proportion of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion in the different states; some holding that any visible admixture of black blood stamps the person as belonging to the colored race (State v. Chavers, 5 Jones [N. C.] 1); others, that it depends upon the preponderance of blood (Gray v. State, 4 Ohio, 354; Monroe v. Collins, 17 Ohio St. 665); and still others, that the predominance of white blood must only be in the proportion of three-fourths (People v. Dean, 14 Mich. 406; Jones v. Com., 80 Va. 544). But these are questions to be determined under the laws of each state, and are not properly put in issue in this case. Under the allegations of his

petition, it may undoubtedly become a question of importance whether, under the laws of Louisiana, the petitioner belongs to the white or colored race.

The judgment of the court below is therefore affirmed.

Dissenting Opinion of Mr. Justice Harlan available at archives.gov/milestone-documents/Plessy-v-ferguson

SUPREME COURT OF THE UNITED STATES

Brown v. Board of Education, 347 U.S. 483 (1954) (USSC+)

Argued December 9, 1952

Reargued December 8, 1953

Decided May 17, 1954

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS*

Syllabus

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment -- even though the physical facilities and other "tangible" factors of white and Negro schools may be equal.

(a) The history of the Fourteenth Amendment is inconclusive as to its intended effect on public education.

(b) The question presented in these cases must be determined not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation.

(c) Where a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms.

(d) Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal.

(e) The "separate but equal" doctrine adopted in *Plessy* v. *Ferguson*, 163 U.S. 537, has no place in the field of public education.

(f) The cases are restored to the docket for further argument on specified questions relating to the forms of the decrees.

Opinion

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.
These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in Plessy v. Ferguson, 163 U.S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then-existing practices in racial segregation, and

the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history with respect to segregated schools is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences, as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states, and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy* v. *Ferguson*, supra, involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. In *Cumming* v. *County Board of Education*, 175 U.S. 528, and *Gong Lum* v. *Rice*, 275 U.S. 78, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337; *Sipuel* v. *Oklahoma*, 332 U.S. 631; *Sweatt* v. Painter, 339 U.S. 629; *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt* v. *Painter*, supra, the Court expressly reserved decision on the question whether *Plessy* v. *Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt* v. *Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when *Plessy* v. *Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt* v. *Painter*, supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin* v. *Oklahoma State Regents*, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

Whatever may have been the extent of psychological knowledge at the time of *Plessy* v. *Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy* v. *Ferguson* contrary to this finding is rejected.

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question -- the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

It is so ordered.

* Together with No. 2, *Briggs et al.* v. *Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina, argued December 9-10, 1952, reargued December 7-8, 1953; No. 4, *Davis et al.* v. *County School Board of Prince Edward County, Virginia, et al.* , on appeal from the United States District Court for the Eastern District of Virginia, argued December 10, 1952, reargued December 7-8, 1953, and No. 10, *Gebhart et al.* v. *Belton et al.*, on certiorari to the Supreme Court of Delaware, argued December 11, 1952, reargued December 9, 1953.

GRISWOLD v. CONNECTICUT. Syllabus. *GRISWOLD ET AL. V. CONNECTICUT. APPEAL FROM THE SUPREME COURT OF ERRORS OF CONNECTICUT*. No. 496. Argued March 29-30,' 1965.-Decided June 7, 1965.

Appellants, the Executive Director of the Planned Parenthood League of Connecticut, and its medical director, a licensed physician, were convicted as accessories for giving married persons information and medical advice on how to prevent conception and, following examination, prescribing a contraceptive device or material for the wife'9 use. A Connecticut statute makes it a crime for any person to use any drug or article to prevent conception. Appellants claimed that the accessory statute as applied violated the Fourteenth Amendment. An intermediate appellate court and the State's highest court affirmed the judgment. Held: 1. Appellants have standing to assert the constitutional rights of the married people. Tileston v. Ullman, 318 U. S. 44, distinguished. P. 481. 2. The Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights. Pp. 481-486. 151 Conn. 544, 200 A. 2d 479, reversed. Thomas I. Emerson argued the cause for appellants. With him on the briefs was Catherine G. Roraback. Joseph B. Clark argued the cause for appellee. With him on the brief was Julius Maretz. Briefs of amici curiae, urging reversal, were filed by Whitney North Seymour and Eleanor M. Fox for Dr. John M. Adams et al.; by Morris L. Ernst, Harriet F. Pilpel and Nancy F. Wechsler for the Planned Parenthood Federation of America, Inc.; by Alfred L. Scanlon for the Catholic Council on Civil Liberties, and by Rhoda H. Karpatkin, Melvin L. Wulf and Jerome E. Caplan for the American Civil Liberties Union et al. OCTOBER TERM, 1964. Opinion of the Court. 381 U. S. MR. JUSTICE DOUGLAS delivered the opinion of the Court. Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Buxton is a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League at its Center in New Haven-a center open and operating from November 1 to November 10, 1961, when appellants were arrested. They gave information, instruction, and medical advice to married persons as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free. The statutes whose constitutionality is involved in this appeal are §§ 53-32 and 54-196 of the General Statutes of Connecticut (1958 rev.). The former provides: "Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty 'dollars or imprisoned not less than sixty days nor more than one year or be

both fined and imprisoned." Section 54-196 provides: "Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender." The appellants were found guilty as accessories and fined $100 each, against the claim that the accessory statute as so applied'violated the Fourteenth Amendment. The Appellate Division of the Circuit Court affirmed. The Supreme Court of' Errors affirmed that judgment. 151 Conn. 544, 200 A. 2d 479. We noted probable jurisdiction. 379 U. S. 926.
GRISWOLD v. CONNECTICUT. 479 Opinion of the Court. We think that appellants have standing to raise the constitutional rights of the married people with whom they had a professional relationship. Tileston v. Ullman, 318 U. S. 44, is different, for there the plaintiff seeking to represent others asked for a declaratory judgment. In that situation we thought that the requirements of standing should be strict, lest the standards of "case or controversy" in Article III of the Constitution become blurred. Here those doubts are removed by reason of a criminal conviction for serving married couples in violation of an aiding-and-abetting statute. Certainly the accessory should have standing to assert that the offense which he is charged with assisting is not, or cannot constitutionally be, a crime. This case is more akin to Truax v. Raich, 239 U. S. 33, where an employee was permitted to assert the rights of his employer; to Pierce v. Society of Sisters, 268 U. S. 510, where the owners of private schools were entitled to assert the rights of potential pupils and their parents; and to Barrows v. Jackson, 346 U. S. 249, where a white defendant, party to a racially restrictive covenant, who was being sued for damages by the covenantors because she had conveyed her property to Negroes, was allowed to raise the issue that enforcement of the covenant violated the rights of prospective Negro purchasers to equal protection, although no Negro was a party to the suit. And see Meyer'v. Nebraska, 262 U. S. 390; Adler v. Board of Education, 342 U. S. 485; NAACP v. Alabama, 357 U. S. 449; NAACP v. Button, 371 U. S. 415. The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them. Coming to the merits, we are met with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment. Overtones of some arguments OCTOBER TERM, 1964. Opinion of the Court. 381 U. S. suggest that Lochner v. New York, 198 U. S. 45, should be our guide. But we decline that invitation as we did in West Coast Hotel Co. v. Parrish, 300 U. S. 379; Olsen v. Nebraska, 313 U. S. 236; Lincoln Union v. Northwestern Co., 335 U. S. 525; Williamson v. Lee Optical Co., 348 U. S. 483; Giboney v. Empire Storage Co., 336 U. S. 490. We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation. The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice-whether public or private or parochial-is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights. By Pierce v. Society of Sisters, supra, the right to edu- .cate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By Meyer v. Nebraska, supra, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech axid press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (Martin v. Struthers, 319 U. S. 1J1, 143) and freedom of inquiry, freedom of thought, and freedom to teach (see Wieman v. Updegraff, 344 U. S. 183, 195)-indeed the freedom of the entire university community. Sweezy v. New Hampshire, 354 U. S. 234, 249-250, 261-263; Barenblatt v. United States, 360 U. S. 109, 112; Baggett v. Bullitt, 377 U. S. 360, 369. Without GRISWOLD v. CONNECTICUT. 479 Opinion of the Court. those peripheral rights the specific rights would be less secure. And so we reaffirm the principle of the Pierce and the Meyer cases. In NAACP v. Alabama, 357 U. S. 449, 462, we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a periph- eral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid "as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association." Ibid. In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members. NAACP v. Button, 371 U. S. 415, 430-431. In Schware v. Board of Bar Examiners, 353 U. S. 232, we held it not permissible to bar a lawyer from practice, because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "any- thing more than a political faith in a political party" (id., at 244) and was not action of a kind proving bad moral character. Id., at 245-246. Those cases involved more than the "right of assembly"-a right that extends to all irrespective of their race or ideology. De Jonge v. Oregon, 299 U. S. 353. The right of "association," like the right of belief (Board of Education v. Barnette, 319 U. S. 624), is more than the right to attend a meeting; it includes the right to e:,press one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly

included in the First Amendment its existence is necessary in making the express guarantees fully meaningful. OCTOBER TERM, 1964. Opinion of the Court. 381 U. S. The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See Poe v. Ulinan, 367 U. S. 497, 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Fourth and Fifth Amendments were described in Boyd v. United States, 116 U. S. 616, 630, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." We recently re- *The Court said in full about this right of privacy: "The principles laid down in this opinion [by Lord Camden in Entick v. Carrington, 19 How. St. Tr. 1029] affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence,--it is the invasion of this sacred right which underlies and constitutes the essence of GRISWOLD v. CONNECTICUT. 479 Opinion of the Court. ferred in Mapp v. Ohio, 367 U. S. 643, 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people." See Beaney, The Constitutional Right to Privacy, 1962 Sup. Ct. Rev. 212; Griswold, The Right to be Let Alone, 55 Nw. U. L. Rtv, 216 (1960). We have had many controversies over these penumbral rights of "privacy and repose." See, e. g., Breard v. Alexandria, 341 U. S. 622, 626, 644; Public Utilities Comm'n v. Pollak, 343 U. S. 451; Monroe v. Pape, 365 U. S. 167; Lanza v. New York, 370 U. S. 139; Frank v. Maryland, 359 U. S. 360; Skinner v. Oklahoma, 316 U. S. 535, 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one. The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedofns." NAACP v. Alabama, 377 U. S. 288, 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." 116 U. S., at 630. OCTOBER TERM, 1064. GOLDBERG, J., concurring. 381 U. S. very idea is repulsive to the notions of privacy surrounding the marriage relationship. We deal with a right of privacy older than the Bill of Rights-older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions. Reversed.

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Appendix V

Excerpts from the Anti-federalists (George Mason Speech, Brutus I, and the Federal Farmer)

George Mason Speech: Virginia Ratifying Convention, 4 June 1788 Mr. Chairman—

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Whether the Constitution be good or bad, the present clause clearly discovers, that it is a National Government, and no longer a confederation. I mean that clause which gives the first hint of the General Government laying direct taxes. The assumption of this power of laying direct taxes, does of itself, entirely change the confederation of the States into one consolidated Government. This power being at discretion, unconfined, and without any kind of controul, must carry every thing before it. The very idea of converting what was formerly a confederation, to a consolidated Government, is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the State Governments. Will the people of this great community submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harrassed? These two concurrent powers cannot exist long together; the one will destroy the other: The General Government being paramount to, and in every respect more powerful than, the State governments, the latter must give way to the former. Is it to be supposed that one National Government will suit so extensive a country, embracing so many climates, and containing inhabitants so very different in manners, habits, and customs? It is ascertained by history, that there never was a Government, over a very extensive country, without destroying the liberties of the people: History also, supported by the opinions of the best writers, shew us, that monarchy may suit a large territory, and despotic Governments ever so extensive a country; but that popular Governments can only exist in small territories. Is there a single example, on the face of the earth, to support a contrary opinion? Where is there one exception to this general rule? Was there ever an instance of a general National Government extending over so extensive a country, abounding in such a variety of climates, &c. where the people retained their liberty? I solemnly declare, that no man is a greater friend to a firm Union of the American States than I am: But, Sir, if this great end can be obtained without hazarding the rights of the people, why should we recur to such dangerous principles? Requisitions have been often refused, sometimes from an impossibility of complying with them; often from that great variety of circumstances which retard the collection of monies, and, perhaps, sometimes from a wilful design of procrastinating. But why shall we give up to the National Government, this power, so dangerous in its nature, and for which its members will not have sufficient information?—Is it not well known, that what would be a proper tax in one State would be grievous in another? The Gentleman [George Nicholas] who hath favored us with an eulogium in favor of this system, must, after all the encomiums he has been pleased to bestow upon it, acknowledge, that our Federal Representatives must be unacquainted with the situation of their constituents: Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent: When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax on that article which will be most productive, and easiest in the collection, without consulting the real circumstances or convenience of a country, with which, in fact, they cannot be sufficiently acquainted. The mode of levying taxes is of the utmost consequence, and yet here it is to be determined by those who have neither knowledge of our situation, nor a common interest with us, nor a fellow feeling for us:—The subjects of taxation differ in three-fourths; nay, I might say with truth, in four-fifths of the States:—If we trust the National Government with an effectual way of raising the necessary sums, 'tis sufficient; every thing we do further is trusting the happiness and rights of the people: Why then should we give up this dangerous power of individual taxation? Why leave the manner of laying taxes to those, who in the nature of things, cannot be acquainted with the situation of those on whom they are to impose them, when it can be done by those who are well acquainted with it? If instead of giving this oppressive power, we give them such an effectual alternative as will answer the purpose, without encountering the evil and danger that might arise from it, then I would chearfully acquiesce: And would it not be far more eligible? I candidly acknowledge the inefficacy of the confederation; but requisitions have been made, which were impossible to be complied with: Requisitions for more gold and silver than were in the United States: If we give the General Government the power of demanding their quotas of the States, with an alternative of laying direct taxes, in case of non compliance, then the mischief would be avoided; and the certainty of this conditional power would, in all human probability, prevent the application, and the sums necessary for the Union would be then laid by the States; by those who know how it can best be raised; by those who have a fellow-feeling for us. Give me leave to say, that the same sum raised one way with convenience and ease, would be very oppressive another way: Why then not leave this power to be exercised by those who know the mode most convenient for the inhabitants, and not by those who must necessarily apportion it in such manner as shall be oppressive? With respect to the representation so much applauded, I cannot think it such a full and free one as it is represented; but I must candidly acknowledge, that this defect results from the very nature of the Government. It would be impossible to have a full and adequate representation in the General Government; it would be too expensive and too unweildy: We are then under the necessity of having this a very inadequate

representation: Is this general representation to be compared with the real, actual, substantial representation of the State Legislatures? It cannot bear a comparison. To make representation real and actual, the number of Representatives ought to be adequate; they ought to mix with the people, think as they think, feel as they feel, ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition: Now these great ingredients are, either not at all, or in so small a degree, to be found in our Federal Representatives, that we have no real, actual, substantial representation; but I acknowledge it results from the nature of the Government: The necessity of this inconvenience may appear a sufficient reason not to argue against it: But, Sir, it clearly shews, that we ought to give power with a sparing hand to a Government thus imperfectly constructed. To a Government, which, in the nature of things, cannot but be defective, no powers ought to be given, but such as are absolutely necessary: There is one thing in it which I conceive to be extremely dangerous. Gentlemen may talk of public virtue and confidence; we shall be told that the House of Representatives will consist of the most virtuous men on the Continent, and that in their hands we may trust our dearest rights. This, like all other assemblies, will be composed of some bad and some good men; and considering the natural lust of power so inherent in man, I fear the thirst of power will prevail to oppress the people:—What I conceive to be so dangerous, is the provision with respect to the number of Representatives: It does not expressly provide, that we shall have one for every 30,000, but that the number shall not exceed that proportion: The utmost that we can expect (and perhaps that is too much) is, that the present number shall be continued to us:—"The number of Representatives shall not exceed one for every 30,000." Now will not this be complied with, although the present number should never be increased; nay, although it should be decreased? Suppose Congress should say, that we should have one for every 200,000, will not the Constitution be complied with? For one for every 200,000 does not exceed one for every 30,000. There is a want of proportion that ought to be strictly guarded against: The worthy Gentleman [George Nicholas] tells us, we have no reason to fear; but I always fear for the rights of the people: I do not pretend to inspiration, but I think, it is apparent as the day, that the members will attend to local partial interests to prevent an augmentation of their number: I know not how they will be chosen, but whatever be the mode of choosing, our present number is but ten: And suppose our State is laid off in ten districts; those Gentlemen who shall be sent from those districts will lessen their own power and influence, in their respective districts, if they increase their number; for the greater the number of men among whom any given quantum of power is divided, the less the power of each individual. Thus they will have a local interest to prevent the increase of, and perhaps they will lessen their own number: This is evident on the face of the Constitution—so loose an expression ought to be guarded against; for Congress will be clearly within the requisition of the Constitution, although the number of Representatives should always continue what it is now, and the population of the country should increase to an immense number. Nay, they may reduce the number from 65, to one from each State, without violating the Constitution; and thus the number which is now too small, would then be infinitely too much so: But my principal objection is, that the confederation is converted to one general consolidated Government, which, from my best judgment of it (and which perhaps will be shewn in the course of this discussion, to be really well founded) is one of the worst curses that can possibly befal a nation. Does any man suppose, that one general National Government can exist in so extensive a country as this? I hope that a Government may be framed which may suit us, by drawing the line between the general and State Governments, and prevent that dangerous clashing of interest and power, which must, as it now stands, terminate in the destruction of one or the other. When we come to the Judiciary, we shall be more convinced, that this Government will terminate in the annihilation of the State Governments: The question then will be, whether a consolidated Government can preserve the freedom, and secure the great rights of the people. If such amendments be introduced as shall exclude danger, I shall most gladly put my hand to it. When such amendments, as shall, from the best information, secure the great essential rights of the people, shall be agreed to by Gentlemen, I shall most heartily make the greatest concessions, and concur in any reasonable measure to obtain the desirable end of conciliation and unanimity. An indispensible amendment in this case, is, that Congress shall not exercise the power of raising direct taxes till the States shall have refused to comply with the requisitions of Congress. On this condition it may be granted, but I see no reason to grant it unconditionally; as the States can raise the taxes with more ease, and lay them on the inhabitants with more propriety, than it is possible for the General Government to do. If Congress hath this power without controul, the taxes will be laid by those who have no fellow-feeling or acquaintance with the people. This is my objection to the article now under consideration. It is a very great and important one. I therefore beg Gentlemen seriously to consider it. Should this power be restrained, I shall withdraw my objections to this part of the Constitution: But as it stands, it is an objection so strong in my mind, that its amendment is with me, a sine qua non, of its adoption. I wish for such amendments, and such only, as are necessary to secure the dearest rights of the people. Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009. Original source: Ratification by the States, Volume IX: Virginia, No. 2

Brutus I; October 18, 1787

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To the Citizens of the State of New-York.

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to [your acceptance], be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favored land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realized. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty — if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining asylum for liberty will be [shut] up, and posterity will execrate your memory. . . .

With these few introductory remarks I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and control of a supreme federal head for certain defined national purposes only?

This inquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States. — The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance — there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises; — there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation; but this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defense and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defense, and they only are to determine what is for the general welfare: this power therefore is neither more nor less, than a power to lay and collect taxes,

imposts, and excises, at their pleasure; not only the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defense, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late governments, on this article of raising money. No state can emit paper money — lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States. The only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxes[; hence,] when the federal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers [will be] absorbed in that of the general government.

It might be here shown, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their control over the militia, tend, not only to a consolidation of the government, but the destruction of liberty. — I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each state at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite, and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding. — By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts

of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

Let us now proceed to inquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these increasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two.

The one is the Baron de Montesquieu, *Spirit of the Laws*,[1] Chap. xvi. Vol. I [Book VIII]. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected." Of the same opinion is the Marquis Beccarari.[2]

History furnishes no example of a free republic, anything like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide.

This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other.

The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expense for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people. Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey: but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet — a government of all others the most to be dreaded.

In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the control of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power,

when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.

These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to it, which are so material and fundamental, that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections — they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice — perfection is not to be expected in any thing that is the production of man — and if I did not in my conscience believe that this scheme was defective in the fundamental principles — in the foundation upon which a free and equal government must rest — I would hold my peace.

Brutus.

1787: Letters from the Federal Farmer, No. 7

Source: Empire and Nation: Letters from a Farmer in Pennsylvania (John Dickinson). Letters from the Federal Farmer (Richard Henry Lee), ed. Forrest McDonald (Indianapolis: Liberty Fund 1999). (Credit: teaching American history.org/document/federal-farmer-no-7/; do not copy, republish or use outside the Blackboard Firewall; for educational use only)

In viewing the various governments instituted by mankind, we see their whole force reducible to two principles—the important springs which alone move the machines, and give them their intended influence and control, are force and persuasion: by the former men are compelled, by the latter they are drawn. We denominate a government despotic or free, as the one or other principle prevails in it. Perhaps it is not possible for a government to be so despotic, as not to operate persuasively on some of its subjects; nor is it, in the nature of things, I conceive, for a government to be so free, or so supported by voluntary consent, as never to want force to compel obedience to the laws. In despotic governments one man, or a few men, independent of the people, generally make the laws, command obedience, and enforce it by the sword: one-fourth part of the people are armed, and obliged to endure the fatigues of soldiers, to oppress the others and keep them subject to the laws. In free governments the people, or their representatives, make the laws; their execution is principally the effect of voluntary consent and aid; the people respect the magistrate, follow their private pursuits, and enjoy the fruits of their labor with very small deductions for the public use. The body of the people must evidently prefer the latter species of government; and it can be only those few, who may be well paid for the part they take in enforcing despotism, that can, for a moment, prefer the former. Our true object is to give full efficacy to one principle, to arm persuasion on every side, and to render force as little necessary as possible. Persuasion is never dangerous not even in despotic governments; but military force, if often applied internally, can never fail to destroy the love and confidence, and break the spirits, of the people; and to render it totally impracticable and unnatural for him or them who govern, and yield to this force against the people, to hold their places by the peoples' elections.

I repeat my observation, that the plan proposed will have a doubtful operation between the two principles; and whether it will preponderate towards persuasion or force is uncertain.

Government must exist—if the persuasive principle be feeble, force is infallibly the next resort—The moment the laws of congress shall be disregarded they must languish, and the whole system be convulsed—that moment we must have recourse to this next resort, and all freedom vanish.

It being impracticable for the people to assemble to make laws, they must elect legislators, and assign men to the different departments of the government. In the representative branch we must expect chiefly to collect the confidence of the people, and in

it to find almost entirely the force of persuasion. In forming this branch, therefore, several important considerations must be attended to. It must possess abilities to discern the situation of the people and of public affairs, a disposition to sympathize with the people, and a capacity and inclination to make laws congenial to their circumstances and condition: it must afford security against interested combinations, corruption and influence; it must possess the confidence, and have the voluntary support of the people.

I think these positions will not be controverted, nor the one I formerly advanced, that a fair and equal representation is that in which the interests, feelings, opinions and views of the people are collected, in such manner as they would be were the people all assembled. Having made these general observations, I shall proceed to consider further my principal position, viz. that there is no substantial representation of the people provided for in a government, in which the most essential powers, even as to the internal police of the country, are proposed to be lodged; and to propose certain amendments as to the representative branch: 1st, That there ought to be *an increase of the numbers of representatives:* And, 2dly, That the elections of them ought to be better secured.

The representation is unsubstantial and ought to be increased. In matters where there is much room for opinion, you will not expect me to establish my positions with mathematical certainty; you must only expect my observations to be candid, and such as are well founded in the mind of the writer. I am in a field where doctors disagree; and as to genuine representation, though no feature in government can be more important, perhaps, no one has been less understood, and no one that has received so imperfect a consideration by political writers. The ephori in Sparta, and the tribunes in Rome,[1] were but the shadow; the representation in Great-Britain is unequal and insecure. In America we have done more in establishing this important branch on its true principles, than, perhaps, all the world besides: yet even here, I conceive, that very great improvements in representation may be made. In fixing this branch, the situation of the people must be surveyed, and the number of representatives and forms of election apportioned to that situation. When we find a numerous people settled in a fertile and extensive country, possessing equality, and few or none of them oppressed with riches or wants, it ought to be the anxious care of the constitution and laws, to arrest them from national depravity, and to preserve them in their happy condition. A virtuous people make just laws, and good laws tend to preserve unchanged a virtuous people. A virtuous and happy people by laws uncongenial to their characters, may easily be gradually changed into servile and depraved creatures. Where the people, or their representatives, make the laws, it is probable they will generally be fitted to the national character and circumstances, unless the representation be partial, and the imperfect substitute of the people. . . .

I wish you to take another idea along with you; we are not only to balance these natural efforts, but we are also to guard against accidental combinations; combinations founded in the connections of offices and private interests, both evils which are increased in proportion as the number of men, among which the elected must be, are decreased. To set this matter in a proper point of view, we must form some general ideas and descriptions of the different classes of men, as they may be divided by occupations and politically: the first class is the aristocratical.

There are three kinds of aristocracy spoken of in this country—the first is a constitutional one. . . .

. . . [T]he second is an aristocratic faction, a junto of unprincipled men, often distinguished for their wealth or abilities, who combine together and make their object their private interests and aggrandizement; the existence of this description is merely accidental, but particularly to be guarded against. The third is the natural aristocracy; this term we use to designate a respectable order of men, the line between whom and the natural democracy is in some degree arbitrary. . . .

It is easy to perceive that men of these two classes, the aristocratical, and democratical, with views equally honest, have sentiments widely different, especially respecting public and private expenses, salaries, taxes, &c. Men of the first class associate more extensively, have a high sense of honor, possess abilities, ambition, and general knowledge: men of the second class are not so much used to combining great objects; they possess less ambition, and a larger share of honesty: their dependence is principally on middling and small estates, industrious pursuits, and hard labor, while that of the former is principally on the emoluments of large estates, and of the chief offices of government. Not only the efforts of these two great parties are to be balanced, but other interests and parties also. . . .

These general observations will enable you to discern what I intend by different classes, and the general scope of my ideas, when I contend for uniting and balancing their interests, feelings, opinions, and views in the legislature; we may not only so unite and balance these as to prevent a change in the government by the gradual exaltation of one part to the depression of others, but we may derive many other advantages from the combination and full representation; a small representation can never be well informed as to the circumstances of the people, the members of it must be too far removed from the people, in general, to sympathize with them, and too few to communicate with them: a representation must be extremely imperfect where the representatives are not

circumstanced to make the proper communications to their constituents, and where the constituents in turn cannot, with tolerable convenience, make known their wants, circumstances, and opinions, to their representatives; where there is but one representative to 30,000, or 40,000 inhabitants,[2] it appears to me, he can only mix, and be acquainted with a few respectable characters among his constituents, even double the federal representation, and then there must be a very great distance between the representatives and the people in general represented. On the proposed plan, the state of Delaware, the city of Philadelphia, the state of Rhode Island, the province of Main[e], the county of Suffolk in Massachusetts, will have one representative each; there can be but little personal knowledge, or but few communications, between him and the people at large of either of those districts. . . .

Could we get over all our difficulties respecting a balance of interests and party efforts, to raise some and oppress others, the want of sympathy, information and intercourse between the representatives and the people, an insuperable difficulty will still remain, I mean the constant liability of a small number of representatives to private combinations; the tyranny of the one, or the licentiousness of the multitude, are, in my mind, but small evils, compared with the factions of the few.

FOOTNOTES

1. 1. The Ephor was a council of five annually elected representatives in ancient Sparta. Ephors performed duties went beyond the purview of legislation; they also had authority over financial, executive and judicial procedures. Similar to the Ephors, the Tribuni Plebis, or Tribunes of the People, were democratically elected by eligible voters and possessed powers to check the Roman Senate and magistrates.

2. 2. See U.S. Constitution: Article 1 Section 2 for the allocation of representatives. The number contained within the Constitution is 30,000 inhabitants per representative, having been changed during the Constitutional Convention after George Washington (speaking for his first and only time during the convention) proposed that it be lowered from 40,000 inhabitants per representative.

Appendix W

October 15, 1858 Debate Between Lincoln and Douglas

Seventh Debate: Alton, Illinois

October 15, 1858

People were charged one dollar for a round trip ticket to ride a steamboat from St. Louis. It was a cloudy day with only 5,000 in attendance despite the fact that the Chicago and Alton Railroad offered half price fare from Springfield and other locations.

Douglas attacked Lincoln's House Divided Speech and championed Popular Sovereignty.

Lincoln pointed out the Kansas-Nebraska Act repealed Henry Clay's Missouri Compromise [many 'Old Whigs' in attendance]. Lincoln used Clay's statements that slavery was evil and Lincoln charged that by excluding the Negro from the Declaration of Independence Douglas de-humanized and took away from the Negro "the right of striving to be a man."

Source: Neely, Mark E. Jr. 1982. *The Abraham Lincoln Encyclopedia*. New York: Da Capo Press, Inc.

Full text of the debate follows. (Credit: NPS.gov/liho/learn/historyculture/debate7.htm; National Park Service)

Mr. Douglas' Speech

Long and loud bursts of applause greeted Senator Douglas when he appeared on the stand. As he was about to commence speaking, he was interrupted by Dr. Hope, one of the Danite faction.

DR. HOPE.-Judge, before you commence speaking, allow me to ask you a question.

SENATOR DOUGLAS.-If you will not occupy too much of my time.

DR. HOPE.-Only an instant.

SENATOR DOUGLAS.-What is your question?

MR. HOPE.- Do you believe that the Territorial legislatures ought to pass laws to protect slavery in the territories?

SENATOR DOUGLAS.- You will get an answer in the course of my remarks. (Applause.)

LADIES AND GENTLEMEN: It is now nearly four months since the canvass between Mr. Lincoln and myself commenced. On the 16th of June the Republican Convention assembled at Springfield and nominated Mr. Lincoln as their candidate for the United States Senate, and he, on that occasion, delivered a speech in which he laid down what he understood to be the Republican creed and the platform on which he proposed to stand during the contest. The principal points in that speech of Mr. Lincoln's were: First, that this Government could not endure permanently divided into free and slave States, as our fathers made it; that they must all become free or all become slave; all become one thing or all become the other, otherwise this Union could not continue to exist. I give you his opinions almost in the identical language he used. His second proposition was a crusade against the Supreme Court of the United States because of the Dred Scott decision; urging as an especial reason for his opposition to that decision that it deprived the negroes of the rights and benefits of that clause in the Constitution of the United States which guaranties to the citizens of each State all the rights, privileges, and immunities of the citizens of the several States. On the 10th of July I returned home, and delivered a speech to the people of Chicago, in which I announced it to be my purpose to appeal to the people of Illinois to sustain the course I had pursued

in Congress. In that speech I joined issue with Mr. Lincoln on the points which he had presented. Thus there was an issue clear and distinct made up between us on these two propositions laid down in the speech of Mr. Lincoln at Springfield, and controverted by me in my reply to him at Chicago. On the next day, the 11th of July, Mr. Lincoln replied to me at Chicago, explaining at some length, and reaffirming the positions which he had taken in his Springfield speech. In that Chicago speech he even went further than he had before, and uttered sentiments in regard to the negro being on an equality with the white man. ("That's so.) He adopted in support of this position the argument which Lovejoy and Codding, and other Abolition lecturers had made familiar in the northern and central portions of the State, to wit: that the Declaration of Independence having declared all men free and equal, by Divine law, also that negro equality was an inalienable right, of which they could not be deprived. He insisted, in that speech, that the Declaration of Independence included the negro in the clause, asserting that all men were created equal, and went so far as to say that if one man was allowed to take the position, that it did not include the negro, others might take the position that it did not include other men. He said that all these distinctions between this man and that man, this race and the other race, must be discarded, and we must all stand by the Declaration of Independence, declaring that all men were created equal.

The issue thus being made up between Mr. Lincoln and myself on three points, we went before the people of the State. During the following seven weeks, between the Chicago speeches and our first meeting at Ottawa, he and I addressed large assemblages of the people in many of the central counties. In my speeches I confined myself closely to those three positions which he had taken, controverting his proposition that this Union could not exist as our fathers made it, divided into free and slave States, controverting his proposition of a crusade against the Supreme Court because of the Dred Scott decision, and controverting his proposition that the Declaration of Independence included and meant the negroes as well as the white men, when it declared all men to be created equal. (Cheers for Douglas.) I supposed at that time that these propositions constituted a distinct issue between us, and that the opposite positions we had taken upon them we would be willing to be held to in every part of the State, I never intended to waver one hair's breadth from that issue either in the north or the south, or wherever I should address the people of Illinois. I hold that when the time arrives that I cannot proclaim my political creed in the same terms not only in the northern but the southern part of Illinois, not only in the Northern but the Southern States, and wherever the American flag waves over American soil, that then there must be something wrong in that creed. ("Good, good," and cheers.) So long as we live under a common Constitution, so long as we live in a confederacy of sovereign and equal States, joined together as one for certain purposes, that any political creed is radically wrong which cannot be proclaimed in every State, and every section of that Union, alike. I took up Mr. Lincoln's three propositions in my several speeches, analyzed them, and pointed out what I believed to be the radical errors contained in them. First, in regard to his doctrine that this Government was in violation of the law of God, which says that a house divided against itself cannot stand, I repudiated it as a slander upon the immortal framers of our Constitution. I then said, I have often repeated, and now again assert, that in my opinion our Government can endure forever, (good) divided into free and slave States as our fathers made it,-each State having the right to prohibit, abolish or sustain slavery, just as it pleases. ("Good," "right," and cheers.) This Government was made upon the great basis of the sovereignty of the States, the right of each State to regulate its own domestic institutions to suit itself, and that right was conferred with the understanding and expectation that inasmuch as each locality had separate interests, each locality must have different and distinct local and domestic institutions, corresponding to its wants and interests. Our fathers knew when they made the Government, that the laws and institutions which were well adapted to the green mountains of Vermont, were unsuited to the rice plantations of South Carolina. They knew then, as well as we know now, that the laws and institutions which would be well adapted to the beautiful prairies of Illinois would not be suited to the mining regions of California. They knew that in a Republic as broad as this, having such a variety of soil, climate and interest, there must necessarily be a corresponding variety of local laws-the policy and institutions of each State adapted to its condition and wants. For this reason this Union was established on the right of each State to do as it pleased on the question of slavery, and every other question; and the various States were not allowed to complain of, much less interfere with the policy, of their neighbors. ("That's good doctrine," "that's the doctrine," and cheers.)

Suppose the doctrine advocated by Mr. Lincoln and the abolitionists of this day had prevailed when the Constitution was made, what would have been the result? Imagine for a moment that Mr. Lincoln had been a member of the Convention that framed the Constitution of the United States, and that when its members were about to sign that wonderful document, he had arisen in that Convention as he did at Springfield this summer, and addressing himself to the President, had said, "A house divided against itself cannot stand; (laughter) this government, divided into free and slave States, cannot endure, they must all be free or all be slave, they must all be one thing or all the other, otherwise, it is a violation of the law of God, and cannot continue to exist;" -suppose Mr. Lincoln had convinced that body of sages that that doctrine was sound, what would have been the result? Remember that the Union was then composed of thirteen States, twelve of which were slaveholding and one free. Do you think that the one free State would have outvoted the twelve slaveholding States, and thus have secured the abolition of slavery? (No, no.) On the other hand, would not the twelve slaveholding States have outvoted the one free State, and thus have fastened slavery, by a Constitutional provision, on every foot of the American Republic forever? You see that if this abolition doctrine of Mr. Lincoln had prevailed when the Government was made, it would have established slavery as a permanent institution, in all the States, whether they wanted it or not, and the question for us to determine in Illinois now as one of the free States is, whether or not we are willing, having become the majority section, to enforce a doctrine on the minority, which we would have resisted with our heart's blood had it been attempted on us when we were in a minority. ("We never will," "good, good," and cheers.) How has the South lost her power as the majority section in this Union, and how have the free States gained it, except under the operation of that principle which declares the right of the

people of each State and each Territory to form and regulate their domestic institutions in their own way. It was under that principle that slavery was abolished in New Hampshire, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania; it was under that principle that one half of the slaveholding States became free; it was under that principle that the number of free States increased until from being one out of twelve States, we have grown to be the majority of States of the whole Union, with the power to control the House of Representatives and Senate, and the power, consequently, to elect a President by Northern votes without the aid of a Southern State. Having obtained this power under the operation of that great principle, are you now prepared to abandon the principle and declare that merely because we have the power you will wage a war against the Southern States and their institutions until you force them to abolish slavery every where. (No, never, and great applause.)

After having pressed these arguments home on Mr. Lincoln for seven weeks, publishing a number of my speeches, we met at Ottawa in joint discussion, and he then began to crawfish a little, and let himself down. (Immense applause.) I there propounded certain questions to him. Amongst others, I asked him whether he would vote for the admission of any more slave States in the event the people wanted them. He would not answer. (Applause and laughter.) I then told him that if he did not answer the question there I would renew it at Freeport, and would then trot him down into Egypt and again put it to him. (Cheers.) Well, at Freeport, knowing that the next joint discussion took place in Egypt, and being in dread of it, he did answer my question in regard to no more slave States in a mode which he hoped would be satisfactory to me, and accomplish the object he had in view. I will show you what his answer was. After saying that he was not pledged to the Republican doctrine of "no more slave States," he declared:

I state to you freely, frankly, that I should be exceedingly sorry to ever be put in the position of having to pass upon that question. I should be exceedingly glad to know that there never would be another slave State admitted into this Union.

Here permit me to remark, that I do not think the people will ever force him into a position against his will. (Great laughter and applause.) He went on to say:

But I must add in regard to this, that if slavery shall be kept out of the Territory during the territorial existence of any one given Territory, and then the people should, having a fair chance and a clear field when they come to adopt a Constitution, if they should do the extraordinary thing of adopting a slave Constitution, uninfluenced by the actual presence of the institution among them, I see no alternative, if we own the country, but we must admit it into the Union.

That answer Mr. Lincoln supposed would satisfy the old line Whigs, composed of Kentuckians and Virginians, down in the southern part of the State. Now, what does it amount to? I desired to know whether he would vote to allow Kansas to come into the Union with slavery or not, as her people desired. He would not answer; but in a roundabout way said that if slavery should be kept out of a Territory during the whole of its territorial existence, and then the people, when they adopted a State Constitution, asked admission as a slave State, he supposed he would have to let the State come in. The case I put to him was an entirely different one. I desired to know whether he would vote to admit a State if Congress had not prohibited slavery in it during its territorial existence, as Congress never pretended to do under Clay's Compromise measures of 1850. He would not answer, and I have not yet been able to get an answer from him. (Laughter, "he'll answer this time," "he's afraid to answer," etc.) I have asked him whether he would vote to admit Nebraska if her people asked to come in as a State with a Constitution recognizing slavery, and he refused to answer. ("Put him through," "give it to him," and cheers.) I have put the question to him with reference to New Mexico, and he has not uttered a word in answer. I have enumerated the Territories, one after another, putting the same question to him with reference to each, and he has not said, and will not say, whether, if elected to Congress, he will vote to admit any Territory now in existence with such a Constitution as her people may adopt. He invents a case which does not exist, and cannot exist under this Government, and answers it; but he will not answer the question I put to him in connection with any of the Territories now in existence. ("Hurrah for Douglas," "three cheers for Douglas.") The contract we entered into with Texas when she entered the Union obliges us to allow four States to be formed out of the old State, and admitted with or without slavery as the respective inhabitants of each may determine. I have asked Mr. Lincoln three times in our joint discussions whether he would vote to redeem that pledge, and he has never yet answered. He is as silent as the grave on the subject. (Laughter, "Lincoln must answer," "he will," &c.) He would rather answer as to a state of the case which will never arise than commit himself by telling what he would do in a case which would come up for his action soon after his election to Congress. ("He'll never have to act on any question," and laughter.) Why can he not say whether he is willing to allow the people of each State to have slavery or not as they please, and to come into the Union when they have the requisite population as a slave or a free State as they decide? I have no trouble in answering the question. I have said everywhere, and now repeat it to you, that if the people of Kansas want a slave State they have a right, under the Constitution of the United States, to form such a State, and I will let them come into the Union with slavery or without, as they determine. ("That's right," "good," "hurrah for Douglas all the time," and cheers.) If the people of any other Territory desire slavery, let them have it. If they do not want it, let them prohibit it. It is their business, not mine. ("That's the doctrine.") It is none of our business in Illinois whether Kansas is a free State or a slave State. It is none of your business in Missouri whether Kansas shall adopt slavery or reject it. It is the business of her people and none of yours.

The people of Kansas have as much right to decide that question for themselves as you have in Missouri to decide it for yourselves, or we in Illinois to decide it for ourselves. ("That's what we believe," "We stand by that," and cheers.)

And here I may repeat what I have said in every speech I have made in Illinois, that I fought the Lecompton Constitution to its death, not because of the slavery clause in it, but because it was not the act and deed of the people of Kansas. I said then in Congress, and I say now, that if the people of Kansas want a slave State, they have a right to have it. If they wanted the Lecompton Constitution, they had a right to have it. I was opposed to that Constitution because I did not believe that it was the act and deed of the people, but on the contrary, the act of a small, pitiful minority acting in the name of the majority. When at last it was determined to send that Constitution back to the people, and accordingly, in August last, the question of admission under it was submitted to a popular vote, the citizens rejected it by nearly ten to one, thus showing conclusively, that I was right when I said that the Lecompton Constitution was not the act and deed of the people of Kansas, and did not embody their will. (Cheers.)

I hold that there is no power on earth, under our system of Government, which has the right to force a Constitution upon an unwilling people. (That's so.) Suppose that there had been a majority of ten to one in favor of slavery in Kansas, and suppose there had been an Abolition President, and an Abolition Administration, and by some means the Abolitionists succeeded in forcing an Abolition Constitution on those slave-holding people, would the people of the South have submitted to that act for one instant? (No,no.)Well, if you of the South would not have submitted to it a day, how can you, as fair, honorable and honest men, insist on putting a slave Constitution on a people who desire a free State? ("That's so," and cheers.) Your safety and ours depend upon both of us acting in good faith, and living up to that great principle which asserts the right of every people to form and regulate their domestic institutions to suit themselves, subject only to the Constitution of the United States. ("That's the doctrine," and immense applause.)

Most of the men who denounced my course on the Lecompton question, objected to it not because I was not right, but because they thought it expedient at that time, for the sake of keeping the party together, to do wrong. (Cheers.) I never knew the Democratic party to violate any one of its principles out of policy or expediency, that it did not pay the debt with sorrow. There is no safety or success for our party unless we always do right, and trust the consequences to God and the people. I chose not to depart from principle for the sake of expediency in the Lecompton question, and I never intend to do it on that or any other question. (Good.)

But I am told that I would have been all right if I had only voted for the English bill after Lecompton was killed. (Laughter and cheers.) You know a general pardon was granted to all political offenders on the Lecompton question, provided they would only vote for the English bill. I did not accept the benefits of that pardon, for the reason that I had been right in the course I had pursued, and hence did not require any forgiveness. Let us see how the result has been worked out. English brought in his bill referring the Lecompton Constitution back to the people, with the provision that if it was rejected Kansas should be kept out of the Union until she had the full ratio of population required for a member of Congress, thus in effect declaring that if the people of Kansas would only consent to come into the Union under the Lecompton Constitution, and have a slave State when they did not want it, they should be admitted with a population of 35,000, but that if they were so obstinate as to insist upon having just such a Constitution as they thought best, and to desire admission as a free State, then they should be kept out until they had 93,420 inhabitants. I then said, and I now repeat to you, that whenever Kansas has people enough for a slave State she has people enough for a free State. I was and am willing to adopt the rule that no State shall ever come into the Union until she has the full ratio of population for a member of Congress, provided that rule is made uniform. I made that proposition in the Senate last winter, but a majority of the Senators would not agree to it; and I then said to them if you will not adopt the general rule I will not consent to make an exception of Kansas.

I hold that it is a violation of the fundamental principles of this Government to throw the weight of federal power into the scale, either in favor of the free or the slave States. Equality among all the States of this Union is a fundamental principle in our political system. We have no more right to throw the weight of the Federal Government into the scale in favor of the slaveholding than the free States, and last of all should our friends in the South consent for a moment that Congress should withhold its powers either way when they know that there is a majority against them in both Houses of Congress.

Fellow-citizens, how have the supporters of the English bill stood up to their pledges not to admit Kansas until she obtained a population of 93,420 in the event she rejected the Lecompton Constitution? How? The newspapers inform us that English himself, whilst conducting his canvass for re-election, and in order to secure it, pledged himself to his constituents that if returned he would disregard his own bill and vote to admit Kansas into the Union with such population as she might have when she made application. We are informed that every Democratic candidate for Congress in all the States where elections have recently been held, was pledged against the English bill, with perhaps one or two exceptions. Now, if I had only done as these anti-Lecompton men who voted for the English bill in Congress, pledging themselves to refuse to admit Kansas if she refused to become a slave State until she had a population of 93,420, and then returned to their people, forfeited their pledge, and made a new pledge to admit Kansas at any time she applied, without regard to population, I would have had no trouble. You saw the whole power and patronage of the Federal Government wielded in Indiana, Ohio, and Pennsylvania to re-elect anti-Lecompton men to Congress who voted against Lecompton, then voted for the English bill, and then denounced the English bill, and pledged themselves to their people to disregard it. My sin

consists in not having given a pledge, and then in not having afterward forfeited it. For that reason, in this State, every postmaster, every route agent, every collector of the ports, and every federal office-holder, forfeits his head the moment he expresses a preference for the Democratic candidates against Lincoln and his Abolition associates. A Democratic Administration which we helped to bring into power, deems it consistent with its fidelity to principle and its regard to duty, to wield its power in this State in behalf of the Republican Abolition candidates in every county and every Congressional District against the Democratic party. All I have to say in reference to the matter is, that if that Administration have not regard enough for principle, if they are not sufficiently attached to the creed of the Democratic party to bury forever their personal hostilities in order to succeed in carrying out our glorious principles, I have. I have no personal difficulty with Mr. Buchanan or his cabinet. He chose to make certain recommendations to Congress, as he had a right to do, on the Lecompton question. I could not vote in favor of them. I had as much right to judge for myself how I should vote as he had how he should recommend. He undertook to say to me, if you do not vote as I tell you, I will take off the heads of your friends. I replied to him, "You did not elect me, I represent Illinois and I am accountable to Illinois, as my constituency, and to God, but not to the President or to any other power on earth."

And now this warfare is made on me because I would not surrender my connections of duty, because I would not abandon my constituency, and receive the orders of the executive authorities how I should vote in the Senate of the United States. I hold that an attempt to control the Senate on the part of the Executive is subversive of the principles of our Constitution. The Executive department is independent of the Senate, and the Senate is independent of the President. In matters of legislation the President has a veto on the action of the Senate, and in appointments and treaties the Senate has a veto on the President. He has no more right to tell me how I shall vote on his appointments than I have to tell him whether he shall veto or approve a bill that the Senate has passed. Whenever you recognize the right of the Executive to say to a Senator, "Do this, or I will take off the heads of your friends," you convert this Government from a republic into a despotism. Whenever you recognize the right of a President to say to a member of Congress, "Vote as I tell you, or I will bring a power to bear against you at home which will crush you," you destroy the independence of the representative, and convert him into a tool of Executive power. I resisted this invasion of the constitutional rights of a Senator, and I intend to resist it as long as I have a voice to speak, or a vote to give. Yet, Mr. Buchanan cannot provoke me to abandon one iota of Democratic principles out of revenge or hostility to his course. I stand by the platform of the Democratic party, and by its organization, and support its nominees. If there are any who choose to bolt, the fact only shows that they are not as good Democrats as I am.

My friends, there never was a time when it was as important for the Democratic party, for all national men, to rally and stand together as it is to-day. We find all sectional men giving up past differences and continuing the one question of slavery, and when we find sectional men thus uniting, we should unite to resist them and their treasonable designs. Such was the case in 1850, when Clay left the quiet and peace of his home, and again entered upon public life to quell agitation and restore peace to a distracted Union. Then we Democrats, with Cass at our head, welcomed Henry Clay, whom the whole nation regarded as having been preserved by God for the times. He became our leader in that great fight, and we rallied around him the same as the Whigs rallied around old Hickory in 1832, to put down nullification. Thus you see that whilst Whigs and Democrats fought fearlessly in old times about banks, the tariff, distribution, the specie circular, and the sub-treasury, all united as a band of brothers when the peace, harmony, or integrity of the Union was imperiled. It was so in 1850, when Abolitionism had even so far divided this country, North and South, as to endanger the peace of the Union; Whigs and Democrats united in establishing the Compromise measures of that year, and restoring tranquillity and good feeling. These measures passed on the joint action of the two parties. They rested on the great principle that the people of each State and each Territory should be left perfectly free to form and regulate their domestic institutions to suit themselves. You Whigs and we Democrats justified them in that principle. In 1854, when it became necessary to organize the Territories of Kansas and Nebraska, I brought forward the bill on the same principle. In the Kansas-Nebraska bill you find it declared to be the true intent and meaning of the act not to legislate slavery into any State or Territory, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way. ("That's so," and cheers.) I stand on that same platform in 1858 that I did in 1850, 1854, and 1856. The Washington *Union* pretending to be the organ of the Administration, in the number of the 5th of this month, devotes three columns and a half to establish these propositions: First, that Douglas, in his Freeport speech, held the same doctrine that he did in his Nebraska bill in 1854; second, that in 1854 Douglas justified the Nebraska bill upon the ground that it was based upon the same principle as Clay's Compromise measures of 1850. The Union thus proved that Douglas was the same in 1858 that he was in 1856, 1854, and 1850, and consequently argued that he was never a Democrat. Is it not funny that I was never a Democrat? There is no pretense that I have changed a hair's breadth. The *Union* proves by my speeches that I explained the Compromise measures of 1850 just as I do now, and that I explained the Kansas and Nebraska bill in 1854 just as I did in my Freeport speech, and yet says that I am not a Democrat, and cannot be trusted, because I have not changed during the whole of that time. It has occured to me that in 1854 the author of the Kansas and Nebraska bill was considered a pretty good Democrat. (Cheers) It has occurred to me that in 1856, when I was exerting every nerve and every energy for James Buchanan, standing on the same platform then that I do now, that I was a pretty good Democrat. (Renewed applause.) They now tell me that I am not a Democrat, because I assert that the people of a Territory, as well as those of a State, have the right to decide for themselves whether slavery can or cannot exist in such Territory. Let me read what James Buchanan said on that point when he accepted the Democratic nomination for the Presidency in 1856. In his letter of acceptance, he used the following language:

The recent legislation of Congress respecting domestic slavery, derived as it has been from the original and pure fountain of legitimate political power, the will of the majority, promises ere long to allay the dangerous excitement. This legislation is founded upon principles as ancient as free government itself, and in accordance with them has simply declared that the people of a Territory, like those of a State, shall decide for themselves whether slavery shall or shall not exist within their limits.

Dr. Hope will there find my answer to the question he propounded to me before I commenced speaking. (Vociferous shouts of applause.) Of course no man will consider it an answer, who is outside of the Democratic organization, bolts Democratic nominations, and indirectly aids to put Abolitionists into power over Democrats. But whether Dr. Hope considers it an answer or not, every fair-minded man will see that James Buchanan has answered the question, and has asserted that the people of a Territory, like those of a State, shall decide for themselves whether slavery shall or shall not exist within their limits. I answer specifically if you want a further answer, and say that while under the decision of the Supreme Court, as recorded in the opinion of Chief Justice Taney, slaves are property like all other property, and can be carried into any Territory of the United States the same as any other description of property, yet when you get them there they are subject to the local law of the Territory just like all other property. You will find in a recent speech delivered by that able and eloquent statesman, Hon. Jefferson Davis, at Bangor, Maine, that he took the same view of this subject that I did in my Freeport speech. He there said:

"If the inhabitants of any Territory should refuse to enact such laws and police regulations as would give security to their property or to his, it would be rendered more or less valueless in proportion to the difficulties of holding it without such protection. In the case of property in the labor of man, or what is usually called slave property, the insecurity would be so great that the owner could not ordinarily retain it. Therefore, though the right would remain, the remedy being withheld, it would follow that the owner would be practically debarred, by the circumstances of the case, from taking slave property into a Territory where the sense of the inhabitants was opposed to its introduction. So much for the oft-repeated fallacy of forcing slavery upon any community."

You will also find that the distinguished Speaker of the present House of Representatives, Hon. Jas. L. Orr, construed the Kansas and Nebraska bill in this same way in 1856, and also that great intellect of the South, Alex. H. Stephens, put the same construction upon it in Congress that I did in my Freeport speech. The whole South are rallying to the support of the doctrine that if the people of a Territory want slavery they have a right to have it, and if they do not want it that no power on earth can force it upon them. I hold that there is no principle on earth more sacred to all the friends of freedom than that which says that no institution, no law, no constitution, should be forced on an unwilling people contrary to their wishes; and I assert that the Kansas and Nebraska bill contains that principle. It is the great principle contained in that bill. It is the principle on which James Buchanan was made President. Without that principle he never would have been made President of the United States. I will never violate or abandon that doctrine if I have to stand alone. (Hurrah for Douglas.) I have resisted the blandishments and threats of power on the one side, and seduction on the other, and have stood immovably for that principle, fighting for it when assailed by Northern mobs, or threatened by Southern hostility. ("That's the truth," and cheers.) I have defended it against the North and the South, and I will defend it against whoever assails it, and I will follow it wherever its logical conclusions lead me. ("So will we all," "hurrah for Douglas.") I say to you that there is but one hope, one safety for this country, and that is to stand immovably by that principle which declares the right of each State and each Territory to decide these questions for themselves. (Hear him, hear him.) This Government was founded on that principle, and must be administered in the same sense in which it was founded.

But the Abolition party really think that under the Declaration of Independence the negro is equal to the white man, and that negro equality is an inalienable right conferred by the Almighty, and hence that all human laws in violation of it are null and void. With such men it is no use for me to argue. I hold that the signers of the Declaration of Independence had no reference to negroes at all when they declared all men to be created equal. They did not mean negro, nor the savage Indians, nor the Fejee Islanders, nor any other barbarous race. They were speaking of white men. ("It's so," "it's so," and cheers.) They alluded to men of European birth and European descent-to white men, and to none others, when they declared that doctrine. ("That's the truth.") I hold that this Government was established on the white basis. It was established by white men for the benefit of white men and their posterity forever, and should be administered by white men, and none others. But it does not follow, by any means, that merely because the negro is not a citizen, and merely because he is not our equal, that, therefore, he should be a slave. On the contrary, it does follow that we ought to extend to the negro race, and to all other dependent races all the rights, all the privileges, and all the immunities which they can exercise consistently with the safety of society. Humanity requires that we should give them all these privileges; Christianity commands that we should extend those privileges to them. The question then arises what are those privileges, and what is the nature and extent of them. My answer is that that is a question which each State must answer for itself. We in Illinois have decided it for ourselves. We tried slavery, kept it up for twelve years, and finding that it was not profitable, we abolished it for that reason, and became a free State. We adopted in its stead the policy that a negro in this State shall not be a slave and shall not be a citizen. We have a right to adopt that policy. For my part I think it is a wise and sound policy for us. You in Missouri must judge for yourselves whether it is a wise policy for you. If you choose to follow our example, very good; if you reject it, still well, it is your business, not ours. So with Kentucky. Let Kentucky adopt a policy to suit herself. If we do not like it we will keep away from it, and if she does not like ours let her stay at home, mind her own business and let us alone. If the people of all the States will act on that great principle,

and each State mind its own business, attend to its own affairs, take care of its own negroes and not meddle with its neighbors, then there will be peace between the North and the South, the East and the West, throughout the whole Union. (Cheers.) Why can we not thus have peace? Why should we thus allow a sectional party to agitate this country, to array the North against the South, and convert us into enemies instead of friends, merely that a few ambitious men may ride into power on a sectional hobby? How long is it since these ambitious Northern men wished for a sectional organization? Did any one of them dream of a sectional party as long as the North was the weaker section and the South the stronger? Then all were opposed to sectional parties; but the moment the North obtained the majority in the House and Senate by the admission of California, and could elect a President without the aid of Southern votes, that moment ambitious Northern men formed a scheme to excite the North against the South, and make the people be governed in their votes by geographical lines, thinking that the North, being the stronger section, would outvote the South, and consequently they, the leaders, would ride into office on a sectional hobby. I am told that my hour is out. It was very short.

Mr. Lincoln's Speech

On being introduced to the audience, after the cheering had subsided Mr. Lincoln said:

LADIES AND GENTLEMEN: I have been somewhat, in my own mind, complimented by a large portion of Judge Douglas's speech-I mean that portion which he devotes to the controversy between himself and the present Administration. This is the seventh time Judge Douglas and myself have met in these joint discussions, and he has been gradually improving in regard to his war with the Administration. [Laughter, "That's so."] At Quincy, day before yesterday, he was a little more severe upon the Administration than I had heard him upon any occasion, and I took pains to compliment him for it. I then told him to "Give it to them with all the power he had;" and as some of them were present, I told them I would be very much obliged if they would *give it to him* in about the same way. [Uproarious laughter and cheers.] I take it he has now vastly improved upon the attack he made then upon the Administration. I flatter myself he has really taken my advice on this subject. All I can say now is to re-commend to him and to them what I then commended-to prosecute the war against one another in the most vigorous manner. I say to them again-"Go it, husband!-Go it, bear!" [Great laughter.]

There is one other thing I will mention before I leave this branch of the discussion-although I do not consider it much of my business, any way. I refer to that part of the Judge's remarks where he undertakes to involve Mr. Buchanan in an inconsistency. He reads something from Mr. Buchanan, from which he undertakes to involve him in an inconsistency; and he gets something of a cheer for having done so. I would only remind the Judge that while he is very valiantly fighting for the Nebraska bill and the repeal of the Missouri Compromise, it has been but a little while since he was the *valiant advocate* of the Missouri Compromise. [Cheers.] I want to know if Buchanan has not as much right to be inconsistent as Douglas has? [Loud applause and laughter; "Good, good!" "Hurrah for Lincoln!"] Has Douglas the *exclusive right*, in this country, of being *on all sides of all questions*? Is nobody allowed that high privilege but himself? Is he to have an entire *monopoly* on that subject? [Great laughter.]

So far as Judge Douglas addressed his speech to me, or so far as it was about me, it is my business to pay some attention to it. I have heard the Judge state two or three times what he has stated to-day-that in a speech which I made at Springfield, Illinois, I had in a very especial manner complained that the Supreme Court in the Dred Scott case had decided that a negro could never be a citizen of the United States. I have omitted by some accident heretofore to analyze this statement, and it is required of me to notice it now. In point of fact it is *untrue*. I never have complained *especially* of the Dred Scott decision because it held that a negro could not be a citizen, and the Judge is always wrong when he says I ever did so complain of it. I have the speech here, and I will thank him or any of his friends to show where I said that a negro should be a citizen, and complained especially of the Dred Scott decision because it declared he could not be one. I have done no such thing, and Judge Douglas so persistently insisting that I have done so, has strongly impressed me with the belief of a predetermination on his part to misrepresent me. He could not get his foundation for insisting that I was in favor of this negro equality any where else as well he could by assuming that untrue proposition. Let me tell this audience what is true in regard to that matter; and the means by which they may correct me if I do not tell them truly is by a recurrence to the speech itself. I spoke of the Dred Scott decision in my Springfield speech, and I was then endeavoring to prove that the Dred Scott decision was a portion of a system or scheme to make slavery national in this country. I pointed out what things had been decided by the court. I mentioned as a fact that they had decided that a negro could not be a citizen-that they had done so, as I supposed, to deprive the negro, under all circumstances, of the remotest possibility of ever becoming a citizen and claiming the rights of a citizen of the United States under a certain clause of the Constitution. I stated that, without making any complaint of it at all. I then went on and stated the other points decided in the case, namely: that the bringing of a negro into the State of Illinois and holding him in slavery for two years here was a matter in regard to which they would not decide whether it would make him free or not; that they decided the further point that taking him into a United States Territory where slavery was prohibited by act of Congress, did not make him free, because that act of Congress, as they held, was unconstitutional. I mentioned these three things as making up the points decided in that case. I mentioned them in a lump taken in connection with the introduction of the Nebraska bill, and the amendment of Chase, offered at the time, declaratory of the right of the people of the Territories to *exclude slavery*, which was voted down by the friends of the bill. I mentioned all these things together, as evidence tending to prove a combination and conspiracy to make the institution of slavery

national. In that connection and in that way I mentioned the decision on the point that a negro could not be a citizen, and in no other connection.

Out of this, Judge Douglas builds up his beautiful fabrication-of my purpose to introduce a perfect, social, and political equality between the white and black races. His assertion that I made an "especial objection" (that is his exact language) to the decision on this account, is untrue in point of fact.

Now, while I am upon this subject, and as Henry Clay has been alluded to, I desire to place myself, in connection with Mr. Clay, as nearly right before this people as may be. I am quite aware what the Judge's object is here by all these allusions. He knows that we are before an audience, having strong sympathies southward by relationship, place of birth, and so on. He desires to place me in an extremely Abolition attitude. He read upon a former occasion, and alludes without reading today, to a portion of a speech which I delivered in Chicago. In his quotations from that speech, as he has made them upon former occasions, the extracts were taken in such a way as, I suppose, brings them within the definition of what is called *garbling*-taking portions of a speech which, when taken by themselves, do not present the entire sense of the speaker as expressed at the time. I propose, therefore, out of that same speech, to show how one portion of it which he skipped over (taking an extract before and an extract after) will give a different idea, and the true idea I intended to convey. It will take me some little time to read it, but I believe I will occupy the time that way.

You have heard him frequently allude to my controversy with him in regard to the Declaration of Independence. I confess that I have had a struggle with Judge Douglas on that matter, and I will try briefly to place myself right in regard to it on this occasion. I said-and it is between the extracts Judge Douglas has taken from this speech, and put in his published speeches:

"It may be argued that there are certain conditions that make necessities and impose them upon us, and to the extent that a necessity is imposed upon a man he must submit to it. I think that was the condition in which we found ourselves when we established this Government. We had slaves among us, we could not get our Constitution unless we permitted them to remain in slavery, we could not secure the good we did secure if we grasped for more; and having by necessity submitted to that much, it does not destroy the principle that is the charter of our liberties. Let the charter remain as our standard."

Now I have upon all occasions declared as strongly as Judge Douglas against the disposition to interfere with the existing institution of slavery. You hear me read it from the same speech from which he takes garbled extracts for the purpose of proving upon me a disposition to interfere with the institution of slavery, and establish a perfect social and political equality between negroes and white people.

Allow me while upon this subject briefly to present one other extract from a speech of mine, more than a year ago, at Springfield, in discussing this very same question, soon after Judge Douglas took his ground that negroes were not included in the Declaration of Independence:

"I think the authors of that notable instrument intended to include *all* men, but they did not mean to declare all men equal *in all respects*. They did not mean to say all men were equal in color, size, intellect, moral development or social capacity. They defined with tolerable distinctness in what they did consider all men created equal-equal in certain inalienable rights, among which are life, liberty, and the pursuit of happiness. This they said, and this they meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, or yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances should permit.

"They meant to set up a standard maxim for free society which should be familiar to all: constantly looked to, constantly labored for, and even, though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people, of all colors, every where."

There again are the sentiments I have expressed in regard to the Declaration of Independence upon a former occasion-sentiments which have been put in print and read wherever any body cared to know what so humble an individual as myself chose to say in regard to it.

At Galesburgh the other day, I said in answer to Judge Douglas, that three years ago there never had been a man, so far as I knew or believed, in the whole world, who had said that the Declaration of Independence did not include negroes in the term "all men." I reassert it to-day. I assert that Judge Douglas and all his friends may search the whole records of the country, and it will be a matter of great astonishment to me if they shall be able to find that one human being three years ago had ever uttered the astounding sentiment that the term "all men" in the Declaration did not include the negro. Do not let me be misunderstood. I know that more than three years ago there were men who, finding this assertion constantly in the way of their schemes to bring about the ascendancy and

perpetuation of slavery, *denied the truth of it*. I know that Mr. Calhoun and all the politicians of his school denied the truth of the Declaration. I know that it ran along in the mouth of some Southern men for a period of years, ending at last in that shameful though rather forcible declaration of Pettit of Indiana, upon the floor of the United States Senate, that the Declaration of Independence was in that respect "a self-evident lie," rather than a self-evident truth. But I say, with a perfect knowledge of all this hawking at the Declaration without directly attacking it, that three years ago there never had lived a man who had ventured to assail it in the sneaking way of pretending to believe it and then asserting it did not include the negro. I believe the first man who ever said it was Chief Justice Taney in the Dred Scott case, and the next to him was our friend, Stephen A. Douglas. And now it has become the catch-word of the entire party. I would like to call upon his friends every where to consider how they have come in so short a time to view this matter in a way so entirely different from their former belief? to ask whether they are not being borne along by an irresistible current-whither, they know not? [Great applause.]

In answer to my proposition at Galesburgh last week, I see that some man in Chicago has got up a letter addressed to the Chicago *Times*, to show, as he professes, that somebody *had* said so before; and he signs himself "An Old Line Whig," if I remember correctly. In the first place I would say he *was not* an old line Whig. I am somewhat acquainted with old line Whigs. I was with the old line Whigs from the origin to the end of that party; I became pretty well acquainted with them, and I know they always had some sense, whatever else you could ascribe to them. [Great Laughter.] I know there never was one who had not more sense than to try to show by the evidence he produces that some man had, prior to the time I named, said that negroes were not included in the term "all men" in the Declaration of Independence. What is the evidence he produces? I will bring forward *his* evidence and let you see what *he* offers by way of showing that somebody more than three years ago had said negroes were not included in the Declaration. He brings forward part of a speech from Henry Clay-*the* part of *the* speech of Henry Clay which I used to bring forward to prove precisely the contrary. [Laughter.] I guess we are surrounded to some extent to-day by the old friends of Mr. Clay, and they will be glad to hear anything from that authority. While he was in Indiana a man presented a petition to liberate his negroes, and he (Mr. Clay) made a speech in answer to it, which I suppose he carefully wrote out himself and caused to be published. I have before me an extract from that speech which constitutes the evidence this pretended "Old Line Whig" at Chicago brought forward to show that Mr. Clay didn't suppose the negro was included in the Declaration of Independence. Hear what Mr. Clay said:

"And what is the foundation of this appeal to me in Indiana, to liberate the slaves under my care in Kentucky? It is a general declaration in the act announcing to the world the independence of the thirteen American colonies, that all men are created equal. Now, as an abstract principle, *there is no doubt of the truth of that declaration;* and it is desirable, *in the original construction of society, and in organized societies*, to keep it in view as a great fundamental principle. But, then, I apprehend that in no society that ever did exist, or ever shall be formed, was or can the equality asserted among the members of the human race, be practically enforced and carried out. There are portions, large portions women, minors, insane, culprits, transient sojourners, that will always probably remain subject to the government of another portion of the community.

"That declaration, whatever may be the extent of its import, was made by the delegations of the thirteen States. In most of them slavery existed, and had long existed, and was established by law. It was introduced and forced upon the colonies by the paramount law of England. Do you believe, that in making that declaration the States that concurred in it intended that it should be tortured into a virtual emancipation of all the slaves within their respective limits? Would Virginia and other Southern States have ever united in a declaration which was to be interpreted into an abolition of slavery among them? Did any one of the thirteen colonies entertain such a design or expectation? To impute such a secret and unavowed purpose, would be to charge a political fraud upon the noblest band of patriots that ever assembled in council-a fraud upon the Confederacy of the Revolution-a fraud upon the union of those States whose Constitution not only recognized the lawfulness of slavery, but permitted the importation of slaves from Africa until the year 1808."

This is the entire quotation brought forward to prove that somebody previous to three years ago had said the negro was not included in the term "all men" in the Declaration. How does it do so? In what way has it a tendency to prove that? Mr. Clay says *it is true as an abstract principle* that all men are created equal, but that we cannot practically apply it in all cases. He illustrates this by bringing forward the cases of females, minors, and insane persons, with whom it cannot be enforced; but he says it is true as an abstract principle in the organization of society as well as in organized society, and it should be kept in view as a fundamental principle. Let me read a few words more before I add some comments of my own. Mr. Clay says a little further on:

"I desire no concealment of my opinions in regard to the institution of slavery. I look upon it as a great evil, and deeply lament that we have derived it from the parental Government, and from our ancestors. But here they are, and the question is, how can they be best dealt with? If a state of nature existed, and we were about to lay the foundations of society, *no man would be more strongly opposed than I should be, to incorporating the institution of slavery among its elements*."

Now, here in this same book-in this same speech-in this same extract brought forward to prove that Mr. Clay held that the negro was not included in the Declaration of Independence-no such statement on his part, but the declaration *that it is a great fundamental truth*, which should be constantly kept in view in the organization of society and in societies already organized. But if I say a word about it-

if I attempt, as Mr. Clay said all good men ought to do, to keep it in view-if, in this "organized society," I ask to have the public eye turned upon it-if I ask, in relation to the organization of new Territories, that the public eye should be turned upon it-forthwith I am villified as you hear me to-day. What have I done, that I have not the license of Henry Clay's illustrious example here in doing? Have I done aught that I have not his authority for, while maintaining that in organizing new Territories and societies, this fundamental principle should be regarded, and in organized society holding it up to the public view and recognizing what *he* recognized as the great principle of free government? [Great applause, and cries of "Hurrah for Lincoln."]

And when this new principle-this new proposition that no human being ever thought of three years ago-is brought forward, I *combat* it as having an evil tendency, if not an evil design. I combat it as having a tendency to dehumanize the negro-to take away from him the right of ever striving to be a man. I combat it as being one of the thousand things constantly done in these days to prepare the public mind to make property, and nothing but property, of the *negro in all the States of this Union*. [Tremendous applause. "Hurrah for Lincoln." "Hurrah for Trumbull."]

But there is a point that I wish, before leaving this part of the discussion, to ask attention to. I have read and I repeat the words of Henry Clay:

"I desire no concealment of my opinions in regard to the institution of slavery. I look upon it as a great evil, and deeply lament that we have derived it from the parental Government, and from our ancestors. I wish every slave in the United States was in the country of his ancestors. But here they are; the question is how they can best be dealt with? If a state of nature existed, and we were about to lay the foundations of society, no man would be more strongly opposed than I should be, to incorporate the institution of slavery among its elements."

The principle upon which I have insisted in this canvass, is in relation to laying the foundations of new societies. I have never sought to apply these principles to the old States for the purpose of abolishing slavery in those States. It is nothing but a miserable perversion of what I *have* said, to assume that I have declared Missouri, or any other slave State, shall emancipate her slaves. I have proposed no such thing. But when Mr. Clay says that in laying the foundations of societies in our Territories where it does not exist, he would be opposed to the introduction of slavery as an element, I insist that we have *his warrant*-his license for insisting upon the exclusion of that element which he declared in such strong and emphatic language *was most hateful to him*. [Loud applause.]

Judge Douglas has again referred to a Springfield speech in which I said "a house divided against itself cannot stand." The Judge has so often made the entire quotation from that speech that I can make it from memory. I used this language:

"We are now far into the fifth year, since a policy was initiated with the avowed object and confident promise of putting an end to the slavery agitation. Under the operation of this policy, that agitation has not only not ceased, but has constantly augmented. In my opinion it will not cease until a crisis shall have been reached and passed. 'A house divided against itself cannot stand.' I believe this Government cannot endure permanently half slave and half free. I do not expect the house to fall-but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the States-old as well as new, North as well as South."

That extract and the sentiments expressed in it, have been extremely offensive to Judge Douglas. He has warred upon them as Satan wars upon the Bible. [Laughter.] His perversions upon it are endless. Here now are my views upon it in brief.

I said we were now far into the fifth year, since a policy was initiated with the avowed object and confident promise of putting an end to the slavery agitation. Is it not so? When that Nebraska bill was brought forward four years ago last January, was it not for the "avowed object" of putting an end to the slavery agitation? We were to have no more agitation in Congress, it was all to be banished to the Territories. By the way, I will remark here that, as Judge Douglas is very fond of complimenting Mr. Crittenden in these days, Mr. Crittenden has said there was a falsehood in that whole business, for there was *no slavery agitation at that time to allay*. We were for a little while *quiet* on the troublesome thing, and that very allaying plaster of Judge Douglas's stirred it up again. [Applause and laughter.] But was it not understood or intimated with the "confident promise" of putting an end to the slavery agitation? Surely it was. In every speech you heard Judge Douglas make, until he got into this "imbroglio," as they call it, with the Administration about the Lecompton Constitution, every speech on that Nebraska bill was full of his felicitations that we were *just at the end* of the slavery agitation. The last tip of the last joint of the old serpent's tail was just drawing out of view. But has it proved so? I have asserted that under that policy that agitation "has not only not ceased, but has constantly augmented." When was there ever a greater agitation in Congress than last winter? When was it as great in the country as to-day?

There was a collateral object in the introduction of that Nebraska policy which was to clothe the people of the Territories with a superior degree of self-government, beyond what they had ever had before. The first object and the main one of conferring upon the

people a higher degree of "self -government," is a question of fact to be determined by you in answer to a single question. Have you ever heard or known of a people any where on earth who had as little to do, as, in the first instance of its use, the people of Kansas had with this same right of "self-government"? [Loud applause.] In its main policy and in its collateral object, *it has been nothing but a living, creeping lie from the time of its introduction till to-day*. [Loud cheers.]

I have intimated that I thought the agitation would not cease until a crisis should have been reached and passed. I have stated in what way I thought it would be reached and passed. I have said that it might go one way or the other. We might, by arresting the further spread of it, and placing it where the fathers originally placed it, put it where the public mind should rest in the belief that it was in the course of ultimate extinction. [Great applause.] Thus the agitation may cease. It may be pushed forward until it shall become alike lawful in all the States, old as well as new, North as well as South. I have said, and I repeat, my wish is that the further spread of it may be arrested, and that it may be placed where the public mind shall rest in the belief that it is in the course of ultimate extinction. I have expressed that as my wish. I entertain the opinion upon evidence sufficient to my mind, that the fathers of this Government placed that institution where the public mind *did* rest in the belief that it was in the course of ultimate extinction. Let me ask why they made provision that the source of slavery-the African slave-trade-should be cut off at the end of twenty years? Why did they make provision that in all the new territory we owned at that time, slavery should be forever inhibited? Why stop its spread in one direction and cut off its source in another, if they did not look to its being placed in the course of ultimate extinction?

Again; the institution of slavery is only mentioned in the Constitution of the United States two or three times, and in neither of these cases does the word "slavery" or "negro race" occur; but covert language is used each time, and for a purpose full of significance. What is the language in regard to the prohibition of the African slave-trade? It runs in about this way: "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight."

The next allusion in the Constitution to the question of slavery and the black race, is on the subject of the basis of representation, and there the language used is, "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed-three-fifths of all other persons."

It says "persons," not slaves, not negroes; but this "three-fifths" can be applied to no other class among us than the negroes.

Lastly, in the provision for the reclamation of fugitive slaves, it is said: "No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due." There again there is no mention of the word "negro" or of slavery. In all three of these places, being the only allusions to slavery in the instrument, covert language is used. Language is used not suggesting that slavery existed or that the black race were among us. And I understand the contemporaneous history of those times to be that covert language was used with a purpose, and that purpose was that in our Constitution, which it was hoped and is still hoped will endure forever-when it should be read by intelligent and patriotic men, after the institution of slavery had passed from among us-there should be nothing on the face of the great charter of liberty suggesting that such a thing as negro slavery had ever existed among us. [Enthusiastic applause.] This is part of the evidence that the fathers of the Government expected and intended the institution of slavery to come to an end. They expected and intended that it should be in the course of ultimate extinction. And when I say that I desire to see the further spread of it arrested, I only say I desire to see that done which the fathers have first done. When I say I desire to see it placed where the public mind will rest in the belief that it is in the course of ultimate extinction, I only say I desire to see it placed where they placed it. It is not true that our fathers, as Judge Douglas assumes, made this Government part slave and part free. Understand the sense in which he puts it. He assumes that slavery is a rightful thing within itself-was introduced by the framers of the Constitution. The exact truth is, that they found the institution existing among us, and they left it as they found it. But in making the Government they left this institution with many clear marks of disapprobation upon it. They found slavery among them, and they left it among them because of the difficulty-the absolute impossibility of its immediate removal. And when Judge Douglas asks me why we cannot let it remain part slave and part free, as the fathers of the Government made it, he asks a question based upon an assumption which is itself a falsehood; and I turn upon him and ask him the question, when the policy that the fathers of the Government had adopted in relation to this element among us was the best policy in the world-the only wise policy-the only policy that we can ever safely continue upon-that will ever give us peace unless this dangerous element masters us all and becomes a national institution-*I turn upon him and ask him why he could not let it alone*. [Great and prolonged cheering.] I turn and ask him why he was driven to the necessity of introducing a *new policy* in regard to it? He has himself said he introduced a new policy. He said so in his speech on the 22d of March of the present year, 1858. I ask him why he could not let it remain where our fathers placed it? I ask too of Judge Douglas and his friends why we shall not again place this institution upon the basis on which the fathers left it? I ask you, when he infers that I am in favor of setting the free and slave States at war, when the institution was placed in that attitude by those who made the constitution, *did they make any war*? ["No;" "no;" and cheers.] If we had no war out of it when thus placed, wherein is the ground of belief that we shall have war out of it if we return to that policy? Have we had any peace upon

this matter springing from any other basis? ["No,no."] I maintain that we have not. I have proposed nothing more than a return to the policy of the fathers.

I confess, when I propose a certain measure of policy, it is not enough for me that I do not intend anything evil in the result, but it is incumbent on me to show that it has not a *tendency* to that result. I have met Judge Douglas in that point of view. I have not only made the declaration that I do not *mean* to produce a conflict between the States, but I have tried to show by fair reasoning, and I think I have shown to the minds of fair men, that I propose nothing but what has a most peaceful tendency. The quotation that I happened to make in that Springfield speech, that "a house divided against itself cannot stand," and which has proved so offensive to the Judge, was part and parcel of the same thing. He tries to show that variety in the domestic institutions of the different States is necessary and indispensable. I do not dispute it. I have no controversy with Judge Douglas about that. I shall very readily agree with him that it would be foolish for us to insist upon having a cranberry law here, in Illinois, where we have no cranberries, because they have a cranberry law in Indiana, where they have cranberries. [Laughter, "good,good."] I should insist that it would be exceedingly wrong in us to deny to Virginia the right to enact oyster laws where they have oysters, because we want no such laws here. [Renewed laughter.] I understand, I hope, quite as well as Judge Douglas or anybody else, that the variety in the soil and climate and face of the country, and consequent variety in the industrial pursuits and productions of a country, require systems of law conforming to this variety in the natural features of the country. I understand quite as well as Judge Douglas, that if we here raise a barrel of flour more than we want, and the Louisianians raise a barrel of sugar more than they want, it is of mutual advantage to exchange. That produces commerce, brings us together, and makes us better friends. We like one another the more for it. And I understand as well as Judge Douglas, or any body else, that these mutual accommodations are the cements which bind together the different parts of this Union-that instead of being a thing to "divide the house"- figuratively expressing the Union-they tend to sustain it; they are the props of the house tending always to hold it up.

But when I have admitted all this, I ask if there is any parallel between these things and this institution of slavery? I do not see that there is any parallel at all between them. Consider it. When have we had any difficulty or quarrel amongst ourselves about the cranberry laws of Indiana, or the oyster laws of Virginia, or the pine lumber laws of Maine, or the fact that Louisiana produces sugar, and Illinois flour? When have we had any quarrels over these things? When have we had perfect peace in regard to this thing which I say is an element of discord in this Union? We have sometimes had peace, but when was it? It was when the institution of slavery remained quiet where it was. We have had difficulty and turmoil whenever it has made a struggle to spread itself where it was not. I ask, then, if experience does not speak in thunder-tones, telling us that the policy which has given peace to the country heretofore, being returned to, gives the greatest promise of peace again. ["Yes;" "yes;" "yes."] You may say, and Judge Douglas has intimated the same thing, that all this difficulty in regard to the institution of slavery is the mere agitation of office seekers and ambitious Northern politicians. He thinks we want to get "his place," I suppose. [Cheers and laughter.] I agree that there are office seekers amongst us. The Bible says somewhere that we are desperately selfish. I think we would have discovered that fact without the Bible. I do not claim that I am any less so than the average of men, but I do claim that I am not more selfish than Judge Douglas. [Roars of laughter and applause.]

But is it true that all the difficulty and agitation we have in regard to this institution of slavery springs from office seeking-from the mere ambition of politicians? Is that the truth? How many times have we had danger from this question? Go back to the day of the Missouri Compromise. Go back to the Nullification question, at the bottom of which lay this same slavery question. Go back to the time of the Annexation of Texas. Go back to the troubles that led to the Compromise of 1850. You will find that every time, with the single exception of the Nullification question, they sprung from an endeavor to spread this institution. There never was a party in the history of this country, and there probably never will be, of sufficient strength to disturb the general peace of the country. Parties themselves may be divided and quarrel on minor questions, yet it extends not beyond the parties themselves. But does *not* this question make a disturbance outside of political circles? Does it not enter into the churches and rend them asunder? What divided the great Methodist Church into two parts, North and South? What has raised this constant disturbance in every Presbyterian General Assembly that meets? What disturbed the Unitarian Church in this very city two years ago? What has jarred and shaken the great American Tract Society recently, not yet splitting it, but sure to divide it in the end? Is it not this same mighty, deep-seated power that somehow operates on the minds of men, exciting and stirring them up in every avenue of society-in politics, in religion, in literature, in morals, in all the manifold relations of life? [Applause.] Is this the work of politicians? Is that irresistible power which for fifty years has shaken the Government and agitated the people to be stilled and subdued by pretending that it is an exceedingly simple thing, and we ought not to talk about it? [Great cheers and laughter.] If you will get every body else to stop talking about it, I assure you I will quit before they have half done so. [Renewed laughter.] But where is the philosophy or statesmanship which assumes that you can quiet that disturbing element in our society which has disturbed us for more than half a century, which has been the only serious danger that has threatened our institutions-I say, where is the philosophy or the statesmanship based on the assumption that we are to quit talking about it, [applause] and that the public mind is all at once to cease being agitated by it? Yet this is the policy here in the north that Douglas is advocating-that we are to care nothing about it! I ask you if it is not a false philosophy? Is it not a false statesmanship that undertakes to build up a system of policy upon the basis of caring nothing about *the very thing that every body does*

care the most about? ["Yes, yes," and applause]-a thing which all experience has shown we care a very great deal about? [Laughter and applause.]

The Judge alludes very often in the course of his remarks to the exclusive right which the States have to decide the whole thing for themselves. I agree with him very readily that the different States have that right. He is but fighting a man of straw when he assumes that I am contending against the right of the States to do as they please about it. Our controversy with him is in regard to the new Territories. We agree that when the States come in as States they have the right and the power to do as they please. We have no power as citizens of the free States or in our federal capacity as members of the Federal Union through the General Government, to disturb slavery in the States where it exists. We profess constantly that we have no more inclination than belief in the power of the Government to disturb it; yet we are driven constantly to defend ourselves from the assumption that we are warring upon the rights of the *States*. What I insist upon is, that the new Territories shall be kept free from it while in the Territorial condition. Judge Douglas assumes that we have no interest in them-that we have no right whatever to interfere. I think we have some interest. I think that as white men we have. Do we not wish for an outlet for our surplus population, if I may so express myself? Do we not feel an interest in getting to that outlet with such institutions as we would like to have prevail there? If *you* go to the Territory opposed to slavery and another man comes upon the same ground with his slave, upon the assumption that the things are equal, it turns out that he has the equal right all his way and you have no part of it your way. If he goes in and makes it a slave Territory, and by consequence a slave State, is it not time that those who desire to have it a free State were on equal ground. Let me suggest it in a different way. How many Democrats are there about here ["A thousand"] who have left slave States and come into the free State of Illinois to get rid of the institution of slavery? [Another voice-"a thousand and one."] I reckon there are a thousand and one. [Laughter.] I will ask you, if the policy you are now advocating had prevailed when this country was in a Territorial condition, where would you have gone to get rid of it? [Applause.] Where would you have found your free State or Territory to go to? And when hereafter, for any cause, the people in this place shall desire to find new homes, if they wish to be rid of the institution, where will they find the place to go to? [Loud cheers.]

Now irrespective of the moral aspect of this question as to whether there is a right or wrong in enslaving a negro, I am still in favor of our new Territories being in such a condition that white men may find a home-may find some spot where they can better their condition-where they can settle upon new soil and better their condition in life. [Great and continued cheering.] I am in favor of this not merely, (I must say it here as I have elsewhere,) for our own people who are born amongst us, but as an outlet for *free white people every where*, the world over-in which Hans and Baptiste and Patrick, and all other men from all the world, may find new homes and better their conditions in life. [Loud and long continued applause.]

I have stated upon former occasions, and I may as well state again, what I understand to be the real issue in this controversy between Judge Douglas and myself. On the point of my wanting to make war between the free and the slave States, there has been no issue between us. So, too, when he assumes that I am in favor of introducing a perfect social and political equality between the white and black races. These are false issues, upon which Judge Douglas has tried to force the controversy. There is no foundation in truth for the charge that I maintain either of these propositions. The real issue in this controversy-the one pressing upon every mind-is the sentiment on the part of one class that looks upon the institution of slavery *as a wrong*, and of another class that *does not* look upon it as a wrong. The sentiment that contemplates the institution of slavery in this country as a wrong is the sentiment of the Republican party. It is the sentiment around which all their actions-all their arguments circle-from which all their propositions radiate. They look upon it as being a moral, social and political wrong; and while they contemplate it as such, they nevertheless have due regard for its actual existence among us, and the difficulties of getting rid of it in any satisfactory way and to all the constitutional obligations thrown about it. Yet having a due regard for these, they desire a policy in regard to it that looks to its not creating any more danger. They insist that it should as far as may be, *be treated* as a wrong, and one of the methods of treating it as a wrong is to *make provision that it shall grow no larger*. [Loud applause.] They also desire a policy that looks to a peaceful end of slavery at sometime, as being wrong. These are the views they entertain in regard to it as I understand them; and all their sentiments-all their arguments and propositions are brought within this range. I have said and I repeat it here, that if there be a man amongst us who does not think that the institution of slavery is wrong in any one of the aspects of which I have spoken, he is misplaced and ought not to be with us. And if there be a man amongst us who is so impatient of it as a wrong as to disregard its actual presence among us and the difficulty of getting rid of it suddenly in a satisfactory way, and to disregard the constitutional obligations thrown about it, that man is misplaced if he is on our platform. We disclaim sympathy with him in practical action. He is not placed properly with us.

On this subject of treating it as a wrong, and limiting its spread, let me say a word. Has any thing ever threatened the existence of this Union save and except this very institution of Slavery? What is it that we hold most dear amongst us? Our own liberty and prosperity. What has ever threatened our liberty and prosperity save and except this institution of Slavery? If this is true, how do you propose to improve the condition of things by enlarging Slavery-by spreading it out and making it bigger? You may have a wen or cancer upon your person and not be able to cut it out lest you bleed to death; but surely it is no way to cure it, to engraft it and spread it over your whole body. That is no proper way of treating what you regard a wrong. You see this peaceful way of dealing with it as a wrong-

restricting the spread of it, and not allowing it to go into new countries where it has not already existed. That is the peaceful way, the old-fashioned way, the way in which the fathers themselves set us the example.

On the other hand, I have said there is a sentiment which treats it as *not* being wrong. That is the Democratic sentiment of this day. I do not mean to say that every man who stands within that range positively asserts that it is right. That class will include all who positively assert that it is right, and all who like Judge Douglas treat it as indifferent and do not say it is either right or wrong. These two classes of men fall within the general class of those who do not look upon it as a wrong. And if there be among you any body who supposes that he, as a Democrat can consider himself "as much opposed to slavery as anybody," I would like to reason with him. You never treat it as a wrong. What other thing that you consider as a wrong, do you deal with as you deal with that? Perhaps you *say* it is wrong, *but your leader never does, and you quarrel with any body who says it is wrong*. Although you pretend to say so yourself you can find no fit place to deal with it as a wrong. You must not say any thing about it in the free States, *because it is not here*. You must not say any thing about it in the slave States, *because it is there*. You must not say any thing about it in the pulpit, because that is religion and has nothing to do with it. You must not say any thing about it in politics, *because that will disturb the security of "my place*." There is no place to talk about it as being a wrong, although you say yourself it *is* a wrong. But finally you will screw yourself up to the belief that if the people of the slave States should adopt a system of gradual emancipation on the slavery question, you would be in favor of it. You would be in favor of it. You say that is getting it in the right place, and you would be glad to see it succeed. But you are deceiving yourself. You all know that Frank Blair and Gratz Brown, down there in St. Louis, undertook to introduce that system in Missouri. They fought as valiantly as they could for the system of gradual emancipation which you pretend you would be glad to see succeed. Now I will bring you to the test. After a hard fight they were beaten, and when the news came over here you threw up your hats and *hurraed for Democracy*. More than that, take all the argument made in favor of the system you have proposed, and it carefully excludes the idea that there is any thing wrong in the institution of slavery. The arguments to sustain that policy carefully excluded it. Even here to-day you heard Judge Douglas quarrel with me because I uttered a wish that it might sometime come to an end. Although Henry Clay could say he wished every slave in the United States was in the country of his ancestors, I am denounced by those pretending to respect Henry Clay for uttering a wish that it might sometime, in some peaceful way, come to an end. The Democratic policy in regard to that institution will not tolerate the merest breath, the slightest hint, of the least degree of wrong about it. Try it by some of Judge Douglas's arguments. He says he "don't care whether it is voted up or voted down" in the Territories. I do not care myself in dealing with that expression, whether it is intended to be expressive of his individual sentiments on the subject, or only of the national policy he desires to have established. It is alike valuable for my purpose. Any man can say that who does not see any thing wrong in slavery, but no man can logically say it who does see a wrong in it; because no man can logically say he don't care whether a wrong is voted up or voted down. He may say he don't care whether an indifferent thing is voted up or down, but he must logically have a choice between a right thing and a wrong thing. He contends that whatever community wants slaves has a right to have them. So they have if it is not a wrong. But if it is a wrong, he cannot say people have a right to do wrong. He says that upon the score of equality, slaves should be allowed to go in a new Territory, like other property. This is strictly logical if there is no difference between it and other property. If it and other property are equal, his argument is entirely logical. But if you insist that one is wrong and the other right, there is no use to institute a comparison between right and wrong. You may turn over every thing in the Democratic policy from beginning to end, whether in the shape it takes on the statute book, in the shape it takes in the Dred Scott decision, in the shape it takes in conversation, or the shape it takes in short maxim-like arguments-it every where carefully excludes the idea that there is any thing wrong in it.

That is the real issue. That is the issue that will continue in this country when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles-right and wrong-throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity and the other the divine right of kings. It is the same principle in whatever shape it develops itself. It is the same spirit that says, "You work and toil and earn bread, and I'll eat it." No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle. I was glad to express my gratitude at Quincy, and I re-express it here to Judge Douglas-*that he looks to no end of the institution of slavery*. That will help the people to see where the struggle really is. It will hereafter place with us all men who really do wish the wrong may have an end. And whenever we can get rid of the fog which obscures the real question-when we can get Judge Douglas and his friends to avow a policy looking to its perpetuation-we can get out from among that class of men and bring them to the side of those who treat it as a wrong. Then there will soon be an end of it, and that end will be its "ultimate extinction." Whenever the issue can be distinctly made, and all extraneous matter thrown out so that men can fairly see the real difference between the parties, this controversy will soon be settled, and it will be done peaceably too. There will be no war, no violence. It will be placed again where the wisest and best men of the world placed it. Brooks of South Carolina once declared that when this Constitution was framed, its framers did not look to the institution existing until this day. When he said this, I think he stated a fact that is fully borne out by the history of the times. But he also said they were better and wiser men than the men of these days; yet the men of these days had experience which they had not, and by the invention of the cotton-gin it became a necessity in this country that slavery should be perpetual. I now say that, willingly or unwillingly, purposely or without purpose, Judge Douglas has been the most prominent instrument in changing the position of the institution of slavery which the fathers of the Government

expected to come to an end ere this-*and putting it upon Brooks's cotton-gin basis*-placing it where he openly confesses he has no desire there shall ever be an end of it.

I understand I have ten minutes yet. I will employ it in saying something about this argument Judge Douglas uses, while he sustains the Dred Scott decision, that the people of the Territories can still somehow exclude slavery. The first thing I ask attention to is the fact that Judge Douglas constantly said, before the decision, that whether they could or not, *was a question for the Supreme Court*. But after the court has made the decision he virtually says it is *not* a question for the Supreme Court, but for the people. And how is it he tells us they can exclude it? He says it needs "police regulations," and that admits of "unfriendly legislation." Although it is a right established by the Constitution of the United States to take a slave into a Territory of the United States and hold him as property, yet unless the Territorial Legislature will give friendly legislation, and, more especially, if they adopt unfriendly legislation, they can practically exclude him. Now, without meeting this proposition as a matter of fact, I pass to consider the real Constitutional obligation. Let me take the gentleman who looks me in the face before me, and let us suppose that he is a member of the Territorial Legislature. The first thing he will do will be to swear that he will support the Constitution of the United States. His neighbor by his side in the Territory has slaves and needs Territorial legislation to enable him to enjoy that Constitutional right. Can he withhold the legislation which his neighbor needs for the enjoyment of a right which is fixed in his favor in the Constitution of the United States which he has sworn to support? Can he withhold it without violating his oath? And more especially, can he pass unfriendly legislation to violate his oath? Why, this is a *monstrous* sort of talk about the Constitution of the United States! *There has never been as outlandish or lawless a doctrine from the mouth of any respectable man on earth*. I do not believe it is a Constitutional right to hold slaves in a Territory of the United States. I believe the decision was improperly made and I go for reversing it. Judge Douglas is furious against those who go for reversing a decision. But he is for legislating it out of all force while the law itself stands. I repeat that there has never been so monstrous a doctrine uttered from the mouth of a respectable man.

I suppose most of us (I know it of myself) believe that the people of the Southern States are entitled to a Congressional Fugitive Slave law-that is a right fixed in the Constitution. But it cannot be made available to them without Congressional legislation. In the Judge's language, it is a "barren right" which needs legislation before it can become efficient and valuable to the persons to whom it is guarantied. And as the right is Constitutional I agree that the legislation shall be granted to it-and that not that we like the institution of slavery. We profess to have no taste for running and catching niggers-at least I profess no taste for that job at all. Why then do I yield support to a Fugitive Slave law? Because I do not understand that the Constitution, which guaranties that right, can be supported without it. And if I believed that the right to hold a slave in a Territory was equally fixed in the Constitution with the right to reclaim fugitives, I should be bound to give it the legislation necessary to support it. I say that no man can deny his obligation to give the necessary legislation to support slavery in a Territory, who believes it is a Constitutional right to have it there. No man can, who does not give the Abolitionists an argument to deny the obligation enjoined by the Constitution to enact a Fugitive Slave law. Try it now. It is the strongest Abolition argument ever made. I say if that Dred Scott decision is correct, then the right to hold slaves in a Territory is equally a Constitutional right with the right of a slaveholder to have his runaway returned. No one can show the distinction between them. The one is express, so that we cannot deny it. The other is construed to be in the Constitution, so that he who believes the decision to be correct believes in the right. And the man who argues that by unfriendly legislation, in spite of that Constitutional right, slavery may be driven from the Territories, cannot avoid furnishing an argument by which Abolitionists may deny the obligation to return fugitives, and claim the power to pass laws unfriendly to the right of the slaveholder to reclaim his fugitive. I do not know how such an argument may strike a popular assembly like this, but I defy anybody to go before a body of men whose minds are educated to estimating evidence and reasoning, and show that there is an iota of difference between the Constitutional right to reclaim a fugitive, and the Constitutional right to hold a slave, in a Territory, provided this Dred Scott decision is correct. I defy any man to make an argument that will justify unfriendly legislation to deprive a slaveholder of his right to hold his slave in a Territory, that will not equally, in all its length, breadth and thickness, furnish an argument for nullifying the Fugitive Slave law. Why, there is not such an Abolitionist in the nation as Douglas, after all. [Loud and enthusiastic applause.]

Mr. Douglas' Reply

Mr. Lincoln has concluded his remarks by saying that there is not such an Abolitionist as I am in all America. (Laughter.) If he could make the Abolitionists of Illinois believe that, he would not have much show for the Senate. (Great laughter and applause.) Let him make the Abolitionists believe the truth of that statement and his political back is broken. (Renewed laughter.)

His first criticism upon me is the expression of his hope that the war of the Administration will be prosecuted against me and the Democratic party of this State with vigor. He wants that war prosecuted with vigor; I have no doubt of it. His hopes of success, and the hopes of his party depend solely upon it. They have no chance of destroying the Democracy of this State except by the aid of federal patronage. ("That's a fact," "good," and cheers.) He has all the federal office-holders here as his allies, ("That's so,") running separate tickets against the Democracy to divide the party, although the leaders all intend to vote directly the Abolition ticket, and only leave the greenhorns to vote this separate ticket who refuse to go into the Abolition camp. (Laughter and cheers.) There is something really refreshing in the thought that Mr. Lincoln is in favor of prosecuting one war vigorously. (Roars of laughter.) It is the

first war I ever knew him to be in favor of prosecuting. (Renewed laughter.) It is the first war that I ever knew him to believe to be just or constitutional. (Laughter and cheers.) When the Mexican war [was] being waged, and the American army was surrounded by the enemy in Mexico, he thought that war was unconstitutional, unnecessary, and unjust. ("That's so," "you've got him," "he voted against it," &c.) He thought it was not commenced on the right *spot*. (Laughter.)

When I made an incidental allusion of that kind in the joint discussion over at Charleston some weeks ago, Lincoln, in replying, said that I, Douglas, had charged him with voting against supplies for the Mexican war, and then he reared up, full length, and swore that he never voted against the supplies-that it was a slander-and caught hold of Ficklin, who sat on the stand, and said, "Here, Ficklin, tell the people that it is a lie." (Laughter and cheers.) Well, Ficklin, who had served in Congress with him, stood up and told them all that he recollected about it. It was that when George Ashmun, of Massachusetts, brought forward a resolution declaring the war unconstitutional, unnecessary, and unjust, that Lincoln had voted for it. "Yes," said Lincoln, "I did." Thus he confessed that he voted that the war was wrong, that our country was in the wrong, and consequently that the Mexicans were in the right; but charged that I had slandered him by saying that he voted against the supplies. I never charged him with voting against the supplies in my life, because I knew that he was not in Congress when they were voted. (Tremendous shouts of laughter.) The war was commenced on the 13th day of May, 1846, and on that day we appropriated in Congress ten millions of dollars and fifty thousand men to prosecute it. During the same session we voted more men and more money, and at the next session we voted more men and more money, so that by the time Mr. Lincoln entered Congress we had enough men and enough money to carry on the war, and had no occasion to vote any more. (Laughter and cheers.) When he got into the House, being opposed to the war, and not being able to stop the supplies, because they had all gone forward, all he could do was to follow the lead of Corwin, and prove that the war was not begun on the right spot, and that it was unconstitutional, unnecessary, and wrong. Remember, too, that this he did after the war had been begun. It is one thing to be opposed to the declaration of a war, another and very different thing to take sides with the enemy against your own country after the war has been commenced. ("Good," and cheers.) Our army was in Mexico at the time, many battles had been fought; our citizens, who were defending the honor of their country's flag, were surrounded by the daggers, the guns and the poison of the enemy. Then it was that Corwin made his speech in which he declared that the American soldiers ought to be welcomed by the Mexicans with bloody hands and hospitable graves; then it was that Ashmun and Lincoln voted in the House of Representatives that the war was unconstitutional and unjust; and Ashmun's resolution, Corwin's speech, and Lincoln's vote, were sent to Mexico and read at the head of the Mexican army, to prove to them that there was a Mexican party in the Congress of the United States who were doing all in their power to aid them. ("That's the truth," "Lincoln's a traitor," etc.) That a man who takes sides with the common enemy against his own country in time of war should rejoice in a war being made on me now, is very natural. (Immense applause.) And in my opinion, no other kind of a man would rejoice in it. ("That's true," "hurrah for Douglas." and cheers.)

Mr. Lincoln has told you a great deal to-day about his being an old line Clay Whig. ("He never was.") Bear in mind that there are a great many old Clay Whigs down in this region. It is more agreeable, therefore, for him to talk about the old Clay Whig party than it is for him to talk Abolitionism. We did not hear much about the old Clay Whig party up in the Abolition districts. How much of an old line Henry Clay Whig was he? Have you read General Singleton's speech at Jacksonville? (Yes, yes, and cheers.) You know that Gen. Singleton was, for twenty-five years, the confidential friend of Henry Clay in Illinois, and he testified that in 1847, when the Constitutional Convention of this State was in session, the Whig members were invited to a Whig caucus at the house of Mr. Lincoln's brother-in-law, where Mr. Lincoln proposed to throw Henry Clay overboard and take up Gen. Taylor in his place, giving, as his reason, that if the Whigs did not take up Gen. Taylor the Democrats would. (Cheers and laughter.) Singleton testifies that Lincoln, in that speech, urged, as another reason for throwing Henry Clay overboard, that the Whigs had fought long enough for principle and ought to begin to fight for success. Singleton also testifies that Lincoln's speech did have the effect of cutting Clay's throat, and that he (Singleton) and others withdrew from the caucus in indignation. He further states that when they got to Philadelphia to attend the National Convention of the Whig party, that Lincoln was there, the bitter and deadly enemy of Clay, and that he tried to keep him (Singleton) out of the Convention because he insisted on voting for Clay, and Lincoln was determined to have Taylor. (Laughter and applause.) Singleton says that Lincoln rejoiced with very great joy when he found the mangled remains of the murdered Whig statesman lying cold before him. Now, Mr. Lincoln tells you that he is an old line Clay Whig! (Laughter and cheers.) Gen. Singleton testifies to the facts I have narrated, in a public speech which has been printed and circulated broadcast over the State for weeks, yet not a lisp have we heard from Mr. Lincoln on the subject, except that he is an old Clay Whig.

What part of Henry Clay's policy did Lincoln ever advocate? He was in Congress in 1848-9, when the Wilmot proviso warfare disturbed the peace and harmony of the country, until it shook the foundation of the Republic from its center to its circumference. It was that agitation that brought Clay forth from his retirement at Ashland again to occupy his seat in the Senate of the United States, to see if he could not, by his great wisdom and experience, and the renown of his name, do something to restore peace and quiet to a disturbed country. Who got up that sectional strife that Clay had to be called upon to quell? I have heard Lincoln boast that he voted forty-two times for the Wilmot proviso, and that he would have voted as many times more if he could. (Laughter.) Lincoln is the man, in connection with Seward, Chase, Giddings, and other Abolitionists, who got up that strife that I helped Clay to put down. (Tremendous applause.) Henry Clay came back to the Senate in 1849, and saw that he must do something to restore peace to the country. The Union Whigs and the Union Democrats welcomed him the moment he arrived, as the man for the occasion. We believed that he, of all men on earth, had been preserved by Divine Providence to guide us out of our difficulties, and we Democrats rallied

under Clay then, as you Whigs in nullification time rallied under the banner of old Jackson, forgetting party when the country was in danger, in order that we might have a country first, and parties afterwards. ("Three cheers for Douglas.")

And this reminds me that Mr. Lincoln told you that the slavery question was the only thing that ever disturbed the peace and harmony of the Union. Did not nullification once raise its head and disturb the peace of this Union in 1832? Was that the slavery question, Mr. Lincoln? Did not disunion raise its monster head during the last war with Great Britain? Was that the slavery question, Mr. Lincoln? The peace of this country has been disturbed three times, once during the war with Great Britain, once on the tariff question, and once on the slavery question. ("Three cheers for Douglas.") His argument, therefore, that slavery is the only question that has ever created dissension in the Union falls to the ground. It is true that agitators are enabled now to use this slavery question for the purpose of sectional strife. ("That's so.") He admits that in regard to all things else, the principle that I advocate, making each State and Territory free to decide for itself, ought to prevail. He instances the cranberry laws, and the oyster laws, and he might have gone through the whole list with the same effect. I say that all these laws are local and domestic, and that local and domestic concerns should be left to each State and each Territory to manage for itself. If agitators would acquiesce in that principle, there never would be any danger to the peace and harmony of the Union. ("That's so," and cheers.)

Mr. Lincoln tries to avoid the main issue by attacking the truth of my proposition, that our fathers made this Government divided into free and slave States, recognizing the right of each to decide all its local questions for itself. Did they not thus make it? It is true that they did not establish slavery in any of the States, or abolish it in any of them; but finding thirteen States, twelve of which were slave and one free, they agreed to form a government uniting them together, as they stood divided into free and slave States, and to guaranty forever to each State the right to do as it pleased on the slavery question. (Cheers.) Having thus made the government, and conferred this right upon each State forever, I assert that this Government can exist as they made it, divided into free and slave States, if any one State chooses to retain slavery. (Cheers.) He says that he looks forward to a time when slavery shall be abolished every where. I look forward to a time when each State shall be allowed to do as it pleases. If it chooses to keep slavery forever, it is not my business, but its own; if it chooses to abolish slavery, it is its own business-not mine. I care more for the great principle of self-government, the right of the people to rule, than I do for all the negroes in Christendom. (Cheers.) I would not endanger the perpetuity of this Union, I would not blot out the great inalienable rights of the white men for all the negroes that ever existed. (Renewed applause.) Hence, I say, let us maintain this Government on the principles that our fathers made it, recognizing the right of each State to keep slavery as long as its people determine, or to abolish it when they please. (Cheers.) But Mr. Lincoln says that when our fathers made this Government they did not look forward to the state of things now existing, and therefore he thinks the doctrine was wrong; and he quotes Brooks, of South Carolina, to prove that our fathers then thought that probably slavery would be abolished by each State acting for itself before this time. Suppose they did; suppose they did not foresee what has occurred,-does that change the principles of our Government? They did not probably foresee the telegraph that transmits intelligence by lightning, nor did they foresee the railroads that now form the bonds of union between the different States, or the thousand mechanical inventions that have elevated mankind. But do these things change the principles of the Government? Our fathers, I say, made this Government on the principle of the right of each State to do as it pleases in its own domestic affairs, subject to the Constitution, and allowed the people of each to apply to every new change of circumstances such remedy as they may see fit to improve their condition. This right they have for all time to come. (Cheers.)

Mr. Lincoln went on to tell you that he does not at all desire to interfere with slavery in the States where it exists, nor does his party. I expected him to say that down here. (Laughter.) Let me ask him then how he expects to put slavery in the course of ultimate extinction every where, if he does not intend to interfere with it in the States where it exists? He says that he will prohibit it in all Territories, and the inference is, then, that unless they make free States out of them he will keep them out of the Union; for, mark you, he did not say whether or not he would vote to admit Kansas with slavery or not, as her people might apply (he forgot that as usual, etc.); he did not say whether or not he was in favor of bringing the Territories now in existence into the Union on the principle of Clay's Compromise measures on the slavery question. I told you that he would not. His idea is that he will prohibit slavery in all the Territories and thus force them all to become free States, surrounding the slave States with a cordon of free States and hemming them in, keeping the slaves confined to their present limits whilst they go on multiplying until the soil on which they live will no longer feed them, and he will thus be able to put slavery in a course of ultimate extinction by starvation. (Cheers.) He will extinguish slavery in the Southern States as the French general exterminated the Algerines when he smoked them out. He is going to extinguish slavery by surrounding the slave States, hemming in the slaves and starving them out of existence, as you smoke a fox out of his hole. He intends to do that in the name of humanity and Christianity, in order that we may get rid of the terrible crime and sin entailed upon our fathers of holding slaves. (Laughter and cheers.) Mr. Lincoln makes out that line of policy, and appeals to the moral sense of justice and to the Christian feeling of the community to sustain him. He says that any man who holds to the contrary doctrine is in the position of the king who claimed to govern by Divine right. Let us examine for a moment and see what principle it was that overthrew the Divine right of George the Third to govern us. Did not these colonies rebel because the British parliament had no right to pass laws concerning our property and domestic and private institutions without our consent? We demanded that the British Government should not pass such laws unless they gave us representation in the body passing them, -and this the British government insisting on doing,-we went to war, on the principle that the Home Government should not control and govern distant colonies without giving them a representation. Now, Mr. Lincoln proposes to govern the Territories without giving them a representation, and calls on

Congress to pass laws controlling their property and domestic concerns without their consent and against their will. Thus, he asserts for his party the identical principle asserted by George III. and the Tories of the Revolution. (Cheers.)

I ask you to look into these things, and then tell me whether the Democracy or the Abolitionists are right. I hold that the people of a Territory, like those of a State (I use the language of Mr. Buchanan in his letter of acceptance,) have the right to decide for themselves whether slavery shall or shall not exist within their limits. ("That's the idea," "Hurrah for Douglas.") The point upon which Chief Justice Taney expresses his opinion is simply this, that slaves being property, stand on an equal footing with other property, and consequently that the owner has the same right to carry that property into a Territory that he has any other, subject to the same conditions. Suppose that one of your merchants was to take fifty or one hundred thousand dollars' worth of liquors to Kansas. He has a right to go there under that decision, but when he gets there he finds the Maine liquor law in force, and what can he do with his property after he gets it there? He cannot sell it, he cannot use it, it is subject to the local law, and that law is against him, and the best thing he can do with it is to bring it back into Missouri or Illinois and sell it. If you take negroes to Kansas, as Col. Jeff. Davis said in his Bangor speech, from which I have quoted to-day, you must take them there subject to the local law. If the people want the institution of slavery they will protect and encourage it; but if they do not want it they will withhold that protection, and the absence of local legislation protecting slavery excludes it as completely as a positive prohibition. ("That's so," and cheers.) You slaveholders of Missouri might as well understand what you know practically, that you cannot carry slavery where the people do not want it. ("That's so.") All you have a right to ask is that the people shall do as they please; if they want slavery let them have it; if they do not want it, allow them to refuse to encourage it.

My friends, if, as I have said before, we will only live up to this great fundamental principle, there will be peace between the North and the South. Mr. Lincoln admits that under the Constitution on all domestic questions, except slavery, we ought not to interfere with the people of each State. What right have we to interfere with slavery any more than we have to interfere with any other question? He says that this slavery question is now the bone of contention. Why? Simply because agitators have combined in all the free States to make war upon it. Suppose the agitators in the States should combine in one-half of the Union to make war upon the railroad system of the other half? They would thus be driven to the same sectional strife. Suppose one section makes war upon any other peculiar institution of the opposite section, and the same strife is produced. The only remedy and safety is that we shall stand by the Constitution as our fathers made it, obey the laws as they are passed, while they stand the proper test and sustain the decisions of the Supreme Court and the constituted authorities.