Acknowledgements

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# INSTRUCTOR’S MANUAL

O’Connor & Sabato Essentials 2004 Edition

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PREFACE

This Instructor's Manual is designed to offer helpful suggestions in a number of areas to both new and experienced teachers of courses in American Government. Since lecture styles differ dramatically, I have not written out entire lectures but instead offer an annotated outline in narrative form. In addition, I offer some suggestions on activities, assignments, and sources that may prove useful in developing and executing your course. For more ideas, I strongly recommend APSA's Course Syllabi Project. They just put out a new American Government volume that offers many great ideas for intro courses. More information on the syllabi collection can be found at: www.apsanet.org

For each chapter, this manual follows this pattern:

• Narrative Lecture Outlines
  • many lectures include some hints from me about how I deal with the topic in my own classes. I hope at least some of you find them useful. They are set out in italics.

• Websites for Instructors*

• Web Activities for Classes*

• General Class Activities and Discussion Assignments

• Possible Simulations

• Additional Sources#

* Due to the nature of the Internet, I cannot guarantee that all sites I have included will remain intact or up-to-date. I can only say that at the time of publication, these sites were accurate, up-to-date, and seemed to be the most useful websites on the given topic. In addition, this is not an exhaustive list but a selective one. Hopefully, these are user friendly, useful, informative, and relatively unbiased sites (except where bias is clearly labeled).

# The text gives a large number of sources. In this section, I have attempted to offer some additional sources. Some are academic, others popular, and others had something of interest (hyperbole, points of view, fun, and so on). There was no conscious attempt to represent an ideology or point of view—I tried to choose items from all over the spectrum and, hopefully, some books that would be fun and interesting to you and your students but may not be in the mainstream.
CHAPTER 1
THE POLITICAL LANDSCAPE

The United States has had the same constitution, with only 27 amendments, for almost 220 years. That is an amazing achievement given that in the last 60 years France has had five republics and the Dominican Republic had 31 constitutions between 1844 and 1966. It has lasted because it is flexible and open to interpretation. For example, “We the people” once had a very narrow meaning and today is much, much broader.

The Preamble to the Constitution is a statement of principles and goals that the Founders thought Americans should live by and live up to…whether we have done so, and how we might better achieve these goals, are some of the things that I hope you keep in mind as we progress through this course on American government.

The Political Landscape

In the early days of the American republic, the only people allowed to participate in ‘democracy’ were white, land-owning men over the age of 25 (the actual voting age depended upon the state in which he lived). Therefore, the term "We the People" has changed significantly in meaning since 1787. "People" now includes virtually the entire adult population regardless of race, gender, religion, or other socioeconomic indicators. The only acceptable limits are on felons and people currently suffering from severe mental illness. This is an example of how our government and society has evolved and continues to evolve to "form a more perfect union."

Change is a constant in the United States. In the past, Americans felt the government was helping them. After WWII, the government helped war veterans buy houses through the Veteran's Administration (V.A. mortgage loans), and they went to school through the GI Bill. During the 1990s, many Americans saw the government as a hindrance to the American Dream, not as a helper. After September 11, 2001, Americans felt a surge of patriotism, however, many feel an underlying apprehension about how well the United States lives up to the constitutional promises of a perfect union, justice, and attaining the blessings of liberty. Many Americans don’t think much, or care much, about government and many believe that the government doesn’t promote the ‘general welfare’ very much. In the aftermath of the disputed presidential elections of 2000, the stock market collapse and war on terrorism of 2001, and the establishment of a new cabinet department – the Office of Homeland Security – the future seems quite uncertain to many Americans.

In order for us to understand where the country is going, we must first look at where we have been. In this lecture, we will look at the theoretical roots of American government and explore the characteristics and thoughts of today's Americans.
The Roots of American Government
From Aristotle to the Enlightenment

Aristotle and the Greeks articulated the idea of natural law—the idea that society should be governed by ethical principles that are part of nature and can be understood through reason—and other philosophers added to this tradition. The Reformation promoted the belief that people could talk directly to God, which led to people believing they might also have a say in their own governance. The implication of these thinkers, the Reformation, and the Enlightenment era as a whole changed the way people thought about government. Government had been by "divine right," but these philosophical changes placed mankind on the road toward self-government or democracy.

A Growing Idea: Popular Consent

The Protestant Reformation was based on the idea that individuals should be able to talk to God without going through a priest. This individual empowerment is a major precursor to democracy because Protestantism brought with it the idea of covenants. This idea of a self-governing congregation without the need for formal hierarchy led to the idea that secular matters also could be self-governing.

Covenants evolved into the idea of the social contract—that people must give their consent to be governed. This is one of the bases of democracy.

Hobbes and Locke. Both Hobbes and Locke wrote about social contracts. However, they took different views about the reasons for a social contract and what life was like prior to the social contract (the state of nature).

Thomas Hobbes was a pessimist who believed that man's basic state was one of war. Strong government was necessary to restrain man, and men must give up certain rights to a government in order to survive. John Locke had a different view of human nature and government. Locke argued that men formed governments in order to preserve property and justice. If governments fail to do this, the people have a right to revolt since the government has broken the contract.

Both philosophers contributed to the ideas on which the Founding Fathers built this country. Our system tries to strike a balance between the two views of government and human nature.

Devising a National Government

At the time of the founding, several forms of government existed: monarchy, oligarchy, and aristocracy. All are based on elite rule and give few rights to the subjects who live under them.

The colonists did not want to replicate that under which they had suffered in the Old World, so they sought to establish a new system: a democracy.

The Theory of Democratic Government

The first representative assembly in the New World was the Virginia House of Burgesses, created in 1619. In addition, New England began a tradition of direct democracy through town meetings, and many colonists were hostile towards British taxation because they were not allowed representatives in the British House of Commons nor in the House of Lords.
It seemed obvious that the colonies wanted some form of self-rule but the traditions of direct democracy and representative democracy evidenced above stood in conflict. Virginia and other colonies wanted representative democracy while New England espoused direct democracy. As the colonies got larger, it became fairly obvious that direct democracy would be too cumbersome and time-consuming so representative democracy, or a republic, became the ideal of government in the colonies.

**Why a Capitalist System?**

The nature of the economic system also concerned the colonists. How much government intervention, if any, should be allowed? Could the government limit one's individual liberties in pursuit of a common good? These were hot topics in the colonial era.

The American economy today is characterized by private ownership of property and a free market economy. This form of economic system is called capitalism—a form of economic system that favors private control of business and minimal government regulation.

In 1776, the dominant economic form was mercantilism. Mercantilism is an economic system in which a state controls trade and profit for the good of the state. Examples of mercantilism include the British East India Company and the Dutch East India Company. The idea of "free trade" without the tariffs and trade barriers of mercantilism was virtually unheard of. Countries considered it advantageous to their economic position to have and maintain monopolies, restrict trade through taxation and trade barriers, and limit access to their domestic markets. The United States, an outsider and newcomer to the trade game, favored the ideas of Adam Smith. Smith advocated free trade with no tariffs and no barriers.

Though the U.S. has a capitalist system, it is not pure capitalism. There have been many arguments over the years about the extent of government involvement in the economy. During many periods of history—particularly economic boom periods—*laissez faire* economics was popular. That means "hands-off" in French and argues for absolute minimalist governmental involvement. During many crises, however, there have been demands for increased government involvement (just think about the Great Depression and WWII).

**Other Economic Systems**

*In order to give context, a brief discussion of socialism and other forms of government is in order. With this generation, however, I feel that it is often easier to discuss democracy and authoritarianism instead because they don’t remember Communism in a meaningful way.*
Characteristics of American Democracy

I usually list these seven attributes on the board and hold a discussion about the meaning of each. During the discussion I try to ask specific questions that get at how each idea works in the American context.

- Popular Consent
- Popular Sovereignty
- Majority Rule
- Individualism
- Equality
- Personal Liberty
- Civil Society

The Changing Political Culture and Characteristics of the American People

Changing Size and Population

During the 1790s, there were fewer than 4 million people in 13 states and each member of Congress represented 30,000 people. Today, there are more than 285 million Americans in 50 states plus territories, commonwealths, and dependencies plus a member of Congress from Montana represents 905,000 Americans.

Changing Demographics

America has grown. Growth has benefits and costs. Recent debates about immigration tend to focus only upon the costs of this type of growth. However, there are also substantial benefits and much of the dynamism the United States exhibits can be attributed, in part, to immigration growth and the racial and ethnic changes the country has experienced throughout its history.

Changes in Racial and Ethnic Distributions

During colonial times, most colonists came from Anglo-Saxon northern Europe and shared a Protestant Christian heritage. Slaves came from Africa and the Caribbean but had no rights. Laborers and indentured servants came from Asia but also had no rights. And both groups were relatively small in number. Immigration peaked in the early 1900s and achieved a smaller peak during the 1980s. The earlier peak consisted of immigrants from northern and eastern Europe while the latter peak was predominantly from Asia and other parts of the world. Obviously, over time, immigration patterns have changed. The U.S. is no longer an Anglo-Saxon country.

The structure of racial minorities in America is also changing. By 2025, Latinos/Hispanic Americans are projected to outnumber African-Americans and the Asian American population is expected to double.

Changes in Age Cohort Composition

The age structure is also changing. America is getting "grayer." Today, we live longer and are in better health. When the United States was founded, people lived to the ripe old age of 35, on average. Today, life expectancy is in excess of 74 years! This has
important implications for many public policies, but in particular on health care and social security.

Political scientists and others refer to different age groups by generational labels that can be useful in understanding public policy and the demands individuals and groups make of governments. Each group is characterized by common characteristics that are formed on the basis of common political experiences. (I find it very useful to query the students on their ‘formative political experiences’ and first political memories…it is a nice reality check on what they remember and the fact that they have a quite different perspective than many of their teachers because they are of a different generation.) The group born after WWII is called the “Baby Boom” generation. This group tended to be experimental and quite liberal. They grew up with JFK, the summer of love, and the Beatles. This group is now reaching retirement age. Those born from the late 1960s through the 1970s are called “Generation X-ers.” The most recent generation is “Generation Y” and they are characterized by a faith in the capitalistic system and are highly optimistic since their formative experiences occurred during the boom times of the 1980s.

Changes in Family and Family Size

Families have changed as well. Family sizes have gotten smaller and single-parent families are on the rise. The ‘ideal size’ for a family, as measured by polls, was 4 children in 1949 and today most said that between no and 2 children were best. In 1940, 90% of households were family households. Today, that number is just over 55% two-parent households and another 14.6% single-parent households.

Implications of These Changes

All of these changes have seemed to intensify "us" versus "them" attitudes in the country. Attempts to redress inequalities in the 1960s and 1970s have led to backlash more recently. Economic downturns always exacerbate relations between newer and more established groups in society as well. Changes in immigration and perceptions that immigrants no longer "become American" have contributed to governance problems in the U.S. and have complicated the public policy arena.

Demographics matter because attitudes, values, and ideas affect views on politics and government, on how and whether we vote, on what issues we support and oppose and so on. A few examples: Baby Boomers want to protect Social Security, young parents want to improve the public schools their children attend, and many single people without children demand that government also fund things in which they are interested.

The Ideology of the American Public

To discuss ideology, I often begin by asking students to determine what their ideology is (if they have one). I ask questions such as:

What do you feel is the correct role of government in general?

In the following circumstances, what should the role of government be: poverty in general, child poverty, child abuse, marriage and divorce laws, privacy issues (specifically—should the government be able to access your Internet accounts or emails? should telemarketers be regulated at all, and if so how?), defense issues, and so on?
Do you consider yourself a liberal, conservative, or what? Now what does that mean to you? (list attributes on the board)

Political ideology is defined as a more or less consistent set of values that are reflected in the political, economic, social, and moral make-up of society. Many Americans espouse liberalism or conservatism with a growing number saying that they are libertarian. But what does this mean? (Often less than we might think.)

In the contemporary United States, a conservative favors state action over federal action, emphasizes fiscal responsibility such as balanced budgets, and feels that many social issues such as poverty and homelessness are best addressed by the private sector. A liberal tends to favor a more active government especially in terms of regulation of the economy. Liberals tend to actively call for the protection of the rights of minorities, the elderly, women, and the environment. They advocate social services for the poor and working classes as well. While Libertarians believe in free market economics, personal privacy, and extremely limited government. Some hard line libertarians argue that the only legitimate role for government is to provide for the national defense. Some more moderate libertarians favor severe limitations on government and government spending, but foresee a larger role than simply defense.

The problem with these "labels" is they tend to be applied thoughtlessly and dogmatically. They obscure our ability to see gray areas and common interests and instead polarize the political debate. They are often highly misleading. People often have conflicting views instead of a true ideology. They feel that the government should do more to help the poor (a 'liberal' view) and yet strongly favor more defense spending (a 'conservative' view). They feel that civil rights for minorities are very important as are rights for the elderly ('liberal') and also argue that government regulation of the economy should be very minimal ('conservative'). So these labels need to be used carefully and thoughtfully.

**Political Culture and Views of Government**

Ideology and experience greatly affect how we view our government. It is now part of our political culture to expect negative campaigns, dishonest politicians, and political pundits who bash our leaders and institutions.

Most people get their news about government from the electronic media: from network news (ABC, NBC, CBS), cable news (CNN, C-SPAN, Fox), from the Internet (a huge range from *Time* and the *New York Times* online to the *Drudge Report* and others). There has been a proliferation of news magazine shows as well. These changes have forced media outlets to be even more interested in "scoops": to be the first to air or report an event. This leads to increased reporting of scandals and rumors that often turn out to be incorrect. The "24/7" or instant news report nature of the current media also limits thoughtful commentary and encourages shallow reporting. The visual nature of the electronic media also leads to stories covering interesting images instead of important issues of the day. Looking at American politics this way, leads us to an understanding of why so many in our society today are uninformed and pessimistic.
High Expectations

Americans' expectations of the government are increasing and have been for a long time. When people have problems, they often demand that the government fix them. This has been happening for 200 years, so of course government today does much more than it did in the 1790s. In addition, the government has gotten larger and stronger in response to various crises such as war, economic depression, and social unrest.

Campaigning also leads Americans to expect more of government. Every campaign promise offered by a candidate leads some to expect the government to solve yet another problem (and when it doesn’t solve them, it adds greatly to public cynicism!).

A Missing Appreciation of the Good

The political and economic systems have become far more complex, and the educational system no longer plays the same socialization role it once did. Many Americans have no idea what government actually does for them. {Discuss what government does with the class: from time zones, to regulating airwaves for radio and TV, clean water, flouride, FDA inspections, rules on parking.....and so on.}

In addition, personal responsibility seems to have declined and people often find it easier to blame the government for their problems than to accept their own failings. This has many implications for politics, including an ever larger and more powerful government.

We also have little sense of history. How many times have you heard someone say things like the following: for the first time in history; this is the worst flood in history; there has never been a crime wave like this before; government has never been more powerful than it is today...and so on. Most of these statements are not true. Nor does it seem to be true that everyone in this generation will be less well off than the previous generation. Life expectancy is up, as is the quality of life. In 1970, only 11% of people graduated college; in 2002, 26% graduated. Cable TV was virtually non-existent in the 1970s; now almost 68% of households have it. The same is true of computers; today more than 51% of homes have PCs. The poverty rate has held fairly constant in the last 30 years, so things are not as bleak as we often tend to think. However, that has also come under attack because it is predicated upon outdated ideas about the percentage of one’s income used to pay for housing, food, and other necessities.

Mistrust of Politicians

Polls show that a plurality of Americans distrust our politicians. Scandals have been plentiful and the media cover them with great glee. Recent scandals include the Clinton-Lewinsky affair, House Speaker Newt Gingrich (R-GA) was fined over $300,000 for ethics violation (he later resigned and his divorce trial revealed a long standing affair), Speaker Designate Bob Livingston (R-LA) resigned his seat due to extramarital affairs, the ouster of Congressman James Traficant (D-OH) after his conviction on corruption charges and more. No wonder Americans are distrustful.

What is a marvel is the outstanding polling numbers President George W. Bush continues to earn and the trust most Americans put in the administration and the war on terrorism. Did September 11, 2001 change the American political landscape or is something else at work here? (discuss)

Voter Apathy
Is voter apathy a problem? Are people confronted with too many choices and are simply weary? Is there enough information about the candidates and issues? Are we just too busy? Do we lack real choices? Do we think our vote doesn’t matter? Or are we content? And is low voter turnout a problem at all? These are difficult questions without easy answers. We should consider them as we progress through the course and see if we can come up with ideas about which are the important questions and answers.

**Redefining our Expectations**

Politics involves conflict. Since each of us has different ideas, values, and ideologies – particularly as we become more diverse as a society – we will most likely not be able to govern ourselves on the basis of consensus. There will be winners and losers in the policy process. Government cannot cure all problems but serves many important purposes and will always play a major role in addressing societal problems.

Frustration and dissatisfaction come with change and perhaps we are in a period in which we redefine our expectations of government and of ourselves in light of all the changes of the last few decades. Government is responding to the changes in society. An unprecedented number of retirements from the Congress in 1994 and 1996 might be an indicator that it is harder today to please voters and less pleasant to work in public service.

The United States has lived through many trying times with our Constitution and system intact. We have survived and thrived through slavery and emancipation, wars and depressions, terrorist attacks, and anthrax….chances are we will adapt to the changes yet to come as well.

**Websites for Instructors**

The **Australian National University** offers a **Virtual Library of Demographic Information** that has a large number of links to huge amounts of data about most parts of the world. Includes population studies centers, data centers, and more.

demography.anu.edu.au/VirtualLibrary/

The **Avalon Project/Yale University** is a collection of historical documents of importance to the study of American government ranging from the Magna Carta and the colonial charters to state constitutions, historical variants of the plans put forward at the Constitutional Convention, and ratification debates.

www.yale.edu/lawweb/avalon/constpap.htm

**U.S. Census Bureau** offers information on the demographic, geographic, and economic make-up of our country. Includes the ability to search for state level data.

www.census.gov
Center for Voting and Democracy has links to articles related to voter turnout, links to organizations and ideas related to reforming the electoral system, and analysis of electoral returns.
   www.fairvote.org/turnout/

Core Documents of American Democracy is the Government Printing Office page that lists a large number of documents considered integral to American democracy ranging from the Articles of Confederation, Declaration of Independence, and Emancipation Proclamation to judicial decisions and congressional testimony.
   www.access.gpo.gov/su_docs/locators/coredocs/

detocqueville.com offers lots of information and links to sites related to Alexis deTocqueville who visited America in 1831 and published two volumes on his observations of American culture and democracy.
   www.tocqueville.org/

The Gallup Organization offers up-to-date and historical perspectives on the opinions of the American public.
   www.gallup.com

Keele University Political Science Resources offers a section on political thought that includes a large collection of documents on democracy, constitutions, limited government, ideology, and political theory.
   www.psr.keele.ac.uk

INS Self Test for Naturalization. Find out what aspiring citizens need to know to gain their citizenship.
   www.ins.usdoj.gov/graphics/exec/natz/natztest.asp

ThisNation.com has lots of information including an online textbook and current events. Some parts of the site are open to the public and others require purchasing the online text.
   www.thisnation.com

Yahoo.com Yahoo is a commercial search engine that has a wide variety of information. For our purposes, there is a government subheading of Yahoo that will provide you with links to many topics on government, regime type, ideology, political thought, and more.
   www.yahoo.com/government

Web Activities for Classes

1) Send students to the U.S. Census Bureau website (www.census.gov). Have them explore the site and have each student in the class find out the demographic make up of their hometown and home state. Then compare these to national demographics. Have them discuss what the implications of their findings might be for American democracy.
2) Many people are talking about the impact of the Web/Internet on democracy. Have students get online and find examples of the ways in which political information is available on the Web. Find campaign sites, party sites, sites about political philosophy, and so on. Be prepared to discuss why each one is political, and how it might affect our political system. Be sure to consider how many people have access to the Web, and their demographics in your conclusions.

3) Are Americans truly frustrated with and cynical about their government and politicians? Have students go to the Web and find some reliable polling data (try Gallup and Roper polls to begin with) on this question, also, do some empirical research. Read newspapers, listen to the radio, watch television, and talk to friends and family. Does their personal research correspond with the polls and the conclusions in the book? Have a class discussion of why or why not.

4) Have students explore the meaning of 'conservative' and 'liberal' by exploring the Web and identifying sites that are conservative and liberal in nature. Also have them look at extremely biased sites and discuss with them how many people subscribe to such views—is there a majority of either end of the ideological spectrum or are most of us in the middle? What do the results of this discussion mean particularly in regard to the media, elections, and other polarizing events?

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General Class Activities and Discussion Assignments

1) Have students list community, city, state, or regional problems and discuss what government programs have been established to address them, if any, as well as their effectiveness. After a class discussion, have each student (or groups of students) choose a problem and write a brief paper on what roles government could and should play in the resolution of the problem.

2) Today's Americans often question the "American Dream." What is the American Dream and how could you go about proving that the Dream is still alive or that the Dream is dying? What types of evidence would you need and where might you find it?

3) Many people date the beginnings of popular consent to the Magna Carta. Have students find out what the Magna Carta was and how it relates to the idea of government by the people.

4) Have students write a paper on the following: Hobbes and Locke are often considered extremely influential theorists who had a profound impact on the Framers of our government. How did their theories influence the Framers? How influential are they in American thought today? Are there any other philosophers who have been influential? Find out about two others and discuss how they influenced our system of government.
Possible Simulations

1) Stage a debate about human nature and the nature of government. Have one side research and argue the ideas of John Locke and their implications for government and the other side take Thomas Hobbes.

2) Separate the class into three (or six) groups representing three different regime types: authoritarianism, democracy, and monarchy. Have each group design a government simulating the basic principles of its regime. Each group should then present its findings to the class and explain why its principles and institutions fit that regime type.

3) Stage an episode (if a large class, more than one) of a popular Sunday morning (or other) news show such as The McLaughlin Report, Meet the Press, This Week with Sam Donaldson and Cokie Roberts, etc. Choose a layout that allows some members on the panel to be "conservative" and some to be "liberal." Choose an important issue of the week and assign them to discuss it by role-playing their part on the ideological spectrum. Schedule time at the end of class for a discussion of why certain opinions are liberal, conservative, or what.

4) Start class with the question: “If there were to be a constitutional convention today, what would it look like and how would it differ from the one in the 1780s?” Have students link the changes discussed to demography, ideology, political culture and other topics discussed in this chapter.

Additional Sources

Michael Barone, et al. The Almanac of American Politics: The Senators, the Representatives and the Governors: Their Records and Election Results, Their States and Districts. Times Books, every year.


CHAPTER 2  
THE CONSTITUTION

Narrative Lecture Outline

The Constitution was designed to last and was written in such a way that amendments were not supposed to be needed very often — it is the oldest operational constitution in the world—however, thousands of amendments have been proposed. The process to amend the Constitution, though, is long and rigorous so that only 27 amendments have actually become part of the Constitution. Ten of those were passed very early on as a promise to opponents of the Constitution to get their votes to approve the document. Those ten are known as the Bill of Rights. The most recent amendment passed in the early 1990s.

The process is long and difficult. For example, the idea to extend voting rights to virtually all people over the age of 18 was first discussed in 1942 but only attained passage as an amendment in 1971 after the Supreme Court declared legislation extending the voting age unconstitutional. This amendment made citizenship broader and more comprehensive than ever before. In fact, much of the expansion of the electorate was achieved through constitutional amendment, including voting rights for women and minorities. The Madison amendment, holds the record for the longest ratification period, it was proposed in 1789 and stated that Senators and Representatives could not raise their own pay during a session. An election must occur before any pay raise can take effect. This amendment was resurrected by a student in an American Government class at the University of Texas during research for a term paper and finally passed in 1992. (He got a “C” on the paper…)

Why has the Constitution been amended so rarely and worked so well? Perhaps it has been so successful because people are basically satisfied with our system of government or because it was the result of compromise and therefore vague and flexible? In order find out the answers, we need to look at a little history and the document itself.

The Origins of a New Nation

Colonists came to the New World during the 1600s for a variety of reasons including to escape religious persecution, to find plentiful land, and to seek a new start in life. Traveling in the 17th century was full of hardships so only the hardiest, most adventurous, or most desperate attempted sea voyages of several weeks or more! This made the colonists an independent and cantankerous lot with an ocean between them and their rulers. King James I actually ended up encouraging their independent mindedness by allowing the colonists to establish colonial assemblies such as the Virginia House of Burgesses. The colonists were allowed significant liberties in terms of self-government, religious practices, and economic organization.

By the mid 1700s, ties to the Crown had weakened substantially due to distance and new traditions. Each of the 13 colonies had its own constitution and liked its freedoms.
The British followed a national policy of mercantilism—that is, they wanted to control trade and amass large quantities of gold and silver through a national monopoly on trade. England tried to control and regulate trade in the American colonies but these regulations were often difficult to enforce and colonists tended to ignore or circumvent them.

The French and Indian War (or Seven Years War—1756 to 1763) brought on more English oversight and tougher laws on trade. The American phase of the war was fought on what is now the U.S.-Canadian border due to conflicts between the British and French Empires over control. The Treaty of Paris ended the war and left the British in control of most of North America. The colonists thought this would open up even more cheap land for them. The British had other ideas. The Crown decreed in 1763 that there would be no further westward movement of British subjects. They didn't want to pay to defend settlers against Indians.

The British Parliament also sought ways to pay for the war that infringed on what the colonists saw as their rights. The Sugar Act of 1764 taxed sugar, wine, coffee and other products commonly exported to the colonies. The colonists resented these taxes and began to cry "no taxation without representation!" Major protests waited until the passage of the Stamp Act in 1765 that required all documents (newspapers, deeds, magazines, etc) to pay a stamp tax and in the same year the Parliament passed the Mutiny (Quartering) Act that forced colonists to either provide barracks for British soldiers or house them in their homes. The colonists were outraged. Violent protests began. The Sons of Liberty were organized by Samuel Adams and Patrick Henry to act out against the Crown.

**First Steps Toward Independence**

The Stamp Act Congress in 1765 was the first step toward a unified country. Nine of the 13 colonies attended this meeting in New York City, and they drew up a detailed list of violations the Crown committed against their fundamental rights. In 1767, Parliament enacted the Townshend Acts that imposed duties on many products including tea. The Sons of Liberty started a boycott that prompted the British to send troops to Boston eventually leading to the Boston Massacre. In 1772, still irked by the taxes on tea Samuel Adams suggested the establishment of Committees of Correspondence to enhance communication among colonists. By 1774, 12 colonies had formed such committees.

Despite such resistance, Parliament passed another tax on tea in 1773 granting a monopoly to the East India Company. The colonists responded by dumping tea into Boston Harbor in the "Boston Tea Party." King George flew into a rage and announced that it was time to force the colonies to fall into line, and he persuaded Parliament to pass the Coercive Acts or the Intolerable Acts. These laws allowed Britain to blockade Boston harbor until the colonists paid for the "Tea Party" and allowed 4,000 more soldiers to be quartered in Boston.

Each of these acts added to resentment on both sides of the Atlantic. The colonists felt pushed around and unrepresented. The King and Parliament saw their power flaunted and ignored. Worse, the colonists were costing them money by forcing them to send troops and implement an increasing number of laws in the colonies. The issue ceased to be simply taxes and became control over the political and economic life...
of the colonies. All but one colony agreed to send delegates to a new continental congress to communicate with the King from a united position.

The Continental Congresses

The Continental Congress met in Philadelphia in September and October 1774 and consisted of 56 delegates from every colony except Georgia. Their intent was to find a solution to the problem—they wanted to find a compromise. They were not yet thinking of open rebellion. They called for colonial rights of petition and assembly, trial by peers, freedom from a standing army, and the selection of representative councils to levy taxes. If the King did not agree, the Congress would meet again in May 1775. King George refused the demands of the Continental Congress. A second Continental Congress called their meeting for May 1775, but before they could meet fighting broke out at Lexington and Concord, Massachusetts.

The Second Continental Congress convened on May 10, 1775, and its members were united in their hostility toward Britain. King George sent 20,000 more troops. The Revolutionary War had begun. Thomas Paine forcefully argued for independence for the colonies in his pamphlet *Common Sense* in January 1776.

The Declaration of Independence

Virginia was the first colony to call for independence. Six of the 13 colonies had instructed their delegates to vote for independence, but the Second Continental Congress suspended its sessions to allow delegates to go home to their colonies and consider the issue carefully: demanding independence was treason and punishable by death!

At the same time, committees were formed to consider Virginia's proposal. One of the committees began work on a declaration of independence. Benjamin Franklin, Robert Livingston, John Adams, Roger Sherman, and Thomas Jefferson were tasked with wording the document. On July 2, the colonies voted for independence (except New York which abstained). On July 4, the Congress adopted the Declaration of Independence penned by Thomas Jefferson.

A Theoretical Basis for a New Government

The primary author of the Declaration of Independence was Thomas Jefferson. In it he used stirring language to explain the reasons for the colonists’ desire for independence. He drew heavily on the work of many theorists including John Locke, as a matter of fact, the phrase about man’s inalienable rights to “life, liberty, and the pursuit of happiness” is very close to Locke’s phrase “life, liberty, and property.” Locke’s right to rebel against unjust rulers is also a key component behind the Declaration of Independence.

Jefferson believed strongly that government should be based on consent and therefore followed in the footsteps of social contract theorists. He, and the other members of the committee, felt that Britain had violated the rights of the colonists and could no longer be considered legitimate and therefore a new government was in order that could gain the consent of the governed.

Of course, Britain did not agree. British General William Howe demanded that the colonists revoke their declaration. When they refused, the Revolutionary War began.
While the war was being waged, the Congress worked to fashion a new government for the colonies.

**The First Attempt at Government: The Articles of Confederation**

Britain did not (and does not) have a written constitution. The colonists wanted a constitution—a written document that defines rights and obligations for citizens and puts limits on government. This had never been done before and was accomplished during a war against the largest military power in the world.

The colonists created a loose league of friendship under "The Articles of Confederation." The only way the colonists could have devised a system less like the British unitary system would be if they had chosen anarchy (the lack of any government at all). In a confederacy, the central government is very weak and the component parts—states—have the majority of the power and the sovereignty. This is almost the opposite of the unitary system used in Britain in which all of the power and sovereignty is vested in the central government. The Articles of Confederation (the text is in the appendix of the book) was predominantly a reaction to British rule in many other ways as well.

Key provisions under the Articles included:

- A national government and national legislature (Congress)
- Congress would have the power to coin money, make peace, appoint officers to the military, run the post office, and negotiate with Indian nations
- Each state in the Congress had equal representation, one vote
- A super-majority was required for the passage of any legislation (9/13) and amendments must be unanimous
- Members of Congress would be chosen and paid for by the state legislatures

The Articles were ratified in 1781 and had been operational throughout the Revolutionary War. However, after the British surrendered and the people were no longer united in war, problems began to manifest.

**Problems Under the Articles of Confederation**

The central government under the Articles was to be weak. The national Congress was empowered to make peace, coin money, appoint officers for an army, control the post office, and negotiate with Indians. That's it. The states retained independence and sovereignty. Therefore each state, regardless of size, had one vote in the Congress. To further limit government powers, nine of 13 states were necessary to pass any measure and unanimity was required to amend the Articles. The requirement for 'super-majorities' for even simple legislation, guaranteed the continuing preeminence of the states over the center. Delegates to the Congress were to be chosen by state legislatures further ensuring states' rights. Fearful of a new king, the Articles made no provision for an executive branch and assumed that a federal judiciary was not needed, states could handle all judicial functions.

By 1784, Congress had trouble getting a quorum of nine states to conduct business. Even when quorum was made, the states did nothing but bicker. The Congress faced a very serious problem—how to raise money to pay the Revolutionary War debt?
They had no power to tax. States coined their own money and trade wars erupted. Congress had no power to regulate commerce among the states or ensure a unified monetary system. Although Congress could coin money, Continental Dollars were worth little because the government had nothing to back the currency. States conducted foreign relations without regard to neighboring states' needs or wants. Duties, tariffs, and taxes on trade proliferated with different ones in each state. Vermont threatened to annex itself to Canada and border wars between states began.

So in summary, the greatest weaknesses of the Articles of Confederation were:

- a weak central government
- Congress had
  - no power to tax
  - no power to regulate commerce among the states or with foreign countries
  - no ability to ensure the value or unity of money
  - no power to post or regulate duties and tariffs
- no executive
  - no one to implement and enforce laws
  - no one to coordinate foreign policy
  - no one to ensure compliance with the Treaty of Paris (1783) that ended the Revolutionary War
- no judiciary
  - disputes among states about borders could not be addressed adequately in state courts
  - neither could trade disputes
  - neither could disputes about the frontier and lands to the west
- an extremely limited ability to amend or change the Articles, thus addressing weaknesses without abandoning the document

The economy began to deteriorate. Several years of bad harvests ensued. Farmers went into ever-deeper debt (remember most Americans were farmers at this time). George Washington and Alexander Hamilton, among others, worried about questions of defense, trade, and frontier expansion. Under the Articles, the central government was not strong enough to cope with these problems. By 1786, several states had called for a convention to discuss ways of strengthening the national government.

Before that convention could meet, unrest broke out in America. In Massachusetts, banks were foreclosing on farms and the Massachusetts legislature enacted a new law requiring all debts be paid in cash. Daniel Shays, a Revolutionary War veteran, was outraged and frustrated with the new law and the huge debt burden of farmers. He led a group of 1,500 armed and disgruntled farmers to the capital, Springfield. They forcibly prevented the state court from foreclosing on their farms.

Congress authorized the Secretary of War to call up a national militia to respond and appropriated $530,000 for the purpose. Every state except Virginia refused. Finally, a private army put down Shays's Rebellion. This failure of Congress to protect the citizens and property of Americans was yet another example of the weakness of the Articles.
The Miracle at Philadelphia: Writing a Constitution

On February 21, 1787, Congress called for a Constitutional Convention in Philadelphia "for the sole and express purpose of revising the Articles of Confederation." All states sent delegates except Rhode Island.

Twenty-nine men gathered at the convention. They were farmers, businessmen, intellectuals, and politicians. They were all respected members of their state communities and almost all were well known at the time. They elected George Washington to preside over the convention. When the Virginia delegation suggested they throw out the Articles and devise a new system of government, the delegates realized that this act could be considered treason, so they adopted a pledge of secrecy.

The Framers

Eventually, there were 74 delegates selected for the convention. Fifty-five ultimately made it to Philadelphia. They are often referred to as the "Framers" or the "Founding Fathers." Most of them were quite young although Ben Franklin was 81! And they represented a vast amount of experience.

Motives of the Framers

There were (and are) numerous debates about the motives of the Framers. They have been accused of being a group of self-serving elites out to protect their own vested interests. The Framers themselves asserted that they were trying to “preserve the nation.” This debate has raged on among historians and political scientists.

The Virginia and New Jersey Plans

There were many conflicts among the states in the years of the early republic. Among them were the conflicts in interests between the large and small states; between the predominantly agricultural South and industrial North and between slave and free states. Virginia—a large, populous, agricultural, slave-owning state—presented the first plan for a new government, thus setting the agenda for the convention.

The Virginia Plan proposed that sovereignty be vested in the people and not the states (this would benefit states with large populations since they would then have 'more sovereignty'). They advocated a powerful central government with three branches—legislative, executive, and judicial. The legislative branch was to be bicameral with one house directly elected and the other appointed by state legislatures, but both in proportion to population.

The small states were more satisfied with the Articles and its guarantees of equal status for small states. They proposed the New Jersey Plan that primarily would strengthen the Articles by giving Congress the ability to raise revenues from duties and a post office and retaining a unicameral legislature chosen by state legislatures.
Creating Constitutional Compromises

The most serious disagreements were the conflict between the large and small states over the representation of states in Congress and the argument between North and South on the issue of slavery. The question of slavery dealt with whether and how slaves were to be counted in population figures and how slaves would be dealt with for taxation purposes.

Connecticut offered a compromise, taking elements of both the Virginia (large state) and New Jersey (small state) plans. The legislature would be bicameral with the lower house (House of Representatives) based on population and the upper house (Senate) premised on equal representation for the states. The House, as the more representative body, would originate all money bills. Both houses had to pass all legislation so both small and large states were satisfied.

Southern states did not want Northern states to interfere in the lucrative cotton trade. The proposal of a tax on the importation of slaves was severely contested by the South. This brought up the issue of slavery. In order to gain the acquiescence of the North to continuing the slave trade for another 20 years and for a 20 year ban on taxing cotton exports, Southerners agreed to allow the national government to regulate
commerce and for the Senate to pass treaties with a 2/3rds majority vote. They also agreed to navigation laws being subject to a simple majority vote.

This left the problem of how to determine the populations of the states. The slave states wanted slaves counted for purposes of representation (of course, they would not receive the right to vote), and the free states were opposed to this formulation. They compromised by deciding that slaves would count as 3/5ths of a person—this became known as the Three-Fifths Compromise.

Unfinished Business

The Framers next had to decide on an executive branch. The most controversial decisions were term of office and method of selection. They feared tyranny if the executive was too strong, similar to the tyranny of King George. They also feared direct election of an executive. After Shays's Rebellion, they were wary of the power of the masses. And again the conflict between the influence of large and small states was a problem.

The Committee on Unfinished Portions was tasked with finding a compromise. It chose a four-year term of office with the possibility of reelection, and created the Electoral College that would give states a role in selection of the president and limit the influence of the masses. In addition, the Committee devised a method of impeaching and removing the president—again both House and Senate get separate roles to ensure the interests of both large and small states were met.

The U.S. Constitution

The Preamble came last. The words "We the People" decided in whom sovereignty was vested. It came from the people, not the states. The Constitution was signed by most of those remaining at the convention and was sent to the states for ratification.

The Basic Principles

Federalism

Unitary government was unacceptable due to the British experience and confederation had failed under the Articles, so the Founding Fathers created a half-way house they called federalism. Under federalism, power is divided among the states and the national government.

Separation of Powers

The Framers feared government and wanted to limit it, they didn't want to put too much power into one set of hands. So they divided power vertically through federalism and horizontally through separation of powers among the three branches of government. Each branch would be independent and equal with different staffs and functions.

Checks and Balances

The power of each branch of government is checked or limited and balanced by powers held by other branches. This way no one branch can tyrannize the other branches or the people.
The Supremacy Clause
Article IV says that federal law is supreme. So if the states and federal
government argue, the feds win. This was designed to avoid many of the excesses under
the Articles of Confederation.

The Articles of the Constitution

Article I establishes the legislative branch. Congress consists of two houses: the
House of Representatives and the Senate. It determines the qualifications for holding
office, methods of selection, terms of office, operating procedures, and officers for each
house.

Article I, section 8 enumerates the powers of Congress. These enumerated
powers include the right to tax, regulate commerce, coin money, and so on. However,
Congress also has implied powers—those not listed in Article I, section 8. The 'elastic
clause' at the end of that section says that Congress shall "make all laws which shall be
necessary and proper for carrying into Execution the foregoing powers." This has been
interpreted as a broad grant of power over the years.

Article II establishes the executive branch headed by the president. Section
one sets the president's term of office and explains the electoral college. It also states the
qualifications for office and the mechanism to replace or remove the president.

The powers and duties of the presidency are set out in section three including his
role as commander-in-chief of the armed forces and the authority to make treaties with
the consent of the Senate. In other passages, the president is told to report to the
Congress 'from time to time.' That has become the annual State of the Union Address
today.

Article III establishes the judicial branch. Congress was authorized to set up
"such inferior courts as they deem necessary," but the article does not outline a federal
judiciary beyond the Supreme Court. Article III establishes the Supreme Court, but does
not specify the number of judges or their qualifications. It also lays out the Supreme
Court's original jurisdiction. Federal judges serve terms of 'good behaviour' or basically
life. This allows the judiciary independence from political motives. Article III forbids
Congress from lowering judicial salaries while a judge holds office.

Articles IV through VII. Article IV begins with the "full faith and credit clause"
that mandates that states honor the laws and proceedings of another state. For example, if
I get my windows tinted in Nevada and it's legal there then I move to Michigan where
such a thing is illegal, I cannot be prosecuted. It also means states must recognize each
other's marriage and divorce laws. This has become very controversial due to Hawaii's
attempts to legalize same sex marriages.

These articles also include rules on the admission of new states to the union, how
amendments can be added to the Constitution, prohibits religious tests for holding office,
and set out procedures for the ratification of the document.
The Drive for Ratification

The Framers, worried about resistance in the state legislatures, mandated that the new Constitution be ratified by special ratifying conventions in each state. From the fall of 1787 to the summer of 1788, the proposed Constitution was hotly debated throughout the country. The ratification debate was polarized around the ideas of two groups: the Federalists and Anti-Federalists.

In general, the Federalists were in favor of the new Constitution and the Anti-Federalists were opposed. The primary concern of the Anti-Federalists was the power of the newly proposed central government. They were concerned with civil liberties and freedoms. They preferred most power to rest at the state level where it was more easily limited and controlled in their minds.

Much of the debate took place in newspapers and pamphlets written under pseudonyms, as was the custom of the times. What we now call the Federalist Papers and the Anti-Federalist Papers are collections of those writings. The Federalist Papers—those arguing for ratification—were written by James Madison, Alexander Hamilton, and John Jay. The Anti-Federalist Papers—those opposing ratification or insisting on additional amendments to protect civil liberties—were penned by Patrick Henry, George Clinton, John Winthrop, and George Mason.

The Anti-Federalists feared the power of the new national government would ride roughshod over the liberties of the people. They feared higher taxes, a standing army, a tyrannical executive, and a Supreme Court that would interfere with states' rights. They also complained that there was no bill of rights (a tradition in state constitutions).

Nine states had ratified by June 1788; however, the two largest states had not: Virginia and New York (together they were 40% of the population). Once Virginia ratified, New York was forced to ratify despite its misgivings or it might have been left out of the new union. They voted to ratify with a margin of only three votes. However, it insisted that the first order of business for the new Congress be a bill of rights. North Carolina did not ratify until September 1789, and Rhode Island remained outside of the union until 1790.

Formal Methods of Amending the Constitution

Once the document was ratified, elections were held and the new Congress seated. Twelve amendments were immediately sent to the states for ratification. The first ten—now known as the Bill of Rights—were ratified by three-fourths of the states in 1791. Two others did not. One amendment was to enlarge the House of Representatives; it failed. The other prevented members of the House from raising their own salaries during their terms. It was ratified by the states over 200 years later and is now the 27th Amendment.

The Bill of Rights offers individuals specific protections of personal rights and liberties such as free speech, free press, religious liberty, and procedural safeguards for those accused of crimes.

Article V creates a two-stage process for amending the Constitution: proposal and ratification. An amendment can be proposed by two-thirds of both houses of Congress or by two-thirds of state legislatures requesting Congress to call a national convention to propose amendments. An amendment can be ratified by a favorable vote in three-fourths
of all state legislatures or by such a vote in specially called ratifying conventions in three-fourths of the states.

This is, by design, a very difficult process. More than 10,000 amendments have been introduced in Congress over the years and only 33 of them got beyond the first hurdle to be sent to the states for debate and ratification. Twenty-seven were ratified and six were defeated, including the Equal Rights Amendment.

Informal Methods of Amending the Constitution

The formal amendment process is slow and cumbersome to deliberately ensure that any additions to the Constitution are serious and thoughtful, not frivolous. The Constitution, though, also changes informally through judicial interpretation and through cultural and social change.

The first informal 'amendment' to the Constitution may have been John Marshall's interpretation of the Constitution that granted the Supreme Court the power of judicial review. The Supreme Court has dramatically changed the way it interprets many clauses of the Constitution over the years. In particular, it has vastly broadened the interpretation of the Commerce Clause to include civil rights issues. The Supremacy Clause has been interpreted differently over the years as well. The Court has drastically changed its position on slavery and women, has adapted to new technologies and forms of communication in its interpretation of the First Amendment, and reinterpreted the meaning of due process in the Fourteenth (and other) Amendment.

Social and cultural changes have stimulated some of the Court interpretations and have also influenced how Congress and the executive branch read the Constitution. Not so many years ago, 'we the people' excluded blacks, women, the poor, and others. The Founding Fathers did not think in terms of gender discrimination or the Americans with Disabilities Act. In addition, large and activist government was accepted in the 1930s and 1940s. Now we are trending away from that and leaning towards smaller government and states' rights. These are just some of the ways the Constitution has changed over the years. It is a flexible and graceful document that has stood the test of time.

Websites for Instructors

Official government site with full text of Constitution. No downloading necessary.
www.house.gov/house/educat.html

Center on Budget and Policy Priorities provides information on an amendment to require a super-majority in order to raise taxes.
www.cbpp.org/4-24-01tax.htm

Cornell University site offers the complete text of the Constitution. Must be downloaded.
www.law.cornell.edu/constitution/constitution.overview.html
The U.S. Constitution OnLine offers many documents including the Articles of Confederation, Declaration of Independence, the Constitution, and many other links.
   www.usconstitution.net

Flag Burning Issue website has information about the constitutional amendment to prohibit flag burning. It’s biased but informative about campaigns to amend the Constitution.
   www.usflag.org/amendment.html

University of Louisville site that offers many links on or about the U.S. Constitution including amendments not ratified and links to constitutions more generally.
   www.louisville.edu/library/ekstrom/govpubs/goodsources/history/constitution/usconstitution.html

Kingwood College Library offers links to constitutions of the world.
   www.nhmccd.cc.tx.us/contracts/lrc/kc/constitutions-subject.html

The text of the Federalist Papers.
   www.mcs.net/~knautzr/fed/fedpaper.html

PBS.org has lots of information about all of American history including articles on the Founding Fathers, the early national period, the Constitution, etc.
   www.pbs.org/history/american.html

The Manuscript Division of the Library of Congress offers a wide variety of documents from the 15th to 20th centuries on American history.
   lcweb2.loc.gov/ammem/mcchtml/corhome.html

National Museum of American History offers timelines, virtual exhibits, music, and other information from American history.
   www.americanhistory.si.edu/

National Victims’ Constitutional Amendment Project is endorsing a new constitutional amendment to recognize fundamental rights for victims of violent crime. The site is an interesting one because it shows how grassroots groups try to get their issues onto the national agenda.
   www.nvcap.org

The History Net offers a wide range of information about American history.
   www.earlyamericanhom.com/

U.S. Constitution.net has biographies of many of the Founders.
   www.usconstitution.net/constframe.html
**Web Activities for Classes**

1) Have your students use the Internet to find the Constitutions of at least two other democracies and one non-democracy. Have them compare and contrast these documents and explain why they are similar or different either orally or in writing.

2) Many states have already formally asked for a new Constitutional Convention for a variety of reasons, including issues such as a balanced budget, abortion, and declining morals. If only three or four more make the request, we could have a new convention. Have students research calls for a new Convention. Why have certain states requested a convention? Why have others not? They should then discuss who would be chosen as delegates, how they would be chosen, and what the results would be. Remind them to consider the vastly different role of the media in today's society, as well as the size and demographic changes in the country. You can also use this opportunity to help them understand how to evaluate the biases of various websites—many of the sites surrounding the need for a new Constitutional Convention have quite obvious biases!

3) Have your students find copies of three Anti-Federalist Papers on the Web. Ask them to write a short paper or prepare oral presentations about what this country would have looked like had the Anti-Federalists 'won' their points in the ratification debate and the writing of the Constitution.

4) Every year, a number of constitutional amendments are proposed by members of Congress. Have students use the Internet to research a number of proposed constitutional amendments and discuss why they have been proposed, what process they need to go through, and what their chances of passage are.

**General Class Activities and Discussion Assignments**

1) There are several philosophies around the world about the nature of a constitution. Some countries view constitutions as goals to which we should aspire, others consider them to be a 'snapshot' of how a system looked at a given time, and others use a constitution primarily as a propaganda instrument. Where does the U.S. Constitution fit in, and what implications does that have for the nature of our political system?

2) Have students write a constitution for a democratic country. Have them explain their choices about organization and content.

3) Have students propose a constitutional amendment and a strategy for getting it adopted.
4) Have students compare the views of the Federalists and Anti-Federalists in some detail. Have them read several papers written by each (all are available for free on the Web).

5) Have students write a paper about the Articles of Confederation. The classic assignment is to write about the deficiencies of the Articles, however, it could be more challenging to ask them to discuss its positive attributes!

6) Have students write a paper explaining the organization of the Constitution. Among the topics they should cover are: What is the purpose of the Preamble? Why are the articles in their specific order (i.e. Article I comes first...)? Why are the branches of government dealt with in separate articles? And so on...

**Possible Simulations**

1) Role play the proposal and adoption of a constitutional amendment. Divide the class into a House of Representatives, Senate, interest groups, and a President and other actors as appropriate.

2) Role play a new constitutional convention. Assign groups of students to play the various parts.

**Additional Sources**


CHAPTER 3
FEDERALISM

Narrative Lecture Outline

My perspective on federalism is that it was one of the ways that the Framers attempted to keep government closer to the people and under control. It was a limit imposed on government. It also allowed citizens to have multiple routes for participation and influence and thus was considered 'democratic.' The diversity under federalism allows for states to act as 'laboratories.' For example, welfare reform started out as a state policy in Wisconsin and other states. What worked was adopted at the federal level and what did not was discarded.

However, one might be able to argue that the theory of federalism, however laudable, has had several serious drawbacks:

- It is incredibly expensive.
- It is inefficient (duplication of services, etc.)
  --BUT inefficiency has its pluses....the government that is bogged down arguing amongst itself cannot burden the populace with more laws! Some argue that gridlock was the intent of the Founding Fathers!
- It is unfair (one example: Mississippi and Alabama rank extremely low in all rankings of public schools. Is it fair that kids in Minnesota get a better education than kids in Alabama do?).
- It allows lobbyists, as well as citizens, multiple access points and influence.
- The theory is great, but in practice, all power seems to gravitate in one direction—the center. Some argue that for all practical purposes we really have a fairly decentralized unitary system especially after the 'federal blackmail' on drinking ages, seatbelt laws, etc. where state highway funds and grants were threatened if they did not comply with federal wishes.

I often present these pros and cons and ask my students if they can think of others. We then discuss the merits of the federal system, whether we actually have federalism, and if so whether it works as the Framers intended.

The political rallying cry of “smaller government” has been trendy for decades. Presidents, candidates for public office, and members of Congress have complained mightily about the ever-increasing size of government. September 11, 2001 coupled with the economic downturn that has followed it, seems to have changed the direction of the bandwagon. The Transportation Security Agency, the Office of Homeland Security, national law enforcement agencies, intelligence bureaus, and more have all been enlarged
in response to the crises. It is too early to tell if this is a trend that will last or merely another ‘blip’ on the radar screen that will quickly pass.

In order to give us a preliminary idea of what the state of federalism is in the United States, let’s look at its roots, the history of shared powers between the state and federal governments, and some controversies related to those powers.

The Roots of the Federal System

The Framers worked to create a political system that was halfway between the failed confederation of the Articles of Confederation and the tyrannical unitary system of Great Britain. They established a system known as federalism, though that word does not appear anywhere in the Constitution. Federalism is based on the sovereignty of the people who delegate power to both the central and state governments. Such a system of shared powers had never before been tried. The national government and the state governments were to have certain powers in common, their own sets of officials, and each government was to be supreme in some spheres. Since both levels of government would be ultimately responsible to the people, the electorate could shift their allegiance between levels of government, thus ensuring that no one level of government would become too powerful. It was a vertical separation of powers to establish a limitation on the power of government.

Federalism: a political system in which power is divided and shared between the national/central government and the states (subnational units) in order to limit the power of government.

The three major arguments for federalism are the:

• prevention of tyranny;
• provision for increased participation in politics;
• and the use of the states as testing grounds or laboratories for new policies and programs.

However, the Framers remembered the bickering and fighting among the states under the Articles and added Article VI to the new Constitution. This is often called the Supremacy Clause and allowed that in situations of conflict between state and national law, "the laws of the United States, and its treaties are to be the supreme Law of the Land." Seems pretty direct, doesn't it? Well, the Supremacy Clause has been and continues to be interpreted by the courts in a variety of ways.

The Powers of Government in the Federal System

The distribution of powers in the federal system consists of several parts: exclusive powers, shared powers, denied powers, enumerated powers, and implied powers. Since the Framers were acting in reaction to their bad previous experiences, they offered an extensive list of powers for the newly created federal government to prevent the problems that had been inherent in the Articles.
The enumerated powers of the central government are listed in Article I, section 8:

Exclusive powers to central government
- lay and collect taxes, duties, and imposts
- provide for the common defense and general welfare of the United States
- borrow money on the credit of the United States
- regulate commerce with foreign nations, and among the states, and with Indian tribes
- establish a uniform rule of naturalization and uniform laws on bankruptcy
- coin money and regulate the value thereof
- punish counterfeitters
- establish post offices and post roads
- award copyrights and patents
- establish courts inferior to the Supreme Court
- punish piracy, and felonies on the high seas, and offences against the laws of nations
- declare war
- raise and support armies but with no appropriation of money to that use for longer than two years
- provide and maintain a Navy
- make rules to regulate land and naval forces
- call the militia to suppress insurrections and rebellions
- rule what became the District of Columbia

Implied Powers of the central government
- make all laws which shall be necessary and proper for carrying into execution the foregoing powers

The necessary and proper clause has often been used to expand the powers of the national government as we shall see later.

State powers, given the climate of the time, were taken for granted. They were not thought to need such an enumeration. This may have turned out to be a mistake, because in our ahistorical society many people assume that the Framers intended the federal government to be more powerful than the states because their list of powers is longer. That is definitely not true!

The states are granted some powers in this section of the Constitution. They are:
- to determine the times, places, and manners for holding elections for senators and representatives (section 4).

States’ rights exist elsewhere in the Constitution. In Article II, states have the right to appoint electors to vote for president. But most of their powers come from the Tenth Amendment that says: "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." These are often referred to as reserve or police powers. States also have
some powers that the central government also wields called concurrent powers such as the right to tax, borrow money, establish courts, and make and enforce laws.

**Denied Powers**

Article I, section 9 lays out powers denied to the central government. The central government may not:

- prohibit slavery before 1808
- suspend *Habeas Corpus* except in cases of rebellion or invasion
- pass bills of attainder and ex post facto laws
- pass direct taxes unless in proportion to census enumeration
- lay tax or duty on items exported from any state
- give preference to ports of one state over another
- grant titles of nobility

and states that:

- appropriations must be made in order to spend money and the receipts and expenditures must be published from time to time
- no person holding an office of trust shall accept presents, titles, etc from a king, prince, or foreign state

Article I, section 10 lays out the powers denied to the states. States may not:

- enter into treaties, alliances, or confederations
- grant letters of Marque and Reprisal (these have to do with privateering or legalized piracy)
- coin money
- emit bills of credit
- make any thing but gold and silver coin a tender in payment of debt (they are not allowed to make alternate money)
- pass bills of attainder (legislatively condemning someone of a crime)
- pass ex post facto laws
- impair the obligation of contract
- grant titles of nobility
- lay imposts or duties unless explicitly allowed by Congress
- keep troops or ships of war
- enter into compacts or agreements with other states or foreign powers
- engage in war

**Guarantees to the States**

The states also receive guarantees in the Constitution:

- Article I guarantees each state two members in the U.S. Senate and at least one representative in the House
- Article I guarantees that slavery will not be prohibited prior to 1808
• Article IV guarantees the citizens of each state the privileges and immunities of citizens of all other states
• Article IV guarantees a republican form of government
• Article IV guarantees that the central government will protect them against foreign attacks and domestic rebellion

**Relations among the States**

The Constitution was designed to make America more united—in other words to improve relations among the states and encourage unity. The Framers wanted a single country, not 13 squabbling semi-countries. One way the Constitution provides for better relations among the states is by designating the Supreme Court arbiter of state disputes. Under the Court's original jurisdiction, disputes between the states are argued in and decided by the Court. Article IV requires states to give "full faith and credit" to each others' laws. This ensures that judicial decrees and contracts made in one state are legal and binding in other states. States are also required to extradite criminals if asked by another state.

**The Evolution and Development of Federalism**

Federalism had never been tried before the Framers invented it. Like most experiments, it does not always fulfill your dreams, meet your expectations, or look as you envision it. Plus, since the Constitution is basically a series of compromises, it is a vague document. The positive aspect of that vagueness is it is flexible and stands the test of time. It evolves and changes. Many people also say that is the negative aspect as well. (These folks are ideologically descended from the Anti-Federalists and oppose any evolution toward a stronger central government.)

The allocation of powers in our federal system has changed dramatically over the years. A major player in the redefinition of federalism is the Supreme Court in its role as interpreter of constitutional meaning.

**Early Pronouncements on Federalism**

*McCulloch v. Maryland (1819)* aka the national bank case. *McCulloch* was the first major decision by the Supreme Court under Chief Justice John Marshall about the relationship between the states and the national government.

In 1816, Congress chartered the Second Bank of the United States. In 1818, the Maryland state legislature (controlled by the Democratic-Republicans, heirs of Anti-Federalists) levied a tax on the Bank of the U.S. and other banks not chartered by the state of Maryland. James McCulloch, the head cashier of the Baltimore branch of the Bank of the U.S. refused to pay the tax and the state of Maryland brought suit.

McCulloch lost in a Maryland court and appealed to the U.S. Supreme Court.

In a unanimous opinion, the Supreme Court said that the U.S. Congress had legitimate authority to establish the Bank of the United States. Though the power to charter banks is not enumerated in the Constitution, but the Congress does have the powers to coin money, borrow funds, and collect taxes. From these enumerated powers it is reasonable to imply that Congress had the power to charter a bank since a bank could be 'necessary and proper' to execute the listed powers. Marshall and the Court also ruled
that the state could not tax a federal entity since the "power to tax is the power to destroy" and therefore would violate the Supremacy Clause. This ruling greatly enlarged the powers of the national government.

**Gibbons v. Ogden (1824)** Shortly after *McCulloch*, the Marshall Court got another opportunity to rule in favor of a broad interpretation of the scope of national power. *Gibbons* has to do with steamship navigation on the Hudson River and whether New York could grant a monopoly concession on such navigation. Not only does the Hudson River form part of the border between New York and New Jersey—with citizens of both states wanting the right to control shipping on the Hudson—but at the same time as New York awarded a monopoly to Robert Fulton, the U.S. Congress licensed a ship to sail on the Hudson. A lawsuit resulted. The main constitutional question in *Gibbons* was about the scope of Congress' authority under the Commerce Clause. In *Gibbons*, the Court ruled that interstate commerce includes more than simply direct dealings in products. It also includes other commercial activities. New York was found to be interfering in interstate commerce by granting a monopoly on the Hudson and lost the suit.

**Dual Federalism**

The Marshall Court was quite nationalist, however, the debate over the proper distribution of power under federalism continued to rage. Roger B. Taney became Chief Justice after Marshall, and he had a different notion about federalism. The Court began to articulate the idea of concurrent powers and the idea of dual federalism in which there should be separate but equally powerful levels of government. The Taney Court also thought that the national government should not exceed its enumerated powers.

The Taney Court is best remembered for the *Dred Scott* decision. Scott had lived with his master in Illinois and Wisconsin, both free states. After the death of his owner, he sued based on a Missouri law that stated "once free, always free." The first trial ended in mistrial due to hearsay, but the court ordered him freed at the second trial. It took several years for the case to be heard the second time during which Scott's wages were held in escrow awaiting a verdict. John Sanford, the brother and agent of the owner of Scott, filed an appeal with the Missouri Supreme Court. Slavery had become an intensely partisan issue and passions had flared—the Missouri Supreme Court ruled that Scott remained a slave. The case was taken to federal court and on to the U.S. Supreme Court. In a 7-2 decision, the Court argued that Scott was not a U.S. citizen and therefore not entitled to sue in federal court. The case was dismissed and Scott remained a slave. Taney further wrote that Congress had no power to abolish slavery in the territories and that slaves were private property protected by the Constitution. The Missouri Compromise of 1820 was therefore invalid.

The decision in the *Dred Scott* case strengthened states' rights and invalidated a federal law greatly altering the balance of state/national relations. This ruling was vastly different than the rulings of the nationalist Marshall Court. The decision also heightened tensions and helped to bring about the Civil War.
The Civil War and Beyond

Crisis and wars always seem to increase the powers of the national government vis-a-vis the states. The Civil War (1861-1865) definitely followed that logic. The size of the federal government increased dramatically. For the first time the national government paid out pensions and disability payments. However, dual federalism remained the Supreme Court's framework for federalism even after the adoption of the 13th, 14th, and 15th amendments.

The Sixteenth and Seventeenth Amendments

The Constitution, as originally written, made no provision for a national income tax. However, when the United States entered World War I, the government recognized that it desperately needed a new method of funding for the war effort. The result was the 16th amendment that gave Congress the power to levy and collect taxes. This was a substantial increase in federal powers.

The 17th amendment also increased federal powers. It removed the right to appoint senators from state legislators and put it in the hands of the electorate. States’ rights were no longer as vociferously protected as they once were in the Senate.

The New Deal and its Effect on Federalism

Dual federalism finally ended in the 1930s. The Great Depression virtually thrust power into the hands of the national government, and with the New Deal the national government accepted and exercised that power. FDR treated the Depression almost like a war. He mobilized new bureaucracies and ushered in new ideas about the roles of government.

The Supreme Court, through the mid-1930s, rejected many of Roosevelt's plans to combat the Depression. The Court argued that national solutions overstepped the national government's constitutional powers and that solutions were best left to the states (a true expression of dual federalism). FDR was angry and proposed changing the composition of the Court—called by his opponents a 'court-packing plan'—by raising the number of justices to 13 from 9. He would thus get to appoint four new judges giving the New Deal a Supreme Court majority. The Court seemed to respond to the threat, and in 1937 began to reverse itself by using a greatly expanded view of federal powers through the Commerce Clause.

States and the national government worked together in implementing the New Deal. In addition, a third federal partner was drafted: cities. Cities became big players in the New Deal, particularly the big cities controlled by Democratic machines that supported FDR.

Modern Federalism

Prior to the 1930s, many scholars used the analogy of a layer cake to describe federalism. Each layer had clearly defined powers and responsibilities. After the New Deal, the analogy of a marble cake seemed more appropriate because the lines of authority were much more mixed. This marble cake federalism is often called cooperative federalism and has a much more powerful national government. States have a cooperative role, as did many cities. And the federal government began to allocate money in different ways as well.
The first real federal grant was the Morrill Land Grant Act of 1862 that gave each state 30,000 acres of public lands for each representative of Congress. The income from the sale of these lands was to be earmarked for the creation and support of agricultural and mechanical arts colleges (land-grant colleges like Texas A&M, Michigan State University, Iowa State University, Florida A&M, and many others).

The New Deal unleashed floods of federal grant monies for public works projects such as building and road construction. Grants made it easy for the national government to impose its agenda on the states. If the states wanted the money, they had to do what the feds wanted them to! Grants flourished during WWII and after as well. The national government became and remains a major player in domestic policy.

Creative Federalism

The civil rights era had a profound impact on the distribution of powers between the national and state governments. Most of the blatant discrimination based on race was occurring at the state level. Federal programs began to withhold funds from discriminatory programs and states, and of course later on the federal government intervened with National Guard troops and the Federal Election Commission to guarantee equal treatment.

In 1964, Lyndon Johnson introduced his 'War on Poverty,' which was part of his 'Great Society' program. In an effort to eradicate poverty, huge amounts of federal money went to the states, local governments, and citizen action groups. This undermined the traditional powers of the state governments and increased the role of localities and citizen groups. The states became more and more dependent on federal funds and on the 'strings' that came with those funds.

New Federalism and The Reagan Revolution

Ronald Reagan was elected on a pledge to return power to the states. Federal aid to state and local governments declined for the first time in decades. The Reagan administration preferred to give block grants to states for specified activities. Block grants designated a broad area of responsibility such as education and left most decisions and implementation up to the states, thus reversing the trend, during the era of creative federalism, of federal mandates. Declining funds and changing rules—coupled with intense competition for federal money—led state and local governments, as well as school systems, cities, police departments, and so on, to hire lobbyists to advance their interests. This became known as the intergovernmental lobby.

The Devolution Revolution

Despite changes under Reagan, the national government still had far more power than the states. Republicans and many state governors began to campaign heavily against national power and for more states' rights.

Preemption

One method by which the national government has taken powers from the states is the power of preemption. This is based on the Supremacy Clause and basically allows the national government to override, or preempt, state and local actions in some areas. This began in 1965 under LBJ and since then Congress has routinely passed preemption
laws. One such law is special education. Congress passed a law requiring states to provide special education—however, they passed no appropriation to go with the law. This is an 'unfunded mandate'—an order to the states to provide a service by the national government without federal money to pay for that service. Such highhandedness by Congress has led to numerous calls for the devolution of power back to the states.

**Unfunded Mandates**

Mandates are laws that direct states or local governments to comply with federal rules and regulations such as clean air laws and disabled access to mass transit. Prior to 1995, unfunded mandates made up as much as 30% of a local budget. In 1995, Congress passed a law forbidding additional unfunded mandates.

**Federalism and the Supreme Court**

During the 1930s and 1940s, Americans were in favor of additional powers for the national government. The 1960s seemed to prove that the federal government was more fair and just than the governments of many states. However, by the 1980s and 1990s, public opinion shifted and people began to think that the national government was too big, too strong, and too distant to understand their concerns.

As always, the Supreme Court played a role in this new evolution of the federal bargain. Traditionally, education has been the purview of the states. That tradition was shattered with the Supreme Court ruling in [*Brown v. Board of Education of Topeka, Kansas* (1954)]. The Brown ruling ended state-mandated segregation in public schools—actually it ordered the end of such segregation with all due speed though the actual result has been less than spectacular. Since then courts have played an important role in monitoring state and local efforts to tear down segregation.

Elections also have been a state function, but in 1964, the Supreme Court began to limit the states' ability to determine the nature of congressional redistricting. In 1966, the Court invalidated the poll tax and in 1995, the Court struck down state-imposed term limits on members of Congress.

The Commerce Clause has been widely used as a justification for additional national powers. Until 1995, the Court generally ruled in favor of the national government's wide interpretation of the Commerce Clause. That seems to be changing. In [*U.S. v. Lopez* (1995)] the Court ruled that Congress lacked authority under the Commerce Clause to regulate guns within 1,000 feet of a school. Local gun control was ruled a state matter, not a federal one. [*U.S. Term Limits v. Thornton* (1995)], however,
reined in state powers by ruling that a state law restricting the terms of federal members of Congress was unconstitutional but term limits for state offices were constitutional. The following year, the Court ruled that states, not Congress, had the right to negotiate over gaming with Indian tribes on the basis of the sovereign immunity of states. This was a major change since the Constitution specifically gives Congress and the federal government the right to deal with the Indian tribes.

The basic trend has been that this Court will not allow additional federal powers at the expense of state powers. However, the Court and its justices are not always consistent. In the 2000 presidential elections, a law suit was brought to the Florida courts about whether and how to recount ballots. It was appealed to the U.S. Supreme Court, and normally states’ rights justices voted in favor of federal power and normally federalizing justices voted in favor of the state court...due in large part to partisan preferences over the electoral outcome. So preference for federal law, in this case, led to the election of George W. Bush, a man who will appoint more justices in favor of states’ rights.

Websites for Instructors

The American Enterprise Institute’s Federalism Project offers conservative analysis on federal issues, publications, working papers, and links.
www.federalismproject.org/


Center for the Study of Federalism at Temple University. The Center publishes Publius: The Journal of Federalism (currently housed at Lafayette College with its editor John Kincaid) and The Federalism Report and the website offers a variety of links as well.
www.temple.edu/federalism/

The Close Up Foundation has a site with information about federalism.
www.closeup.org/federal.htm

The General Services Administration gives you the ability to search for information on hundreds of federal grants.
www.gsa.gov

Legal Information Institute of Cornell University offers a list of important Supreme Court decisions about federalism with links to the official texts.
www2.law.cornell.edu

National Council of State Legislators site offers analyses and information on intergovernmental relations.
NGA On-Line. The National Governors' Council is a nonpartisan organization that looks at solving state-focused problems and provides information on state innovations and practices. The website has stories and articles of interest to the states and provides links to similar issues and organizations.

www.nga.org

Project Vote-Smart has a site on federalism/states' rights.

www.vote-smart.org/issues/FEDERALISM_STATES_RIGHTS/

Publius: The Journal of Federalism. Publius offers academic articles on federal issues in the U.S. and abroad. They do periodic special issues on the state of federalism in the U.S.

ww2.lafayette.edu/~publius/

Queen's University in Canada offers a comparison of federal relations among countries.


The Urban Institute has a publication called “Assessing the New Federalism” as well as other information on related topics.

www.urban.org/Content/Research/NewFederalism/AboutANF/AboutANF.htm

U.S. Federalism Site was created as part of a student’s doctoral program at George Washington University. It has lots of definitions, links, etc.

www.min.net/~kala/fed/

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**Web Activities for Classes**

1) Go to the Oyez, Oyez site on the Internet (this is a Supreme Court site—<oyez.nwu.edu>) and check out the docket of the Court from this year and last year regarding federalism. Have students determine what cases about federalism the Court has decided and how these cases have affected the relationship between the national government and the states.

2) Using the Internet, have students find information on another federal system and compare the division of powers they use to the one that we use. What can such a comparison tell us about our system of government?

3) Each year, Publius: The Journal of Federalism has a special issue on the state of federalism in the United States. Have students read the current year's issue and write papers on the issues discussed therein.
**General Class Activities and Discussion Assignments**

1) Have students discuss the relative merits of choosing a unitary, federal, or confederal system of government. If the U.S. were to have another constitutional convention, would we keep a federal system or change it? Why or why not?

2) Have students consider the following: "What do you think are the most important federal issues today and why?" Some possibilities include "full faith and credit"—particularly regarding same sex marriages and tinted windows in cars—the use of the "Commerce Clause," reproductive rights, term limits, child support issues, and many others.

3) Have students consider this idea and be prepared to argue in favor or against: "Federalism, the separation of powers, and checks and balances are all institutional arrangements designed to make government move in a slow and cumbersome manner—in other words, the gridlock we often complain about is intentional—so that the government cannot infringe on our rights and liberties. If we had an efficient government, our liberties would be greatly reduced."

4) Using *Publius*‘ special issues on the state of federalism, have students look at how the issues and problems of federalism have remained the same or changed over the last 10 or 20 years. For example, have them read one article from 1979 and one from 1999 and compare them.

5) Using *Publius*‘ special issues on the state of federalism, have students look at how the issues and problems of federalism remain the same or change under Republican and Democratic administrations. For example, assign one article from the height of the Reagan administration and one from Clinton or Carter.

**Possible Simulations**

1) Stage a meeting (or several meetings) of the Supreme Court for oral arguments on an issue of federalism currently in the news. Assign 9 justices, a solicitor general, and an attorney for the plaintiff.

2) Hold a meeting of the editorial board of *Publius: The Journal of Federalism*. Have the board discuss what the table of contents for this year's "State of Federalism" issue should look like. What issues should it address, what trends can one discern, etc.?

3) Hold a meeting of the National Governors’ Association. Assign each member of the class to a role as one of the governors (be sure to cover some large states, some small states, and all regions of the country). Have members of the class research the individual governors and stage a discussion about how the federal
government has too much power in the current system and in what areas the states might want to reassert power.

**Additional Sources**


CHAPTER 4
CIVIL LIBERTIES

Narrative Lecture Outline

Courts and policymakers have to balance competing interests. The opening vignette in the chapter discusses a search that took place in a public school. Does the school and government interest in safety outweigh the students’ rights to be free from unreasonable searches and seizures? Or consider this: since the terrorist attacks in 2001, the federal government’s powers to confine you without filing charges or telling your lawyer or family, tap your phone, intercept your emails, search your baggage, enter your home, and so on has been greatly enhanced. Is this a good thing? Or have personal liberties been infringed too much in the name of protecting society from terrorists? During the 2001-2002 term of the Supreme Court, the Court closed for the first time since 1935 due to threats of anthrax contamination. The current justices have been veering more and more towards more governmental powers and fewer civil liberties in their rulings. The attorney general is advocating even more governmental powers. Are these changes warranted? Had America gone too far in protecting civil liberties in the past and, is this a necessary correction? Or is the pendulum swinging too far the other way now? We’ll find out what we think about these issues and why as we discuss this chapter.

Civil Liberties

Civil liberties are the personal rights and freedoms that the federal government cannot abridge, by law, constitution, or judicial interpretation. Thus, they place limitations on the power of government to restrain or dictate how individuals act. In most cases of civil liberties, the issues are complex. There is often a conflict between individuals or groups attempting to exercise rights and government seeking to control the exercise of some rights in the interests of the rights of others and to keep order. The courts decide how to balance these differing interests.

The First Constitutional Amendments: The Bill of Rights

In 1787, most state constitutions had explicit protections for personal liberties and rights. As the Constitution passed through ratification debates, many people argued that the national constitution should also include those protections. The most notable group making this argument was the Anti-Federalists. By 1789, the Congress had considered and passed 10 amendments, the Bill of Rights. The proposed Bill of Rights was sent to the states for ratification and was approved in 1791.

The Bill of Rights consists of the first 10 amendments to the Constitution and includes specific guarantees such as free speech, free press, and religion.

The Incorporation Doctrine: The Bill of Rights Made Applicable to the States

The Bill of Rights was designed to limit the powers of the national government, and the Supreme Court agreed in Barron v. Baltimore (1833). However, in 1868, the 14th Amendment was added to the Constitution and its language suggested that the protections of the Bill of Rights might also be extended to prevent state infringement of
those rights. The amendment begins: "No state shall...deprive any person, of life, liberty, or property without due process of law." The Supreme Court did not interpret the 14th Amendment that way until 1925.

In 1925, the Court ruled in *Gitlow v. New York* that states could not abridge free speech due to the 14th Amendment's Due Process Clause. This was the first step in the development of the incorporation doctrine whereby the Court extended Bill of Rights protections to restrict state actions. Six years later, the Court incorporated freedom of the press in *Near v. Minnesota* (1931). It ruled that a state law violated freedom of the press and that the 14th Amendment Due Process Clause extended the Bill of Rights protections to the state.

Not all of the Bill of Rights has been incorporated. For example, the 2nd and 3rd amendments have not been incorporated. The argument for selective incorporation has been that certain rights are fundamental, and they are the rights that need to be protected from national and state interference.

**Selective Incorporation and Fundamental Freedoms**

The Supreme Court clarified its stand on selective incorporation in *Palko v. Connecticut* (1937). In *Palko*, the Court ruled that the 5th Amendment Double Jeopardy Clause did not bind the state. Only rights that are truly fundamental to our notions of liberty and justice and cannot be denied without compelling reason are subject to the Due Process Clause. This is a high burden of proof.

**First Amendment Guarantees: Freedom of Religion**

The colonists had an intense dislike and distrust of established, official religion. Many of the colonists had come to the New World to avoid religious persecution and wanted to avoid the same problems in their new country. The First Amendment has two clauses that guarantee religious freedoms: the Establishment Clause and the Free Exercise Clause.

These rights, like all of the rights in the Bill of Rights, are a matter of balance and are not absolute. In 1940, the Court ruled that freedom to believe is absolute, but freedom to act can, and sometimes must, be subject to regulation in a case about Mormon polygamy.

**The Establishment Clause**

The Establishment Clause prohibits government from establishing a national religion. Thomas Jefferson referred to this as a 'wall of separation' between church and state. The Court has interpreted this clause in a variety of ways. The key issue seems to be: How high is the wall of separation? Can one hop over it or is it a total and impermeable wall? Or is it something in between?

The Court has allowed such practices as public funding of interpreters for the deaf in religious schools and some use of public funding for special education in religious schools. But the hot issue has been school prayer.

In *Engel v. Vitale* (1962), the Court first ruled that a 22 word non-denominational prayer drafted by the school board was unconstitutional. In 1992, the Court ruled that saying prayers at a middle school graduation was unconstitutional.
Finding the balance between church and state has been difficult and there have been a number of efforts by the Court to come up with a workable way to deal with these issues. In *Lemon v. Kurtzman* (1971), the Court heard a case challenging direct state aid to pay teacher salaries in parochial schools. They devised the Lemon Test that a law or practice must pass to be deemed constitutional. To be constitutional, a law must:

1) have a secular purpose;
2) have a primary effect that neither advances nor prohibits religion; and
3) not foster excessive government entanglement with religion.

State funding of teacher salaries failed this test and was ruled unconstitutional. In 1980, the Court ruled that posting the Ten Commandments in public schools also violated the Constitution because it had no secular purpose.

However, since 1980, the Court has lowered the wall a bit. The Court has ruled that student religious groups may use public school property for Bible studies and other religious purposes as long as the students had a choice whether or not to participate and there were non-religious options. The Court has also allowed public school teachers to offer remedial education to disadvantaged students in religious schools. The tendency of the Court to lower the wall between church and state is continuing with mostly 5-4 majorities. However, in 2000, the Court ruled that student led, student initiated prayer at high school football games violated the Establishment Clause. In 2002, the Court ruled (5-4) that governments can give parents money to send their children to private or religious schools in *Zelman v. Simmons-Harris*.

**The Free Exercise Clause**

"Congress shall make no law.....prohibiting the free exercise thereof (religion)" is designed to prevent the government from interfering with the practice of religion. But again, this freedom is not absolute. Several religious practices have been ruled unconstitutional including: snake handling, the use of illegal drugs, and polygamy.

Practices by fringe or unpopular religious groups are most likely to be banned. In general, when secular law conflicts with religious practice, the free exercise of religion is often denied. One can believe whatever one wants, but practice can be regulated. In contrast, the Court ruled that an Afro-Cuban religion known as Santeria could sacrifice animals during religious services despite a local ordinance prohibiting such practices.

The Court has ruled that Catholic, Protestant, Jewish, and Buddhist prisoners must be allowed to hold religious services. But in 1987, the Court ruled that Islamic prisoners could be denied the same right for security reasons.

**First Amendment Guarantees: Freedom of Speech and Press**

A democracy depends on a free exchange of ideas and the First Amendment is designed to protect such exchanges. The Constitutional clause that "Congress shall make no law .... abridging the freedom of speech, or of the press" has not been interpreted as an absolute ban on government regulation. Once again, it has been a search for balance. Generally, the right to thought is highly protected, words are somewhat protected, and actions are most likely to be regulated.
Attempts to Limit Speech
According to the Court in 1942, the First Amendment did not protect obscenity, libel, lewdness, and fighting words since they are not essential to the flow of ideas necessary in a democracy and are of slight social value. Any benefit they might conceivably offer is outweighed by the social interest in order and morality.

The Alien and Sedition Acts
The Alien and Sedition Acts were passed in 1798 to ban any political criticism by the Jeffersonian Democratic-Republicans of the Federalist Congress. The Acts made criticism of the government a criminal offense. These acts expired before the Supreme Court could rule on their constitutionality.

Slavery, the Civil War, and Rights Curtailment
The public outcry over the Alien and Sedition Acts forced the government out of the business of curtailing speech for a while. Some states made disseminating positive information about slavery a punishable offense in the North, and in the South anti-slavery rhetoric was made unlawful. Southern postal workers often refused to deliver abolitionist newspapers in the South.

During the Civil War, Lincoln suspended the free press and arrested editors critical of him. The Congress changed the jurisdiction of the Supreme Court to prevent a ruling on Lincoln's actions during the war. Prosecutions for sedition were common in the early 1900s, culminating in the state level anti-communist hysteria of the 1910s.

Anti-Governmental Speech
The next national efforts to restrict speech occurred in 1917 with the passage of the Espionage Act. Nearly 2,000 Americans were convicted under its provisions. In 1919, one such case—Schenck v. U.S.—ruled that distributing leaflets opposing the draft was unconstitutional during time of war because it posed a "clear and present danger" to the republic.

In 1969, the Court devised another test called the 'direct incitement' test, stating that advocacy of illegal action can only be abridged if there is a likelihood of imminent harm. This makes it more difficult for the government to punish speech.

Libel and Slander
Libel is a written statement that defames the character of a person and slander is a spoken defamation. False and libelous statements are not restrained by the courts but they can be actionable after the fact. In the U.S., the standards of proof for libel are quite high. One must prove that the statements were untrue in order to win a libel suit.

Public persons find it even more difficult to prove libel or slander. New York Times v. Sullivan (1964) was the first major libel case considered by the Supreme Court. The Court ruled that when public figures are the object of a possibly libelous statement, they must prove 'actual malice,' which is a much higher standard. In 1991, the Court ruled that 'knowledge of falsity' and 'reckless disregard of the truth' must be proved in public figure libel cases. This means that public figures are rarely able to win libel cases.
The Court also protects parody. In the case of *Hustler Magazine v. Falwell*, the Court ruled that even savage parodies were constitutionally protected because this was part of the free flow of ideas.

**Obscenity and Pornography**

In general, obscenity and pornography are not protected speech. The problem comes with defining obscenity and pornography. The Court has issued a number of rulings on this, among them are:

- *Roth v. U.S.* (1957) — utterly without redeeming social value and if applying contemporary community standards wholly appeals to the prurient interest
- *Miller v. California* (1973) — patently offensive sexual conduct and lacking serious literary, artistic, political, or scientific value (the LAPS test). Miller also said community standards were local, not national.

Justice Potter Stewart once said he couldn't define obscenity, but "I know it when I see it." The ambiguity of definition still exists and is becoming even more problematic with the Internet.

**What Types of Speech are Protected?**

**Symbolic speech** — symbols, signs, and other methods of expression. The Court has upheld as constitutional a number of actions, including:

- flying a communist red flag
- wearing black armbands to protest the Vietnam war
- burning the American flag

**Prior Restraint** — The Court rarely allows prior restraint. In *NYT v. United States* (1971) the Court ruled that the publication of the top-secret Pentagon Papers could not be blocked.

**Hate Speech, Unpopular Speech, and Speech Zones** — this is the new frontier. Many groups that used to champion free speech now wish to suppress hateful speech. Campus speech codes, city ordinances, and the Communications Decency Act are just a few examples. In late 2002, Justice Clarence Thomas announced that there was no symbolic speech entailed in cross burning, instead it was purely hate speech designed to terrorize and therefore not protected by the Constitution. Speech has also come under attack since 9/11. Several commentators have lost their jobs after they criticized the president or U.S. foreign policy and many professors have been threatened or censured by university administrators for controversial comments.

**Speech After 9/11** — The protection of free speech has waned since 9/11. Media commentators and professors have lost their jobs or been censured for speaking out against George W. Bush’s policies. Some campuses have established “free speech zones,” implying that other zones are NOT. The purpose, as stated by the universities, is to prevent the disruption of normal activities. What do you think its effect might be?
**The Second Amendment: The Right to Keep and Bear Arms**

The 2nd Amendment states "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." This amendment has been hotly contested in recent years particularly since the 1999 shootings at Columbine High School. The Court has not incorporated this right, nor has it heard many cases about it.

In response to organized crime, Congress passed the National Firearms Act in 1934 that imposed taxes on sawed off shotguns and automatic weapons. In *U.S. v. Miller* (1939), the Supreme Court unanimously upheld the law. That was the last time the Court directly addressed the 2nd amendment. The Brady Bill, passed in 1993 after the attempted assassination of President Ronald Reagan and the serious wounding of his press secretary James Brady, imposed a five-day mandatory waiting period on the purchase of handguns. In 1994, despite extensive lobbying by the National Rifle Association, Congress passed the Violent Crime Control and Law Enforcement Act that, among other things, banned the manufacture, sale, transport, and possession of 19 different kinds of assault rifles. While neither of the laws has come before the Court on 2nd Amendment issues, the Court did rule 5-4 in 1997 that the Brady Bill provision requiring state officials to run background checks violated state sovereignty. Since that time, school shootings have made gun control a more popular issue but it appears to be waning now.

**The Rights of Criminal Defendants and the Criminal Justice System**

Also known as due process rights are the 4th, 5th, 6th, and 8th amendments and their procedural guarantees. These rights have been under attack in recent years due to a strong movement in favor of 'victim's rights' plus society has favored 'law and order' issues and candidates in recent years.

**The Fourth Amendment and Searches and Seizures**

The purpose of the 4th Amendment was to deny the national government the power to make general searches such as those used in England against religious and political dissenters in the 17th and 18th centuries. The 4th Amendment guarantees "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 be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The language is still vague but provides some protection. The Court has interpreted the 4th Amendment to allow the police to conduct a warrantless search in certain limited circumstances. The police may search, without a warrant:

- the person arrested
- things in plain view of the accused
- places or things that are in the immediate control of the accused
- 'stop and frisk' individuals under reasonable suspicion (a lower standard than probable cause)
- with consent, no warrant is needed and consent may be given by roommates and other household occupants
In general, the police may search without a warrant any place that does not have a reasonable expectation of privacy.

Cars have been a thorny issue because they are mobile. The Court has gotten progressively more lenient in car searches. Today, even the belongings of passengers can be searched without probable cause.

But in most cases, the police need to obtain a warrant from a neutral and detached magistrate. A warrant must specify the place to be searched and the object of the search, or they are not legal and the evidence obtained must be excluded from trial.

Generally, your home is presumed to be private and a warrant is therefore necessary prior to a search. In 1995, the Court ruled unanimously that police must knock and announce before entering a house or apartment to conduct a search though they leave room for 'reasonable exceptions.' In 2001, the Court ruled that the use of thermal imaging of a home without a warrant was acceptable if looking for marijuana hothouses. Low flying aircraft, helicopters, and binoculars have also been ruled constitutional in the search for drugs.

**Drug Testing.**

Drug testing and DNA sampling have brought a new series of problems. The Court ruled that mandatory drug and alcohol tests of employees involved in accidents were constitutional in 1989. And in 1995, the Court upheld random drug testing in high school athletes. In 2002, the Court ruled that mandatory drug testing of all high schoolers who participated in extracurricular activities ranging from Future Farmers of America and band to football and field hockey was constitutional. The Court has also allowed taking DNA samples from convicted felons without permission or warrant.

**The Fifth Amendment and Self Incrimination**

The 5th Amendment states that "No person shall be...compelled in any criminal case to be a witness against himself." So criminals cannot be required to take the stand in a trial nor can their failure to do so be construed as guilt.

**Use of Voluntary Confessions**

In 1966, the Supreme Court ruled that 'voluntary' confessions had not always been voluntary and they set standards for determining if a confession had been coerced or was truly voluntary. In *Miranda v. Arizona*, the defendant was questioned for hours until he confessed and was never informed of his right to an attorney. He appealed based on the 5th Amendment, saying his confession had been coerced. The Court agreed. Chief Justice Earl Warren wrote that the police have a tremendous advantage in interrogations and criminal suspects must be given greater protection. The Miranda confession was ruled inadmissible. The Court provided guidelines for the police, ruling that all suspects must be read their rights—hence the Miranda warnings we have all heard on TV cop shows.

The Rehnquist Court has been more tolerant of forced confessions and has employed a more flexible standard to allow their admissibility. In 1991, the Court ruled that a coerced confession does not automatically invalidate its admission if it is a
harmless error and other evidence is sufficient to convict. The long-term viability of the Miranda rule was questionable, particularly after lower court rulings admitting confessions without the benefit of a Miranda warning.

In 2000, Chief Justice Rehnquist wrote an opinion reaffirming the central holding of Miranda that defendants be read their rights. The Court further stated that without Miranda warnings no admission could be trusted to be truly voluntary. This seems to be a sea change in the Court’s interpretation of both Miranda and of the wider issue of voluntary confessions.

**The Fourth and Fifth Amendments and the Exclusionary Rule**

In *Weeks v. United States* (1914), the Supreme Court adopted the Exclusionary Rule that bars the admission of illegally obtained evidence at trial. So the exclusionary rule is a judicially created remedy to deter police from violating the 4th and 5th amendment rights of suspects. Congress and the Supreme Court in recent years have chipped away at the Exclusionary Rule. There are now a number of ‘good faith exceptions’ allowing the use of tainted evidence. Simple errors on warrants no longer totally invalidate a search and as long as there is no police misconduct, evidence is generally admissible even without a proper warrant.

**The Sixth Amendment and the Right to Counsel**

The 6th Amendment guarantees a right to counsel. In the past, this meant suspects could hire an attorney. Since most of the accused are poor, they often did not have counsel. Congress required federal courts to provide attorneys for indigent suspects, and in 1932, the Supreme Court ruled that free lawyers must be provided in all death penalty cases. The Court also began to piece-meal expand the right to free counsel, but in such a way that many states were confused about when it was necessary.

The Court clarified itself in the case of *Gideon v. Wainwright* (1963). In *Gideon*, a poor man was accused of a crime and denied a lawyer. In prison, Gideon drafted an *in forma pauperis* petition to the Supreme Court asking for an appeal. The Court accepted the case and ruled unanimously that a lawyer was a necessity in criminal court, not a luxury. The state must provide a lawyer to poor defendants in felony cases. Gideon was granted a new trial with a lawyer and set free. In 1972, the Court extended the right to free counsel for offenses less serious than felonies. And in 1978, it clarified further by ruling that the right to counsel is constitutionally required where a prison or jail term is imposed. In 2002, the Rehnquist Court revisited the issue and in a 5-4 decision ruled that a suspended sentence for a minor crime that could result in imprisonment cannot be imposed unless the defendant has a lawyer, even if the sentence was not ever going to be served.

**The Sixth Amendment and Jury Trials**

The 6th Amendment provides for a speedy and public trial by an impartial jury. The Supreme Court has ruled that jury trials must be available if a prison sentence of six months or more is possible.

Jury selection has become quite a tricky issue though. The definition of 'impartial jury' has changed dramatically over the years. And today, no group can be systematically excluded from serving as women and African Americans once were. The Supreme Court
also has ruled that lawyers cannot choose a jury on the basis of gender even using preemptory challenges because it violates the Equal Protection Clause.

The right to confront witnesses is also part of the 6th Amendment. In 1990, the Court ruled that this was not an absolute right. Young child abuse victims may testify by one-way closed circuit television for their protection, for example. The Court argued that the central premise of the clause was to ensure the reliability of testimony, not physical presence and that the protection of the child outweighed the right to confront witnesses.

**The Eighth Amendment and Cruel and Unusual Punishment**

The 8th Amendment prohibits cruel and unusual punishment and is most often used in arguing death penalty cases. The Supreme Court has changed its mind on the death penalty several times, and currently it is considered constitutional. Thirty-eight states allow the death penalty at present. Some of the major death penalty cases were:

- *Furman v. Georgia* (1972) —the Court ruled that the death penalty constituted unconstitutional cruel and unusual punishment when it was imposed in an arbitrary manner.
- *Gregg v. Georgia* (1976) —Georgia rewrote its death penalty statute, and the new statute was ruled constitutional in a 7-2 decision.
- *McKleskey v. Kemp* (1987) —in a 5-4 ruling, the Court ruled that the death penalty—even when it appeared to discriminate against African Americans—did not violate the equal protection clause.

In general, the current Court is unwilling to overrule state decisions about the death penalty unless the perpetrator was 15 years old or younger at the time the crime was committed.

In 2002, the Supreme Court ruled that mentally retarded convicts could not be executed because that violated the 8th Amendment. This reversed a 1989 decision and threw out the laws of 20 states.

At the state level, the death penalty is becoming more controversial. In 2000, the governor of Illinois, George Ryan, ordered a moratorium on executions, although generally a proponent of the death penalty, due to a student research project at Northwestern University that led to the release of 13 men on death row due to wrongful convictions. DNA testing has brought release to a number of death row inmates (over 100) and some states, like Ohio, are now offering free DNA testing to death row inmates to ensure that no one is wrongly executed. Following these events, public support for the death penalty is at an all-time low and Ryan pardoned all 167 men and women on death row in Illinois in 2003 claiming that the death penalty system, as constituted, “is arbitrary and capricious and therefore immoral.”

**The Right to Privacy**

Until now, the rights we have been discussing have been enumerated in the Bill of Rights explicitly. In contrast, the Supreme Court has also given protection to rights not specifically enumerated. The Court has ruled that though privacy is not specifically mentioned in the Constitution, the Framers expected some areas to be off-limits to
government interference. The right to freedom of religion implies a right to exercise private, personal beliefs. The protection against unreasonable searches and seizures implies that persons should be secure and private in their homes. And Justice Louis Brandeis argued in 1928 that "the right to be left alone is the most comprehensive of rights and the right most valued by civilized men."

**Birth Control**

Easy access to birth control has not always been the case. In particular, Connecticut had a law in the 1960s prohibiting the dissemination of information about and/or the sale of contraceptives. In 1965, the Court ruled on the constitutionality of this law in *Griswold v. Connecticut*. In *Griswold*, seven justices argued that the 1st, 3rd, 4th, 5th, and 14th amendments created zones of privacy, including a married couple's right to plan a family. Later, the Court expanded the right to birth control to unmarried persons.

**Abortion**

In the late 1960s, abortion was legal in some states. Women's rights advocates wanted a woman's right to decide about pregnancy and whether she would carry a baby to term to be a fundamental constitutional right. In 1973, the Court agreed in *Roe v. Wade*. Seven members of the Court relied on medical evidence and ruled that a Texas law prohibiting abortion violated a woman's constitutional right to privacy. Pregnancy was divided into trimesters in Justice Harry Blackmun's opinion. In the first trimester, a woman had an absolute right to an abortion. In the second trimester, the state's interest in the health of the mother must be taken into account. And in the third trimester, the state's interest in the safety of the fetus outweighed a woman's right to privacy. This ruling was highly controversial and ignited a firestorm of argument on all sides.

Since *Roe*, a number of other cases on abortion have been decided; in general they have limited abortion rights in some way. Congress has also worked to limit abortions.

- the Hyde Amendment passed by Congress and upheld twice by the Supreme Court bans the use of Medicaid funds for poor women's abortions
- *Webster v. Reproductive Health Services* (1989)—the Court upheld fetal viability tests even though they would drastically increase the cost of abortions
- Missouri refused to allow abortions in state-funded clinics or by state-funded doctors and nurses. The Court upheld this law.
- *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) —Pennsylvania was allowed to limit abortions as long as they did not pose 'an undue burden' on pregnant women and imposed a 24 hour waiting period for the procedures
- the Court has upheld mandatory waiting periods in Mississippi

Under President Bill Clinton, the ban on fetal tissue research was lifted, bans on abortions at military hospitals were lifted, the gag rule (a federal regulation barring clinics from discussing the procedure) was removed. And he lifted the restrictions on testing RU-486, the so-called French abortion pill. He also appointed pro-choice justices to the Supreme Court. However, the Republican Congress made repeated attempts to restrict abortion rights. And the election of a Republican president who has stated he is 'pro-life,' coupled
with the Republican control of both houses of Congress after the 2002 election, means that abortion rights are likely to be reduced again.

The battle continues. The uncertain status of abortion rights and privacy rights underscores the role of politics in civil liberties issues and how changes in the Court, the partisan makeup of Congress, and the beliefs of the president also play an important role in the changing nature of civil liberties.

Homosexuality

The Court has declined to extend privacy rights to protect homosexual acts. In 1986, the Court upheld a Georgia law against sodomy in a 5-4 decision in the case of *Bowers v. Hardwick*. However, in 1996, the Court ruled that a state could not deny rights to homosexuals simply on the basis of sexual preference. The Court also ruled that the Boy Scouts can legally exclude gays from the organization as scout masters.

The Right to Die

In 1990, the Court heard the case *Cruzan by Cruzan v. Director, Missouri Department of Health*. This case was about a comatose woman who was brain dead. Her parents wanted her feeding tube removed so she could die with dignity. The Bush (Sr.) administration and numerous anti-abortion groups filed briefs supporting the state against the parents. In a 5-4 ruling, the Court rejected a right to privacy in such cases but argued that living wills, written when competent, were constitutional. In 1997, the Court ruled that there was no constitutional right to assisted suicide. And in 2001, in response to an Oregon law on assisted suicide, Attorney General John Ashcroft issued a legal opinion that assisted suicide is not a “legitimate medical purpose” and called for the revocation of physicians’ licenses if they assist in suicides. The licensing of professionals has traditionally been a state power and Oregon filed a lawsuit to block Ashcroft’s interference. A federal judge ruled that Ashcroft has overstepped his mandate and held in favor of Oregon.

| Websites for Instructors |

**American Civil Liberties Union (ACLU)** offers information on the entire Bill of Rights, including racial profiling, women's rights, privacy issues, prisons, drugs, etc. Includes links to other sites dealing with the same issues.

  www.aclu.org

**Cornell University Law School** offers the full text of the Bill of Rights and other constitutional documents.

  www.law.cornell.edu/constitution/constitution.billofrights.html

**Findlaw** is a searchable database of Supreme Court decisions plus legal subjects, state courts, law schools, bar associations and international law.

  www.findlaw.com
FLITE: Federal Legal Information Through Electronics offers a searchable database of Supreme Court decisions from 1937-1975.
www.fedworld.gov/supcourt/index.htm

The Gay and Lesbian Alliance Against Defamation (GLAAD) advocates fair, accurate and inclusive representation in the media. Their website includes links to related issues as well as news and opinion.
www.glaad.org

The Lambda Legal Defense Fund offers extensive coverage of legal action related to gay, lesbian, bisexuals, the transgendered, and HIV infected people’s rights.
www.lambdalegal.org/cgi-bin/iowa/index.html

The Legal Information Institute of Cornell University has an excellent site that offers extensive information about civil liberties. There is a section focused on the First Amendment with definitions, historical background, Supreme Court decisions, and links to numerous First Amendment related sites. There are also sites at LII for prisoners' rights, employment rights, and constitutional rights generally.
www.law.cornell.edu/topics/first_amendment.html

LII also offers Supreme Court opinions under the auspices of Project Hermes, the court's electronic-dissemination project. This archive contains (or will soon contain) all opinions of the court issued since May of 1990.
//supct.law.cornell.edu/supct/

Oyez-Oyez-Oyez is a comprehensive database of major constitutional cases, including multimedia aspects such as audio.
www.oyez.nwu.edu

Rominger Legal Services provides U.S. Supreme Court links including history, pending cases, rules, bios, etc.
www.romingerlegal.com/supreme.htm

U.S. Supreme Court Plus has decisions from the current term as well as legal research, bios, basic Supreme Court information and more. Also offers a free e-mail notification service of Supreme Court rulings.
www.usscplus.com

Web Activities for Classes

1) Have students explore the current docket of the Supreme Court (the easiest way is through Oyez, Oyez, Oyez on the Internet). What civil liberties issues are going to be heard this term? How do you think they will be decided and why? Follow the process until the rulings are made and see if you are right.
2) Have students explore controversial websites and discuss the issue of Internet free speech. Should there be controls? What kind of controls might be constitutionally acceptable? Has the Supreme Court dealt with this issue yet? If so, what was its ruling, and how does the ruling affect the sites you looked at?

3) Have students explore the ACLU website. What issues is the ACLU currently sponsoring, and why? Are there any surprises here? Why or why not? Does the actual working of the ACLU differ from its goals? Why or why not?

### General Class Activities and Discussion Assignments

1) Have students visit or call a local branch of the American Civil Liberties Union. They should collect written information about ACLU activities and issues. Find out what the ACLU does, and why. They could also visit ACLU websites to find out what activities are currently on the ACLU agenda.

2) Have students prepare a debate or write a paper on the following: Under Chief Justice Rehnquist, the Court has reduced many of the due process rights granted under the Warren and Burger Courts. Find examples of how these rights have changed and why. What has the role of public and political opinion been in these changes?

3) Have students address the following:
Find out if your campus has a "speech code." (If it doesn't, find a nearby college or university with one.) Would this code stand up to a constitutional test? Why or why not? According to your understanding of the First Amendment, are speech codes constitutional? Do some research at the campus newspaper and see if there was any controversy surrounding the adoption of the speech code and discuss it in class.

### Possible Simulations

1) Stage a debate about a civil liberties issue that is currently in front of the Court. Students should research the docket on the Web and be prepared to discuss the issue fully.

2) Using groups of nine, stage a number of Supreme Court conference sessions. Have students do research on "their" assigned justice (one should be Rehnquist, another O'Connor, and so on). They should also choose a case from the current docket and try to determine how the conference would go. What would the Court decide and why? What strategies could the justices use to marshall a majority, etc.?
Additional Sources


CHAPTER 5
CIVIL RIGHTS

Narrative Lecture Outline

Since 9/11, not only have American notions (and laws) about civil liberties changed but civil rights have also been reinterpreted. During the 1990s as well as 2000 and much of 2001, the legality of racial profiling had been under intense scrutiny and was being considered by a number of courts, including the Supreme Court. The idea of DWB (driving while black) as a traffic offense was the subject of satire for late night talk shows. Now in the aftermath of the terror attacks, the groups that are being targeted are not black, but ‘Middle Eastern’ in appearance. This can range from Americans of Greek heritage to anyone with a beard. And, as mentioned in the previous chapter, the civil liberties protections have been greatly weakened due to the Patriot Act. Is racial profiling warranted in any situation? In some situations? What should the civil rights of citizens, and noncitizens, be in the United States? These are the topics we’ll be addressing in this unit.

The term "civil rights" refers to the positive acts governments take to protect individuals against arbitrary or discriminatory treatment by government or individuals. Since the Constitution was written, the conception of civil rights has changed dramatically. The addition of the 14th Amendment after the Civil War made equality a constitutional right by specifying that the states could not "deny any person within its jurisdiction equal protection of the laws." This amendment has generated more litigation than any other constitutional provision. Those seeking equality have used the Constitution and litigation strategies as well as other methods of attaining their goal, such as protest, lobbying, civil disobedience, and appeals to public opinion.

Slavery, Abolition, and Winning the Right to Vote, 1800-1890

Slavery and Congress

Congress banned the slave trade in 1808 as soon as the constitutional prohibition on banning it passed. Slavery was a divisive issue in the early republic. The South was becoming more heavily dependent on the cheap labor of slaves for agriculture, while the North was rapidly becoming industrial. This division between North and South intensified cultural and political differences and caused much animosity. A particularly controversial issue was the admission of new states. Would they be slave or free? This became a crisis in 1820 when Missouri applied for admission as a slave state. This would have given the slave-holding states a majority in the Senate and so was strongly opposed in the North. The Missouri Compromise of 1820 allowed the admission of Missouri as a slave state along with the admission of Maine (formed out of Massachusetts' territory) as a free state, thus preserving the balance of power, but the controversies raged on.

The Abolitionist Movement: The First Civil Rights Movement

The abolitionist movement and private charities purchased slaves and transported them back to Africa in the early 1800s. In the 1820s, 88 former slaves formed the
independent state of Liberia, but this 'solution' to slavery was expensive and unpopular. The abolitionist movement began to fizzle out, but the arrival of William Lloyd Garrison reinvigorated the movement by founding the American Anti-Slavery Society.

People were also beginning to question the second-class status of women. As a matter of fact, Frederick Douglass—a well-known black abolitionist writer—quit the American Anti-Slavery Society because it refused to allow women to participate equally.

In 1848, Elizabeth Cady Stanton and Lucretia Mott sent out a call for the first women's rights convention in Seneca Falls, New York. The conference, attended by hundreds of men and women, called for equal rights of citizenship regardless of gender. The calls to change moral codes, divorce and property rules, criminal laws, and to extend educational opportunities to women all passed unanimously. Only the call to extend voting rights to women failed to win unanimous approval.

In 1850, Harriet Beecher Stowe published *Uncle Tom's Cabin*, a novel on the evils of slavery, and rallied public opinion behind the abolitionists. At about the same time as national passions were fanned by Stowe's novel, a major civil rights case came before the Supreme Court: *Dred Scott v. Sanford*. In its ruling on *Scott*, the Court ruled the Missouri Compromise unconstitutional and found that slaves were not citizens and could not sue in court. (This case was covered in Chapter 3.)

**The Civil War and its Aftermath: Civil Rights Laws and Constitutional Amendments**

The Civil War had many causes, including:

- political conflict between North and South over nullification, a doctrine allowing states to declare federal law null and void
- political conflict between North and South over the right to secession
- the Northern states increasing political strength in the House of Representatives
- Southern agriculture vs. Northern industry
- the clash of Southern conservative culture with more progressive Northern ideas
- and, of course, slavery

During the war, abolitionists kept up pressure on Lincoln to abolish slavery. In 1863, he issued the Emancipation Proclamation that freed all slaves living in states in active rebellion against the United States. It did not free all slaves, just those in the Confederacy. Slavery was not truly abolished until the ratification of the 13th Amendment in 1865.

Three amendments were passed following the war. They came to be known as the Civil War Amendments. They are:

- 13th Amendment—banned all forms of slavery and involuntary servitude
- 14th Amendment—guarantees equal protection of the laws and due process to all citizens
- 15th Amendment—specifically gives blacks the right to vote

Southern states were required to ratify these three amendments as a condition of being readmitted to the Union. However, shortly after ratification they devised ways
around the spirit and intent of the amendments by passing laws restricting opportunities for African Americans. These Black Codes forbade blacks from jury duty, appearing in public places, and other indignities. In response, Congress passed the Civil Rights Act of 1866 to invalidate the Black Codes but President Andrew Johnson vetoed it. For the first time in history, Congress overrode a presidential veto. The law gave Congress the power to intervene when states attempted to restrict black male citizenship rights. They were also allowed to sue in federal court since they were unlikely to win in the elected state courts.

The 14th Amendment was opposed by many women's groups because it specifically added the word 'male' to the Constitution. Women's groups were also not pleased with the 15th Amendment, which guaranteed the right of citizens to vote regardless of race, color, or previous condition of servitude with no mention of gender. These two 'slights' to women caused them to leave the abolitionist movement and form an organization to work solely for women's rights. So Stanton and Susan B. Anthony formed the National Woman Suffrage Association (NWSA) in 1870.

Civil Rights and the Supreme Court

Congress was quite clear in its desire to support the rights of African Americans. The Supreme Court was not. The Court ruled in a number of cases against a broad interpretation of the 14th Amendment in The Slaughterhouse Cases and Bradwell v. Illinois. The Court continued to reject claims for expanded rights and requests for clear definitions of U.S. citizenship rights.

Judicial decisions also upheld Jim Crow Laws. These laws grew out of the Black Codes and required segregation in public schools and facilities. Jim Crow also barred interracial marriage. These laws conflicted with the Civil Rights Act of 1875 but by 1883 the Supreme Court heard five cases, called the Civil Rights Cases, involving people who had been convicted of refusing to allow African Americans in theaters, hotels, and a railroad. The Supreme Court ruled that Congress could not prohibit individual acts of discrimination, thus seriously limiting the scope of the 14th Amendment and provided moral reinforcement for Jim Crow laws.

Southern states also tried to undermine the intent of the 15th Amendment. Since the 15th Amendment specifically said states could not deny anyone the right to vote based on race or color, they decided to exclude blacks from suffrage on other bases. They used poll taxes, property owning qualifications, literacy tests, and other voting restrictions. Many Southern states added grandfather clauses that prevented from voting those whose grandfathers had not been able to vote.

The Push for Equality, 1889-1954

The Progressive Era (1889-1920) was a concerted effort to reform political, economic, and social affairs. Child labor, monopolies, and prejudice were all targets of the reformers. The concerns over the treatment of African Americans grew worse after the Supreme Court ruled in Plessy v. Ferguson, a case that some refer to as the darkest hour in the history of the Supreme Court.

In 1892, a group of African Americans decided to test the constitutionality of a Louisiana law mandating racial segregation on all trains. They asked Homer Adolph Plessy—a man 7/8ths white, and 1/8th black—to challenge the law. Plessy boarded a
train in New Orleans and went to the whites only car. He was arrested when he refused to leave and sit in the colored section. He sued, arguing that the 14th Amendment made such racial segregation illegal.

The Supreme Court disagreed. They ruled that the Louisiana law was constitutional and that separate facilities for blacks and whites did not violate the Equal Protection Clause. This came to be known as the "separate but equal" doctrine. The Jim Crow system flourished. In 1898, the Supreme Court upheld the constitutionality of literacy tests. Again and again, the Supreme Court sanctioned racial segregation.

The Founding of Key Groups

In 1909, a number of progressive individuals gathered to discuss the idea of forming a group devoted to the problems of "the Negro." This group evolved into the NAACP. The first leaders of the NAACP included Jane Addams of Hull House and W.E.B. DuBois.

In 1890, the National American Woman Suffrage Association (NAWWSA) was formed when the National and American Woman Suffrage Movements merged. This group was devoted to securing women's suffrage.

By 1920, a coalition of women's groups secured ratification of the 19th Amendment guaranteeing all women the right to vote. Following this victory, the otherwise diverse groups splintered off, and widespread, organized activity on behalf of women did not reemerge until the 1960s.

Litigating for Equality

During the 1930s, the NAACP decided it was time to challenge *Plessy*. Legislative strategies had not worked due to the limited political power of blacks so a litigation strategy was its most lucrative avenue to pursue. The NAACP mapped out a long-range litigation strategy that began by targeting segregation in graduate and professional schools. Such schools admitted only adults and a small percentage of the population; therefore desegregation in graduate and professional schools would be less threatening to whites than some other arenas.

Lloyd Gaines, a black university graduate, applied for admission to the all-white University of Missouri Law School in 1936. He was rejected. In the spirit of *Plessy's* "separate but equal" doctrine, the state offered to build a law school for blacks (but no funds were allocated) or they would pay his tuition at an out-of-state law school. He appealed and ended up in the Supreme Court. The Court had changed dramatically in the last few years and seemed more sympathetic to cases about individual freedoms and rights. The justices ruled that the state of Missouri had failed to meet the "separate but equal" requirements of *Plessy*. They ordered Missouri to admit Gaines or set up a law school for him.

This partial success led the NAACP to set up a legal defense fund to pursue more such test cases. The first head of the NAACP-LDF was Thurgood Marshall (later to be the first African American on the Supreme Court). The LDF began to bring a carefully orchestrated series of test cases to the Court.

H.M. Sweatt was a 46 year old African American mail carrier who in 1946 applied for admission to the all-white University of Texas Law School. He was rejected and sued. The judge gave the state six months to establish a law school for blacks or
admit Sweatt to the University of Texas. The university rented rooms in downtown Houston and hired two local black attorneys to be part-time faculty members. The state legislature authorized $3 million for the creation of a Texas State University for Negroes and a small new law school for blacks in Austin. It would have three small basement rooms, a library of 10,000 books, access to the state law library, and three part-time, first year instructors as faculty. Sweatt opted to continue his legal challenge rather than accept such a poor alternative.

While working on Sweatt, Marshall began another case based on a 68 year old African American who was denied admission to a doctoral program at the University of Oklahoma. Marshall thought that George McLaurin would be immune from charges of wanting integration in order to intermarry due to his age. A lower court ordered him admitted. The university allowed him to eat at the cafeteria during off hours and forced him to sit outside classrooms while lectures and seminars were held.

The Supreme Court bundled these two cases together. Southern states lobbied with a friend of the court brief (amicus curiae) that Plessy should govern both cases. But the U.S. government joined the NAACP. The Truman Administration urged the Court to overrule Plessy. This was a first. But the Court did not overrule Plessy. Instead they argued that measures taken by the states failed to live up to "separate but equal." In Sweatt, the Court ruled that it would be impossible for the state to provide an equal legal education in a separate setting. These partial victories convinced the NAACP-LDF that the time was ripe for a full-scale attack on legal segregation and Plessy.

The next major case, though actually it was a series of four cases, was known as Brown v. Board of Education of Topeka, Kansas. All four cases involved public elementary or high schools that mandated racial segregation. In Brown, the NAACP again argued that Plessy's "separate but equal" doctrine violated the 14th Amendment's Equal Protection Clause. The strategy was to prove that the intellectual, psychological, and financial damage that befell African Americans as a result of segregation precluded any court from finding that equality was served by the separate but equal policy. The Court, under Chief Justice Earl Warren, overruled Plessy saying that separate was inherently unequal. The question then turned to implementation of the ruling and whether the ruling could be extrapolated to other realms of segregation.

The Civil Rights Movement
School Desegregation After Brown

One year after Brown, in Brown II, the Court ruled that segregated systems must be dismantled "with all deliberate speed." Implementation was given over to federal district court judges who were deemed more immune from local political pressure than state judges.

In Arkansas, Governor Orval Faubus announced that he would prevent the desegregation of Little Rock's Central High School using the National Guard. Finally, President Eisenhower sent federal troops to Little Rock to protect the rights of the black students who had tried to attend Central High. Desegregation would prove to be a long and costly battle.
A New Move for African American Rights

Shortly after victory in *Brown II*, the civil rights movement challenged another vestige of segregation: public transportation. Rosa Parks, an NAACP employee, challenged the segregated bus system in Montgomery, Alabama. She refused to leave her seat and move to the back to make room for a white male passenger. She was arrested. The city clergy and others got together and called for a bus boycott. Martin Luther King, Jr. was selected to lead the Montgomery Improvement Association and the bus boycott. After a year, the boycott succeeded and a federal court ruled that buses should integrate. The tactic of nonviolent protest would become a staple of the civil rights movement.

Formation of New Groups

King went on to found the Southern Christian Leadership Conference (SCLC) in 1957. This group had a Southern, Christian base, was run mostly by clergy, and reflected a growing belief in the importance of nonviolent protest.

Sit-ins, boycotts, and other forms of nonviolent protest were used to open up segregated lunch counters, waiting rooms, and more. Many college students from around the South joined together to challenge Jim Crow Laws in this fashion.

In a series of meetings beginning in 1960, white and black students got together to form the Student Nonviolent Coordinating Committee (SNCC). Among the first leaders of SNCC were John Lewis, Marion Barry, and Marion Wright Edelman. SNCC was more radical than the SCLC. Among SNCC's tactics were "freedom rides" to focus attention on segregated public accommodations. College students and civil rights activists, black and white, from all over the country headed South to travel by bus and force desegregation. Local police attacked them or chose not to defend them from attacking segregationists.

Meanwhile, SCLC and Martin Luther King, Jr. launched a series of massive nonviolent demonstrations in Birmingham, Alabama. Thousands of blacks and whites marched together in a show of solidarity and equality. Peaceful marchers were met by the Birmingham Police Commissioner, who ordered his officers to use dogs, clubs, and fire hoses to disburse the march. The television news covered these events, and the nation was shocked. Not only did public opinion turn in favor of civil rights, but President John F. Kennedy was convinced to propose important civil rights legislation.

The Civil Rights Act of 1964

In 1963, President Kennedy requested that Congress pass a law banning discrimination in public accommodation—the first major piece of civil rights legislation since the post-Civil War years. Reverend King seized the moment and planned a massive show of support that came to be known as the March on Washington. King wanted a law that would ban discrimination in all aspects of life, not just public accommodations. In August 1963, more than 250,000 people marched peacefully on Washington and King delivered his "I Have a Dream" speech. Before Congress could vote, Kennedy was assassinated in November.

Lyndon B. Johnson became president and put civil rights at the top of the agenda and Congress passed the Civil Rights Act despite filibustering by Southern Senators. Senator Strom Thurmond (SC) and his allies held the bill up for eight weeks before a cloture vote finally stopped the filibuster.
The Civil Rights Act of 1964:

- outlawed arbitrary discrimination in voter registration and expedited voting rights lawsuits
- barred discrimination in public accommodations engaged in interstate commerce
- authorized the U.S. Justice Department to initiate lawsuits to desegregate schools and public facilities
- allowed the federal government to withhold funds from discriminatory state and local programs
- prohibited discrimination on the basis of race, color, religion, national origin, or sex
- created the Equal Employment Opportunity Commission (EEOC) to monitor and enforce bans on employment discrimination

Meanwhile, ghetto riots rocked the Northeast. Although they did not have to contend with Jim Crow, many blacks in the North lived in poverty and faced pervasive discrimination. There was a growing black power movement under leaders like Malcolm X, arguing that blacks needed to establish their own power separate from whites to survive. From 1964 to 1968, many Northern African Americans burned and looted to vent their rage and frustration. The fight was far from over.

Southerners were adamant that the Civil Rights Act violated the Constitution and was an unwarranted use of federal power. The Supreme Court disagreed. It argued that the Commerce Clause gave the federal government the power to implement the Civil Rights Act.

Despite the Act and Supreme Court rulings, desegregation still needed to be fought on many fronts. The Court ruled that state imposed segregation (de jure) must be eliminated at once. However, a full decade after Brown, less than 1% of African American children in the South attended integrated schools.

The Act also prohibited employment discrimination (in 1978 it was amended to prohibit discrimination based on pregnancy). Slowly, the Court (and lower courts) ruled on arbitrary policies like height and weight restrictions, special tests, etc. saying that if the effect of the rules was discriminatory, the practice was unconstitutional. Over time, these rulings opened up numerous occupations to minorities, and especially to women.

The Women’s Rights Movement

Women worked hard in the abolition movement and the civil rights movements. They belonged to SNCC, the NAACP, and SCLC but were often treated as second-class citizens. By the early 1960s, women were mobilized into action by a series of events, including JFK’s Commission on the Status of Women and its report documenting discrimination against women; the publication of Betty Friedan’s The Feminine Mystique; and the Civil Rights Act of 1964.

In 1966, the National Organization for Women (NOW) was formed to address the many remaining problems faced by women, including laws against jury duty for women. NOW was organized to work within the existing system for change, just like the NAACP. And like the NAACP, they tried to work through the judiciary to end discrimination. But
the courts were not sympathetic and ruled against women time and again. So NOW decided to go after a constitutional amendment for equal rights.

The Equal Rights Amendment (ERA)

The Supreme Court continued to deny women the protection of the 14th Amendment so NOW and other women's groups began to press for an Equal Rights Amendment. In 1972, Congress passed it by an overwhelming majority in both houses. Within a year, 22 states had ratified. The amendment, which simply states that equality of rights under the law shall not be abridged or denied by the U.S. or by any state on account of sex, seemed very popular. Every president since Harry Truman had supported it and Congress had passed it.

However, the ERA became quite controversial. And women were finally winning in the courts, so the need seemed, to some, to have diminished. Among the stories told by opponents of the ERA was that the ERA would require coed bathrooms!

In 1973, the Supreme Court handed down a ruling in Roe v. Wade concluding that women had a constitutional right to privacy including, in certain circumstances, the right to terminate a pregnancy. Roe gave ERA opponents valuable ammunition to use against the ERA. Radical arguments by opponents about coed bathrooms, mandatory military service for women, and abortion on demand frightened many people into opposing the amendment. Two states rescinded ratification. Though Congress extended the deadline for ratification, the amendment failed anyway. The ERA failed in part due to opposition but also due to successes for women's rights in the courtroom that made some people think the amendment was unnecessary.

The Equal Protection Clause and Constitutional Standards of Review

The 14th Amendment protects all U.S. citizens from state action that violates equal protection of the laws. However, in practice, the Supreme Court regards certain rights as so fundamental that they deserve a higher standard of scrutiny. When a fundamental right such as free speech, or a suspect classification such as race are involved in a case, the Supreme Court uses a heightened standard of review called strict scrutiny to determine its constitutional validity. Beginning with Korematsu v. U.S. (1944) and the internment of Japanese Americans during WWII, the Supreme Court said that any legal restriction that curtailed the right of a single racial group is immediately suspect and should be given "the most rigid scrutiny." The Court also used strict scrutiny in Brown. Under strict scrutiny, a statute is presumed to be unconstitutional unless the state can provide "compelling affirmative justifications"—that means that the law must be necessary to attain a permissible goal and be the least restrictive means to that goal.

In Reed v. Reed (1971), the Supreme Court finally extended 14th Amendment protections to gender as well as race. Gender was not made a suspect classification but created an intermediate standard of review for such cases. Since that time many practices have been found to violate the 14th Amendment, including:

- single sex public nursing schools
- laws that consider men adults at 21 but women adults at 18
- laws that allow women, but not men, to receive alimony
- preemptory challenges in jury selection based on gender
Virginia's all-male, publicly funded military college, the Virginia Military Institute

But the Court has upheld the following practices and laws as constitutional:
- draft registration for males only
- statutory rape laws that apply only to female victims

Other Groups Mobilize for Rights

Native Americans

Native Americans have a unique status under American law. In 1924, Indians were made U.S. citizens and given the right to vote but it was not until the 1960s that the Indians too began to mobilize for their rights and against the discrimination against themselves and their ancestors. There were, like with all groupings, radical Indian groups, moderate ones, and groups that were fairly timid in their demands.

Law suits were filed about fishing rights, hunting rights, tribal land claims, and the taxation of tribal profits. And, much like the NAACP, this strategy won on many occasions. Native Americans have managed to gain access to and protection of their holy places—particularly burial grounds. They have not fared as well in religious rights. The use of peyote and access to religious sites during timber harvesting have been limited.

Hispanic or Latino/a Americans

Latino/a Americans can date their push for equal rights to 1965-75. They also borrowed tactics from the African American civil rights movement, including sit-ins, boycotts, marches, and activities that drew publicity.

The Latino/a community has also relied heavily on litigation strategies. Key groups include the Mexican American Legal Defense and Educational Fund (MALDEF) and the Puerto Rican Legal Defense and Educational Fund. These groups have been quite successful in expanding voting rights and opportunities for Latinos/as.

With the release of 2000 Census results and the dramatic increase in the Latino/a population, we are likely to see even more political action by this identity group. However, the Latino/a community is also divided by national origin. Within the Latino/a groups there are Brazilians, Cubans, Puerto Ricans, Colombians, El Salvadorans, and more. Sometimes these national groupings are more important than language as an identity marker. In addition, each national grouping can have different salient issues. For some it is citizenship, for others language and cultural rights, and for others the overthrow of a Communist dictator and American policy toward a certain country.

Gays and Lesbians

Gays and lesbians have had a harder time than many other groups in achieving fuller rights. Gays do, however, have on average higher educational and income levels and are beginning to turn that into clout at the ballot box. In general, the Supreme Court has been unwilling to expand privacy rights or special constitutional protections to homosexuals. In Bowers v. Hardwick (1986), the Court ruled that privacy rights did not extend to homosexuals even if they were consenting adults in private.
Disabled Americans

Disabled veterans often led the charge for anti-discrimination legislation. As the disabled saw the victories of other groups, they too began fighting for better treatment. In 1990, veterans and other disabled people were able to convince Congress to pass the Americans with Disabilities Act (ADA). The ADA defines a disabled person as someone whose physical or mental impairment seriously limits one or more life activities. The ADA requires that facilities be accessible to those in wheelchairs, that telecommunications devices be provided for deaf employees, that employers acquire or modify work equipment or work schedules to accommodate the disabled.

The Court has ruled that the ADA covers pregnant women and people with AIDS. In 1999, the Court ruled in a number of ADA cases. They argued that if disabilities were treatable—such as myopia with eyeglasses or diabetes with insulin--one did not qualify for ADA anti-discrimination protection.

Affirmative Action

Affirmative action generates a lot of controversy. Some violently oppose affirmative action as discrimination. Others see it as absolutely vital in providing basic opportunities for minorities and women. There often seems to be very little middle ground. This debate really heated up during the Reagan administration when the Court heard a number of reverse discrimination cases.

In 1978, the Court first fully addressed the issue of affirmative action in the case *Bakke v. Regents of the University of California*. UC-Davis used two admissions committees—one for white students and one for minority students. Bakke was not admitted though his grades and test scores were higher than all of the African Americans admitted to the medical program. A sharply divided Court ruled that Bakke's rejection was unconstitutional due to the use of strict numerical quotas in the admissions process.

In general, at this time the Court upheld affirmative action programs when there was clear cut evidence of prior discrimination—usually by 5-4 votes. But in 1986, when William Rehnquist was elevated to Chief Justice, the Court began to rule against affirmative action.

The Democratic Congress responded by passing the Civil Rights Act of 1991 which, though watered down through bipartisan compromise, overruled several anti-affirmative action Court rulings—but it specifically prohibited the use of quotas.

The Supreme Court continued to challenge affirmative action programs. In 1995, they ruled that affirmative action must meet strict scrutiny tests. In 1996, the 5th Circuit Court of Appeals threw out the University of Texas Law School's affirmative action program and the Supreme Court let the ruling stand. Since then the Supreme Court has chosen not to hear such cases or the cases have been settled before the Court could rule. In 1996, California voters chose to outlaw most forms of state affirmative action. This has had ramifications on colleges and universities in California and beyond. Minority admissions have dropped, as have minority applications for many programs.

It took over 100 years from the first shot of the Civil War until the Civil Rights Act of 1964 and the Voting Rights Act of 1965 for African Americans to begin to fully exercise their rights. Women achieved the legal right to vote in 1920, and fuller rights in the mid-1960s. Other minorities and the disabled also worked to achieve better treatment during that decade.
However, there is no consensus—almost 40 years later—in this society about race and gender relations. Many people argue that racism and sexism are alive and well in America. President Clinton's Dialogue on Race Initiative was a public attempt to address the difficulties of race relations in a post-OJ Simpson, post-Rodney King, post-Bakke (the list goes on) world. The public dialogue did not get much press coverage—they were too busy with all that Monica-business—and didn't seem to move the conversation along very far, but it was a start.

George W. Bush, and his much-heralded Spanish language skills, have pleased many in the Latino/a communities. His first foreign visit as president was to Mexico and he has paid a lot of attention to issues south of the border. African Americans have not been as pleased with Bush, especially due to the allegations of racial profiling and racially based electoral illegalities in connection with the 2000 presidential election.

On affirmative action, most white Americans (57%) feel it is no longer necessary. The Supreme Court is hearing a case on whether the University of Michigan (and other colleges) can use race as a factor in admissions that a federal appeals court ruled unconstitutional. However, a large number of African Americans express intense distrust in the American legal system and many blacks and women feel affirmative action is still a necessity. Where do you think we stand today on civil rights?

**Websites for Instructors**

**America with Disabilities Act (ADA)** offers information on this legislation and rights of the disabled.

www.usdoj.gov/crt/ada/adahom1.htm

**Civil Rights Division, U.S. Department of Justice** website offers an overview of the activities and programs of the DOJ on civil rights as well as links to documents, legislation, cases, and the Civil Rights Forum Newsletter.

www.usdoj.gov/crt/crt-home.html

**Congressional Black Caucus** offers information about its members in Congress.

www.house.gov/clybum/cbc_main.htm

**Findlaw** is a searchable database of Supreme Court decisions plus legal subjects, state courts, law schools, bar associations and international law.

www.findlaw.com

**FLITE: Federal Legal Information Through Electronics** offers a searchable database of Supreme Court decisions from 1937-1975.

www.fedworld.gov/supcourt/fsearch.htm

The **Legal Information Institute** of Cornell University has an excellent site that offers extensive information about the legalities and definitions of civil rights. It begins with a
prose definition of a civil right and includes links to U.S. Government laws, state laws, Supreme Court rulings, international laws on civil rights and more.
www.law.cornell.edu/topics/civil_rights.html

**Mexican American Legal Defense and Education Fund (MALDEF)** website offers information on Census 2000, scholarships, job opportunities, legal programs, regional offices information and more.
www.maldef.org

The **National Association for the Advancement of Colored People (NAACP)** website offers information about the organization, membership, and issues of interest to proponents of civil rights. Has sections on the Supreme Court, Census 2000, the Education Summit and includes links to other websites.
www.naacp.org

**National Organization of Women (NOW)** website offers information on the organization and its issues/activities including women in the military, economic equity, reproductive rights, and so on. They offer an email action list and the ability to join NOW online. Also has links to related sites.
www.now.org

**Native American Rights Fund (NARF)** website offers profiles of issues, an archive, resources, a tribal directory, and treaty information as well as a lot of other information.
www.narf.org

**Oyez-Oyez-Oyez** is a comprehensive database of major constitutional cases, including multimedia aspects such as audio.
www.oyez.nwu.edu

**Rominger Legal Services** provides U.S. Supreme Court links including history, pending cases, rules, bios, etc.
www.romingerlegal.com/supreme.htm

The **Southern Poverty Law Center (SPLC)** is a non-profit group dedicated to fighting hate and intolerance. Its website includes information on the center and its activities including a program titled "Teaching Tolerance," the Klanwatch, and Militia Task Force. They also have a state-by-state listing of 'hate incidents.'
www.splcenter.org

**U.S. Commission on Civil Rights** is a bipartisan fact-finding agency established within the executive branch. The website offers news releases, publications, a calendar of events, and multimedia coverage of civil rights events.
www.usccr.gov/
U.S. Supreme Court Plus has decisions from the current term as well as legal research, bios, basic Supreme Court information and more. Also offers a free email notification service of Supreme Court rulings.
www.usscplus.com

### Web Activities for Classes

1) **Have students look on the Web for additional historical information on the struggle for civil rights including the process the U.S. went through from 1800-1890 in civil rights, 1900-1939 (impact of WWI, etc.), 1940-1948 (the impact of WWII, GI Bill, etc.), 1948-1960, 1960-1965, 1966-1974 (impact of Vietnam and Watergate), 1974 to present.**

2) **Have students look on the Web for additional information on the history of the women's suffrage and rights movement up to and including the ERA and its ratification drive as well as the current situation. Give them some hints on key words such as: glass ceiling, pink collar work, equal pay, NOW, Phyllis Schaffley, etc.**

3) **Have students use the Web to research civil rights strategies, for example, the NAACP chose to use a litigation strategy to achieve desegregation and equal rights. How did they implement this strategy and what were their other choices?**

4) **Have students search the Web for examples of Supreme Court cases that explain the equal protection clause and constitutional standards of review.**

5) **Once African Americans and women had some success in the battle for equal rights, other groups mobilized to gain their rights. Have students do some Web research. What other civil rights groups formed after the two mentioned above? What tactics did they use? And how successful they have been?**

6) **Go to the U.S. Census home page (www.census.gov). Look at the demographic breakdown from the 2000 Census and discuss the public policy ramifications of the new population numbers.**

### General Class Activities and Discussion Assignments

1) **Have students look at the current Supreme Court docket. What civil rights cases do they see? Have students address the following questions: What are the constitutional arguments? How do the arguments differ from the cases the book**
discusses in the 1950s and 1960s? What might account for these changes? What might account for the similarities?

2) The use of amicus curiae briefs has increased dramatically in the last couple of decades and many people now argue that public opinion plays a role in Supreme Court decisions. Have students discuss how one might study these two issues. How would one characterize the role of such lobbying in civil rights cases? Does public opinion affect Supreme Court opinions? How and why?

3) Have students address the following: Choose one civil rights issue and research it in depth. What constitutional issues are used, what arguments, etc.? How do you feel the current Court would rule on this issue and why?

4) Have students look at the current Supreme Court. They should do some biographical and case research on each of the nine justices in the area of civil rights. Have them try to build a typography (classify the judges into groups of like-minded individuals) on how the current justices rule on civil rights. (example: the simplest typography would be liberal--moderate--conservative. But be sure to define each of those categories! A more complex system would tell us more about the Court.)

5) Congress also plays a role in civil rights. Have your class do some research to determine what types of civil rights issues Congress has been dealing with in the last 5-10 years. Why are these issues in Congress and not the Courts? Is this a symbol of progressive change or something else?

6) Have your students research the executive branch's activities regarding civil rights. What is their role, and how do they exercise it? What issues does the executive branch currently consider to be important in civil rights? What is the administration's position on certain issues such as affirmative action, equal pay, handicapped access, etc.?

Possible Simulations

1) Have students debate a civil rights issue such as affirmative action, the ADA, funding of special education, etc.

2) Have students find a case on the current Supreme Court docket about civil rights. Assign each of them to determine how a given justice might choose to vote by doing some research on that justice's opinion (make sure all of the justices are represented). Then have them role play a debate on the case they chose.

3) Affirmative action for admission to college is before the Supreme Court. Have students look at ‘admissions packets’ (ask the admissions office for some with names blacked out) and determine what criteria are, can, and ought to be used for
college admissions through interviews with admissions officers (ideally at more than one campus) and then have the class role play as an admissions committee.

**Additional Sources**


Alex Kotlowitz. *The Other Side of the River: A Story of Two Towns, a Death, and America's Dilemma*. Doubleday, 1998. (on race relations)


CHAPTER 6
CONGRESS

Narrative Lecture Outline

Congress
Most people seem to hate Congress, but love their congressional representatives (or at least trust them more than the institution as a whole). This seeming paradox comes out of the dual roles that members of Congress need to fulfill. On the one hand, they are law and policy makers, and on the other hand, they represent the needs and best interests of their particular constituents. These duties are often at odds. Public cynicism about the institution is also nudged along by negative media coverage and the fact that people are often uninformed about what Congress does, how it does it, and the constraints under which it operates. Citizens also tend to hold Congress to very high standards that further contribute to cynicism about the institution when they do not live up to those expectations.

Some people complain that Congress doesn’t represent ‘us’ because it is overwhelmingly middle aged to old, well educated, wealthy, white, and male. The leadership definitely fits that bill! Or it did until changes in 2002. On February 6, 2002, Nancy Pelosi (D-CA) was sworn in as Democratic House whip. The first woman leader of Congress ever! So how representative is Congress? Is Congress truly changing? Should it change and how fast? Will Pelosi make a difference? These are among the questions we’ll look at as we study Congress.

The Roots of the Legislative Branch
The design of Congress was greatly influenced by the American colonial experience and by the Articles of Confederation, so we must first look to our historical experience with legislatures before we can move on to the contemporary set up.

Under the British, colonial assemblies were chosen as advisory bodies to the royal governors. These assemblies gradually assumed more power and authority in each colony, eventually gaining responsibility over taxation and spending. The assemblies dealt with religious issues as well as setting quality standards for rice, tobacco, flour, and rum.

The First Continental Congress was the first truly national legislative body. The Congress met in Philadelphia in 1774 to devise a common colonial response to the British Coercive Acts. All colonies except Georgia participated. The Congress had no enforcement power, but advised colonies to establish militias and organized a boycott of British goods.

Before the Second Continental Congress could meet, the Revolutionary War broke out at Lexington and Concord. The Congress helped the colonies gear up for war, raise an army, and officially adopt the Declaration of Independence. They continued to help direct the war effort, but had little money or stability.

The Second Continental Congress drafted the Articles of Confederation in 1777, but the states did not ratify the document until 1781. They operated under the Articles
even before they were ratified. But the document did not give Congress the power to tax and generally created a quite weak central government (remember the weaknesses of the Articles from Chapter 2?). Discontent with the Articles led to the Philadelphia Convention in 1787.

**The Constitution and the Legislative Branch of Government**

Article I creates the legislative branch of government. Congress is a bicameral institution. The upper house is called the Senate in which each state receives two representatives, and the lower house is called the House of Representatives that is apportioned by population. The formal requirements for membership are:

- **Senate**
  - 30 years old
  - nine years a U.S. resident
  - legal resident of their state

- **House of Representatives**
  - 25 years old
  - seven years a U.S. resident
  - legal resident of their state

The Senate has a 6 year term with 1/3 of the seats up for reelection every two years, and the House has a 2 year term. Originally, Senators were chosen by state legislatures. The 17th Amendment in 1913 provided for the direct election of Senators.

So the Senate was designed to represent state interests and the House the interests of the people. The Senate has longer terms to allow them to address weighty issues that may not appeal to the public such as foreign affairs. They were also to be chosen indirectly to insure that statesmen and not politicians served in the Senate. The House members represent districts within states, and therefore are closer to the people. Since they are up for election every two years, they are considered to be more responsive to the people as well.

**Apportionment and Redistricting**

The Constitution requires that all Americans be counted every 10 years by a census. The census would then determine the representation in the House of Representatives. The first House was set at 65 members or one representative for every 37,000 persons. As the population grew, the House became larger. In 1910, the House reached 435 members and in 1929 the size was fixed by statute.

Since the Constitution requires the House to be based on population, a fixed number of seats demands that after each census the House seats be redistributed as populations shift—this is called redistricting or reapportionment. For example, in 1990, California had gained substantially in population and received an additional seven seats so that it had a total of 52 seats. Many northeastern states lost representatives because their population went down. Redistricting is done by state legislatures and, of course, always has political overtones. When the process is outrageously political, it is called gerrymandering and is often struck down by the courts.
Constitutional Powers of Congress

The most important constitutional power of Congress is the power to make laws. This power is shared by the House and the Senate. In order to become a law, a bill must be passed by both the House and the Senate (and then signed by the president).

The powers of Congress are set out in Article I, section 8:

- lawmaking
- lay and collect taxes and duties
- declaration of war
- raise an army and navy
- coin money
- regulate commerce with foreign nations and among the states
- establish federal courts and their jurisdiction
- establish bankruptcy rules
- establish rules of immigration and naturalization
- issue patents and copyrights
- borrow money
- define and punish piracy
- provide for a militia
- exercise power over the District of Columbia
- override a presidential veto with 2/3rds vote of both houses
- make all laws "necessary and proper" to carrying out the foregoing powers

This last clause is also referred to as the Elastic Clause. It allows Congress's powers to be expanded beyond the enumerated list. The Supreme Court has often interpreted the necessary and proper clause quite broadly, though in recent years decisions seem to be leaning toward restricting broad federal grants of power.

The House has 435 members and all money bills must originate, and the impeachment of executive and judicial officials must occur, in the House. Impeachment is charging the president, vice president, other civil officer, or judge with "treason, bribery, or other high crimes and misdemeanors." The Senate has 100 members. It tries impeachment cases and can remove officials with a 2/3rds vote. The Senate also provides advice and consent on presidential appointments and treaties with a 2/3rds vote.

The House and Senate operate differently as well. The House, being a much larger body, tends to be more formal, centralized, and has stronger leadership. The Rules Committee exists only in the House and exercises substantial control over time and rules of debate in conjunction with the Speaker. The House is impersonal, more partisan, and its members are highly specialized. The Senate is less centralized, less formal, and has weaker leadership. The Senate has the possibility of filibustering—talking a bill to death—that can only be limited through a cloture vote. Debate in the Senate can also be limited by unanimous consent. The Senate is more personal and Senators tend to be generalists. Whereas the House emphasizes tax and revenue policy, the Senate tends to emphasize foreign policy issues.

The Members of Congress
Members of Congress have two constituencies: party leaders, colleagues, and lobbyists in Washington, D.C.; and constituents at home in their state or district. This fact helps to make the average member of Congress's day incredibly busy and hectic. Members must raise money for their campaigns, perform party tasks, go to committee hearings, vote on the floor of the House or Senate (often many times in one day), do radio or TV interviews, meet with colleagues or the leadership, go to receptions, meet constituents, and more. Often they are on the go from early morning to late evening while they are in D.C. At home, the schedule is quite similar and also very hectic. Most House members spend a considerable amount of time in their district, since they are constantly raising money and running for reelection.

Keeping in touch with one's constituents is a key to success and reelection. Time in district is important. But so is casework. Congressional staff usually handle casework—solving constituents’ problems dealing with the bureaucracy. Veterans who need help getting benefits, late social security checks, passport problems, student loan concerns, and many other problems keep congressional staff very busy.

**Running for Office and Staying in Office**

Most members of Congress belong to one of the two major parties, and the ability to raise money is key to winning and holding office. Incumbency is a significant advantage in elections. Incumbents enjoy name recognition, access to media, and fundraising advantages, as well as the franking privilege in Congress (free mailings to constituents). Many have provided tangible benefits to their districts—pork barrel digging. Casework wins loyalty for incumbent members. Experience at running a campaign and making speeches is very helpful. Over 95% of incumbents win reelection.

**Term Limits.**

A term limits movement began sweeping the nation in the 1980s. Incumbency advantage and dissatisfaction with the status quo fueled the fires of term limits. Voters seemed frustrated with gridlock and ethics problems. By 1998, 23 states had enacted term limit laws. However, the Supreme Court ruled that federal term limits were unconstitutional thus a constitutional amendment was necessary to enact term limits. This is a much higher hurdle than passing a simple statute. An amendment must be proposed by 2/3rds and ratified by the states.

*I often talk about term limits slightly differently. I argue that the best term limit is voting against the incumbents. But since most Americans like their representatives—what they want is to get rid of the other guys. I ask students why this is the case? We discuss the different constituencies of members of Congress and the problems inherent in term limits. For example, if the legislature is full of new people and legislating is complex, mightn't that throw more power to the executive branch? What if there are exceptionally good legislators—should they be thrown out after two or three terms? Term limits seem to be an 'easy' solution to a complex problem though that is not always the best route to go.*

**What Does Congress Look Like?**
Congress is older, better educated, whiter, and richer than most of us. However, great strides have been made. Both California and both Maine senators are women. In the 108th Congress, there are 77 women (60 in the House plus 3 nonvoting delegates and 14 in the Senate), 39 African Americans in the House, 25 Latinos in the House, and 6 Asian Americans in Congress (2 senators and 4 House members). There is one American Indian in each house of Congress.

The Representational Role of Members of Congress

There are a number of ways in which an elected official can represent his/her constituents. The book presents three theories of representation:

- **Trustee**—representatives use their own best judgment
- **Delegate**—representatives vote the way their constituents want them to
- **Politico**—representatives act as trustee or delegate depending on the issue

The question of representation is very complex. Can a man represent a woman? Can a white person adequately represent the views of a black person? There are many such questions and no easy answers. Obviously, people bring to D.C. their beliefs, culture, and experiences so diversity in Congress should lead to differences over time in legislation. But it is unclear exactly what the effects are. *(This is a great discussion issue: How can Congress represent “me” when it doesn’t look like “me?”)*

How Congress is Organized

Every two years, a new Congress is seated. The first order of business is the election of leaders and adoption of new rules. Both houses of Congress are organized on the basis of party for both leadership and committee purposes.

The House of Representatives

The Speaker of the House

The Speaker is the only House officer mentioned in the Constitution. The Speaker is elected at the beginning of each new session of Congress by the entire House. The Speaker and all committee chairs are members of the majority party in Congress (this is not a rule, but a political fact). The Speaker in the 108th Congress is Dennis Hastert (R-IL). Generally a Speaker serves until he/she leaves the House, chooses to step down, or if his/her party loses the majority.

The Speaker presides over the House, oversees House business, is the official spokesperson for the House and is second in line of presidential succession (if the president and VP both died, the Speaker would become president). The Speaker is expected to be a liaison with the president and promote his/her parties' legislation through the Congress.

Other House Leaders

Other House leaders are elected by their own parties in party caucuses.

- Majority leader—second most important person in the House
- Majority whip(s)—maintain contacts and rally support on the floor among the majority party
Minority leader—leader of the minority party. In 2002, the first woman was chosen as minority leader Nancy Pelosi (D-CA).
Minority whip(s)—maintain contacts and rally support among minority party members. In 2002, the first woman was elected minority whip, Nancy Pelosi (D-CA).

The Senate
The presiding officer of the Senate, according to the Constitution, is the Vice President of the United States. He is not a member of the Senate and can only vote in case of a tie. The official chair of the Senate is the President Pro Tempore, who is selected by the majority party and presides in lieu of the VP. It is primarily an honorific office with few duties and no power. The President Pro Tempore is usually the senior senator of the majority party. Usually junior senators actually preside over the Senate. The true power in the Senate is the majority leader, who is elected by the majority party. The Senate also has a minority leader and whips for both parties.

The Role of Political Parties
Parties are not mentioned in the Constitution but parties rapidly developed along the cleavages left over from the ratification debates. At the beginning of each new Congress, each party gathers in its caucus or conference to nominate and elect officers, review committee assignments, discuss policy, and more.

The Committee System
Most of the work of Congress takes place in committees. Committees are controlled by the majority party and often set the congressional agenda. They are highly specialized and have staffs of their own. Most committees also have subcommittees that are even more specialized.
Most bills die in committee. Fewer than 10% of the over 8,000 bills considered in any Congress proceed beyond the committee stage. Committees can have a lot of power in the legislative process. Committee chairs can refuse consideration of a bill and refuse to let it go to the floor if they so choose. Bills can be forced out of committee through a discharge petition signed by a majority (218) of the House—but this is rarely done.

Types of Committees
There are four types of committees:
• Standing—permanent committees. Proposed bills are referred to committees, fewer than 10% of bills are reported out to the floor.
• Joint—includes members from both houses
• Conference—special kind of joint committee that reconciles the House and Senate versions of a bill. A bill must pass both houses in identical form to become a law.
• Ad hoc, special, or select—temporary committees for specific purposes. They often conduct special investigations or studies.

Committee Membership
Why does a member of Congress seek a particular committee?

• interest or expertise in the area
• the subject matter will help them get reelected
• access to pork barrel (allows them to bring home the bacon to the district)
• power and influence within Congress
• attract campaign funds
• support and defend interests vital to the district or state

Representatives and Senators are placed on committees by their party's selection committee. They get a chance to express a preference, but not all requests are granted. And someone must serve on the 'bad' committees—like Ethics or the District of Columbia governance committee.

Committee membership generally reflects the balance of parties in the chamber. On 'critical' committees, the majority party often gets a disproportionate share of seats. In the 108th Congress, the House has 19 standing committees and 86 subcommittees roughly parallel to the departments in the bureaucracy. The Senate has 16 standing committees and 68 subcommittees. In general, the membership of committees in the Senate more accurately reflects the partisan split in the chamber than committee membership in the House.

The House has a unique committee, the Rules Committee, in which majority party members are appointed directly by the Speaker. This committee reviews all bills before they go to the full chamber and determines the rule under which each bill will be considered and the date on which it will be heard. It can also specify whether and what kind of amendments might be allowed. Bills considered under a “closed rule” cannot be amended.

Senators hold more committee assignments than House members. Senators, therefore, tend to be generalists, whereas House members develop more in depth specialties. The House tends, as a body, to defer to its committees and their decisions. The Senate is a more individualistic body and Senators tend to look at committee decisions as recommendations to be discussed at great length and changed.

Committee Chairs

Chairs choose when and if the committee will consider any given bill. They can convene meetings when opponents are absent and adjourn meetings when things are going badly. Chairs have a lot of power including control of staff budgets and influence over the life and death of bills.

The power of committee chairs in the House has decreased in recent years due to reforms implemented in 1995. House committees prevent chairs from serving for more than six years (3 terms) and chairs can no longer serve as their own subcommittee chairs. In addition, House chairs are no longer selected by seniority as they are in the Senate.

The Lawmaking Function of Congress

Only a member of the House or Senate may introduce a bill but anyone can write a bill. Over 9,000 bills are proposed and fewer than 5 to 10% are enacted. There are many places where a bill can die. Promoting and shepherding a bill through the process is difficult and time consuming. Opponents, however, need only 'win' at any one of the
numerous potential roadblocks in order to stop a bill from becoming a law. It is much easier to defeat a bill than to get one passed.

A bill must survive three stages to become a law: committees, the floor, and the conference committee. A bill can die at any stage.

How a Bill Becomes a Law: The Textbook Version

1. Bill is introduced by a member and often sponsored by a list of members.
2. Clerk of the chamber numbers it (HR 1 or S 1)
3. Bill is printed, distributed, and sent to the appropriate committee or committees (in the House, bills are referred to committee by the Speaker)
4. COMMITTEE—sends it to subcommittee or chair can kill it
5. SUBCOMMITTEE HEARINGS—or bill can die here. Bill is discussed and revised and the subcommittee votes
6. COMMITTEE—once subcommittee approves, bill goes back to full committee which votes. If passed, referred to floor
7. FLOOR—in the House a bill must go through Rules Committee and it is put on the calendar with floor debate limits. House can choose to act as a Committee of the Whole and deliberate or simply vote. If bill survives, it goes to the other house of Congress and goes through the same process of committees and floor consideration. In the Senate, several differences occur. Bills can be stopped by filibuster or hold. A filibuster is talking a bill to death (unlimited debate) and a hold is a tactic designed to keep the bill off the floor. A senator tells the leadership he/she has an objection to the bill. Since they could filibuster, a hold usually keeps a bill from being considered in the Senate. A filibuster may be stopped by a cloture vote—16 senators must sign a motion for cloture then 60 senators must vote to end the debate.
8. OTHER CHAMBER
9. CONFERENCE COMMITTEE—a joint committee reconciles the two versions if possible
10. BACK TO BOTH HOUSES—for an up or down vote. No amendments or changes.
11. PRESIDENT—has 10 days to consider the bill
   a. signs it and the bill becomes a law
   b. vetos it. Congress may override with 2/3rds of both houses.
   c. Waits 10 days and if Congress remains in session, bill becomes a law without his signature
   d. Waits 10 days and if Congress adjourns—a pocket veto. The bill is vetoed without a signature

Reality is never quite as neat as textbooks often make out. Bills are often controversial, there are opponents and supporters. Lobbying goes on, votes are traded, and deals are struck. Reality also shows us that the legislative process is a long one. Bills are passed, reconsidered, modified, and so on over many, many years.

The example given here is the China Trade Act of 2000. For each bill introduced in Congress, enactment is a long shot. The substance at issue here was the Trade Act of 1974, a Cold War era law that allowed the president of the United States to grant “most favored nation status” (MFN) to any country on a year by year basis. This was to be a carrot and stick approach to communist countries. If they behaved, they would get preferential trading status with the U.S. If not, they would be penalized with tariffs and other trade barriers.

Following the Cold War, and even prior to the end of that era, China was one of the largest trading partners America had. President Clinton and many business leaders wanted the year by year renewals of MFN status dropped, particularly after China was scheduled to join the World Trade Organization. That meant a new law. Many Republicans favored this change. The benefits of more routinized opening of Chinese markets were huge. In contrast, labor unions—traditionally Democratic supporters—feared lost jobs and were opposed to the bill.

Clinton lobbied for the bill with lawmakers and traveled throughout the U.S. trying to gain support. The Chamber of Commerce and Business Roundtable launched a huge advertising campaign for the bill—over $10 million, the largest ever for one bill.

On March 8, 2000, Clinton sent his bill to Congress. The proposed legislation was designated S.2277 and was introduced by William Roth (R-Del) and referred to the Finance Committee. The House held hearings throughout the spring, even before the legislation was introduced. Many members expressed concerns about China’s human rights violations, labor market issues (prison labor, child labor and so on), and the lack of rule of law in China. Finally, HR 4444 was introduced by Bill Archer (R-TX) and referred to the Ways and Means Committee. On May 17th, it was marked up and reported out of committee with a vote of 34-4. The bill received a rule from the Rules Committee allowing for three hours of debate. The bill was closed to amendments and the House Republican leadership strongly supported the bill. Secretary of Commerce William Daley and other cabinet members were sent out to say that the bill meant jobs for Americans and stability in Asia. Chinese dissidents were asked to say that the bill could improve human rights in China and Billy Graham endorsed the bill.

Interest groups rushed in on both sides. Labor unions lobbied vigorously and VP Al Gore broke ranks with the president and supported their views. Large corporation lobbyists lined up on the other side. Former President Bush and Defense Secretary Cohen held meetings with legislators to convince them to pass the bill.
House debate began on May 24. The Republican whip structure worked hard to rally support. Colin Powell and former president Bush were called in to help firm up wavering Republicans and Clinton worked on Democrats who were uncommitted. Lobbyists were everywhere. A last minute amendment to create a 23 member commission to monitor human rights and a second to monitor surges in Chinese imports helped get 20 more votes.

David Bonior (D-MI) moved to recommit the bill to committee so another amendment could be added. He wanted conditions spelled out that allowed the withdrawal of MFN status if China attacked Taiwan but the motion failed. In the vote, all Republicans and 73 Democrats voted for it and it passed 237-197.

The bill went to the Senate. Jesse Helms (R-NC) and others immediately criticized the bill as being soft on China. Secretary Daley asked the Senate Finance Committee to help fend off amendments in the Senate. The Committee promptly reported the bill out and several senators announced they would offer a supplemental bill reinstating the yearly review of China’s status. The Senate debated the bill on July 26, 2000. Robert Byrd (D-WV), Jesse Helms (R-NC), and others started a filibuster. The majority leader called for a cloture vote and invoked cloture, 86-12. The Senate recessed for Labor Day. Upon return they opened debate again. The bill finally passed without amendment on September 19 by a vote of 83 to 15.

The bill was signed by President Clinton on October 10. Clinton had offered many favors in return for votes including a new ZIP code for a small town and a natural gas pipeline for a congressional district, among other 'gifts.'

How Members Make Decisions

Constituents
The people who live and vote back home are an important influence on congressional decision making. It is rare for a legislator to disregard strong wishes of constituents, particularly on hot button issues or those contentious issues that get a lot of media attention. But deciding how the voters feel is tough. The perceptions of the representative are important since he/she cannot really know how all the constituents feel about an issue.

Staff members keep tallies of letters, phone calls, e-mail, and faxes about issues up for a vote. Only if a legislator has a strong personal conviction will they vote against the clearly expressed desires of constituents. If constituents have little knowledge or interest in an issue, the legislator often makes an autonomous decision.

Colleagues
When members must vote on bills beyond their expertise, colleagues who are knowledgeable about such matters often have a lot of influence. On issues that do not concern one's district or on which there is no clear preference in one's district, vote trading or logrolling with colleagues often occurs. Sometimes, personal pleas from respected colleagues or the president can also change votes.
Party
There is little real party discipline in Congress and the cohesion of parties varies over time and by issue, yet party remains a powerful force in decision making. Campaign aid and the pressure of party whips has helped many congressional members make up their minds.

Caucuses
There are a number of special interest caucuses that also help members make up their minds, such as the Black Caucus and the Congressional Caucus for Women's Issues.

Interest Groups and Political Action Committees
Interest groups provide information to members of Congress. They also instigate, fund, or support grassroots campaigns. Interest groups can win over undecided members but rarely change the minds of the committed. Campaign contributions from PACs may also play a role, particularly if a member is undecided.

Staff and Support Agencies
Staff members prepare summaries of bills and brief the senator or representative on their research. If the bill is nonideological or if the member has no position on it the staff can be quite influential. The GAO, CRS, and CBO also play a role.

Congress and the President
Especially since the 1930s, the president has often seemed to be more powerful than Congress. In some cases, Congress has handed power to the president. But Congress retains several key powers vis-a-vis the president: funding powers, oversight, and impeachment/removal.

In the early years of the republic, Congress seemed the most powerful branch. During the Civil War, the executive took many powers and became larger and wielded powers previously unheard of. Following the Civil War, Congress took back some of the president's authority. These shifts have continued throughout our history.

In recent years, the presidency has been quite powerful, particularly since FDR. Congress generally responds to executive branch legislative proposals. The president actively courts members of Congress to vote his way.

Congressional Oversight of the Executive Branch
Congress has the power to review the actions of the executive branch and they seem to be doing it more often lately. We have had oversight committees on Whitewater, campaign finance, FBI conduct in Waco, and IRS abuses, among others. There are often complaints, especially during times of divided government, that many of these reviews are politically motivated; however, oversight is critical to see if the bureaucracy is enforcing and interpreting laws the way Congress intended.

Foreign Affairs Oversight
The Constitution divides foreign policy powers between the president and Congress. The president can wage war and negotiate treaties, whereas Congress declares war and the Senate ratifies treaties. During the 20th century, the president has become
preeminent in foreign affairs. This is due, in part, to the advent of nuclear weapons and the nature of the crises we have experienced as a nation. Quick decision making and secrecy are essential, and 535 members of Congress are poor at both tasks.

Congress attempted to reassert itself in foreign policy through the War Powers Act in 1973. Presidents had been waging war without congressional approval and without formal declarations for decades. Congress passed a law to stop that practice. The Act required the president to get congressional approval before sending troops abroad and to notify Congress within 48 hours of any foreign troop deployment. The president must withdraw troops within 60 days unless Congress declares war. The Act has not been very effective.

In 2001, when Congress passed a joint resolution authorizing the president to act against terrorism, it formally waived the 60 day waiting period (thus expressing Congressional interest in the validity of the War Powers Act).

**Confirmation of Presidential Appointments**

The Senate confirms key presidential appointees, including key members of the executive branch and federal courts. Historically, the Senate has generally confirmed presidential nominees but this seems to be changing. President Clinton’s nominees met an highly hostile Senate and many of his cabinet appointees failed and his judicial nominees became hopelessly stalled. George W. Bush has had an easier road with cabinet appointees though John Ashcroft was highly controversial. His judicial appointees suffered in the Democratically controlled Senate of the 107th Congress but the 108th is controlled by the Republicans and they will most likely move more quickly on the nominations.

**Impeachment and Removal**

Impeachment and removal are the ultimate congressional oversight of the president and federal court judges. The Constitution is quite vague about what constitutes an impeachable offense, citing only bribery, treason, and high crimes and misdemeanors. Most scholars and pundits believe that impeachment was only to be used for significant abuses of power.

Since impeachment and removal are used so rarely, there aren’t many hard and fast rules. There are a number of stages mentioned in the book. The most important thing to remember is that impeachment, which is an inquiry or investigation followed by an indictment, occurs in the House and the removal, which is a trial, occurs in the Senate. A two-thirds vote in the Senate is necessary to remove an official from office.

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**Websites for Instructors**

**Black Elected Officials: A National Roster** is a pdf publication available through the Joint Center for Political and Economic Studies.

Campaigns and Elections magazine focuses on Congress and elections. Some portions of the site require a subscription.

www.campaignline.com

Congress.Org is a joint venture of two Washington, D.C. area firms with expertise in communicating with Congress. Capitol Advantage and Issue Dynamics (IDI) teamed up to produce Congress.Org in 1996. Some search engines refer to it as a "one stop shop" for legislative information including contact information on members, committee assignments, etc.

www.congress.org

Congressional Quarterly is a nonpartisan publication whose mission is to inform the electorate. Site includes information on Congress including bios, votes, election information and so on. They also have a link to their state and local level publication.

www.cq.com/

GPO Gate by the University of California offers the full text of many Government Printing Office publications on the Web including the economic indicators prepared for the Joint Economic Committee by the Council of Economic Advisors (updated monthly.) Among the growing list of titles available are the Federal Register, the Congressional Record, Congressional Bills, United States Code, Economic Indicators and GAO Reports.

www.gpo.ucop.edu

The Hill: The Capital Newspaper. "The Hill reports and analyzes the actions of Congress as it struggles to reconcile the needs of those it represents with the legitimate needs of the administration, lobbyists and the news media. We explain the pressures confronting policy-makers, and the many ways - often unpredictable - that decisions are made. But Capitol Hill is more than the focal point of the legislative branch of government. It is also a community not unlike a small city, and we report on its culture, social life, crime, employment, traffic, education, discrimination, shopping, dining, travel and recreation. Our editorial viewpoint is nonpartisan and nonideological." Published on Wednesdays.

www.hillnews.com

Official site of the House of Representatives.

www.House.gov

Official government website from the Library of Congress with information on legislation, the Congressional Record, links to Congress related sites.

thomas.loc.gov

Project Vote-Smart is a nonpartisan information service funded by members and nonpartisan foundations. It offers "a wealth of facts on your political leaders, including biographies and addresses, issue positions, voting records, campaign finances, evaluations by special interests." It also offers 'CongressTrack' a way for citizens to track the status of legislation, members & committees, sponsors, voting records, clear
Web Activities for Classes

1) Have students use the Web to locate their member of Congress, senators, and their committee assignments. Assign a paper that analyzes each member's use of the Web, and why that site contains the material it does and the links it offers.

2) Have students use the Web to determine what committee hearings are scheduled this week, and when they are held. Assign a brief paper asking students to analyze the role of these committee hearings in the overall policy process.

3) Have students use the Web to determine the committee assignments of 10 different members of Congress and/or senators and write a brief paper explaining why each representative would choose or serve on those committees.

4) Do a Web-based scavenger hunt. Assign your students to find a list of Congress related information on the Web. For example: Name the past and present members of Congress who were/are Native American. How many women are in Congress? Who is the congressional representative from the 4th district of California (or any other district you choose)? How many members ran unopposed? What did the average election cost in the House/Senate? Who is on the House Committee on xx? the Senate Committee on xx? and so on.
5) Have students visit 5 Senate Websites and 5 House Websites. Have them discuss or write a paper comparing the content and discussing why the content differs or why it is similar.

6) Have students read their local paper and look at the Washington Post on-line. Compare the coverage of the papers on the congressional branch of government. Discuss why they are similar or different.

7) Have students go to the Web and determine one or two bills in which they are interested (or have the entire class pick one bill). During the course of the semester, follow that bill on the Web and discuss the route it travels and whether or not it becomes a law.

8) Most Americans claim to dislike and distrust Congress but like and trust their own member of Congress. What explains this paradox? Have students use the Web to do some research on public opinion and voting behavior, analyze the media coverage of Congress, think about what members of Congress do, and why this would be the case. Have them prepare a presentation explaining this phenomenon for class.

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### General Class Activities and Discussion Assignments

1) Have students discuss the roots of the legislative branch prior to the adoption of the U.S. Constitution.

2) Have students discuss the nature of apportionment and redistricting and their implications. If your state currently has a redistricting plan before the courts or legislature, try to invite someone in to discuss it.

3) Have students discuss the incumbency advantage. Assign them to do research about its strength in the House, Senate, and presidency as well as in state contests. What are the limitations of incumbency advantage? Is it waning?

4) Have students address the following: How representative is Congress? (be sure to discuss the definition and theories of representation) What proposals exist, or should exist, to address any perceived deficiencies in representation? Would they work in the U.S.?

5) Have students write a paper addressing the types, functions, and importance of committees in the House and Senate of the U.S. Be sure they compare and contrast the two.

6) Have students write a paper or discuss the role of leadership and party in the House and Senate. Be sure they include the current occupants of each office, and how their styles and personalities affect the exercise of the powers of office.
7) Have students do some research and compare how different or similar the various Congresses have been in terms of leadership, representation, minorities, women, structure, incumbency advantage, and rules. What accounts for the similarities and differences?

8) There have been a number of high profile scandals in the Congress throughout history. Americans now seem quite concerned about the ethics of the legislature. Do some research on scandals in Congress. How many have there been? How severe have they been? How widespread have they been? Is it a few bad apples or the whole barrel? Be sure to look at how the media have covered these scandals and discuss the implications of media coverage of ethics issues.

### Possible Simulations

1) Form a congressional committee or subcommittee. Assign each student a role: i.e. rural Republican congressperson from the Deep South, urban Democratic congressperson from the Northeast, etc. Have each group of students pick which committee or subcommittee they would like to be (they can research existing committees on the Web or at the library), determine the party mix, assign the chairperson, and choose a topic. The groups should either debate a bill or try to write one on a certain topic while staying true to their assigned roles. After the exercise, they can discuss why they made certain choices or write a paper.

2) Have students re-do the legislative branch of government. Many in our society today complain that Congress is unrepresentative, corrupt, doesn't care about the people, and so on. Have students list the most common complaints against Congress and then devise a new institution to solve those problems. Can they do it? Is a better legislature possible? What are the costs and benefits of the proposed changes? What are the drawbacks of any new system? If the class determines that what we have is actually better, discuss why that might be the case.

### Additional Sources


CHAPTER 7
THE PRESIDENCY

Narrative Lecture Outline

A president must not only be able to exercise constitutional powers, but unwritten ones as well. The ability of a president to use the symbols of office and bring the nation together is often at least as important as the powers laid out in Article II.

Ever since Watergate, the president has been under intense public and media scrutiny. The relationship between the president and the public has changed and the relationship between the president and the media has changed dramatically. People looked to the president to solve problems even as their respect for the office declined.

For awhile, it seemed as though no one could perform the duties of president to the general satisfaction of the country. Then came September 11, 2001. George W. Bush’s popularity ratings, however, have stayed almost buoyant. Has something changed? Prior to 9/11 we were asking questions like: Is the job too large and too complex for anyone to succeed? Are we putting poor quality men into the office? What seems to be the problem? And we may go back to asking those questions, but in the meantime, the rally round the flag syndrome appears to be supporting presidential popularity. In this section of the course, we will look at the institution, the men who have occupied it, and public expectations of the office to determine the answers to these questions, and more.

The Roots of the Office of President of the United States

As in the case of Congress, historical experience influenced the presidency. The King of England and the royal governors (appointed by the King) were often at odds with the elected colonial legislatures and the people. They had the best interests of England at heart. The colonists had different ideas by the mid-1700s. The colonists distrusted both the King and the royal governors so much so that the Articles of Confederation neglected the executive branch to a large degree.

The Constitutional Convention

At the Philadelphia Convention, the Framers worried about how to frame an executive so that the office would be strong enough to govern, but not so strong that it could abuse power. The majority of the Framers agreed that the executive power should be vested in a single person to be called the president.

Qualifications for Office

The Constitution requires that the president must be:

- 35 years old
- 14 years a U.S. resident
- a natural born citizen
Terms of Office
The length of the president's term was quite controversial. Four, seven, and eleven year terms were suggested at the Convention and several of the Framers suggested a limit of one or two terms. Hamilton suggested the president should serve for 'good behavior'. The compromise was a four-year term with eligibility for reelection.

George Washington, the first president, served two terms and then stepped down. This pattern became traditional for over 150 years. FDR ran for, and won, four terms. His long tenure in office led to the passage of the 22nd Amendment that limited presidents to two four-year terms or a total of 10 years in office.

Removal
Impeachment and removal are the ultimate check on the office of the president. The House conducts an investigation and drafts Articles of Impeachment for 'treason, bribery, or high crimes and misdemeanors.' The Senate then tries the case with the Chief Justice of the Supreme Court presiding. If 2/3rds of the Senate votes for the Articles, the president is removed from office. Only two presidents have been impeached: Andrew Johnson and William Jefferson Clinton. Neither was removed.

Succession
Through 2000, 8 presidents have died in office from illness or assassination. The vice president takes office according to the Constitution. If the office of vice president were vacant, there could be problems. So Congress passed the Presidential Succession Act of 1947 that stated the order of succession after the VP:

- Speaker of the House
- President Pro Tempore of the Senate
- Secretary of State, Treasury, Defense, and other Cabinet heads in order of the creation of their department

In 1967, the 25th Amendment was added to allow the president to appoint a new VP if the post were vacant. A simple majority of both houses of Congress was needed to approve the nominee.

The Vice President
The vice president's primary duty is to assume office if the president dies. He/she does preside over the Senate and vote in case of a tie. But historically, the office has had little power and little respect.

A vice president has traditionally been chosen for a number of reasons:
- geographical balance for the electoral ticket
- political balance to bring the party back together at the convention. This often causes problems because the president and VP are from different wings of the party and may have run against each other in the primaries...like Reagan/Bush
- social and cultural balance. VPs can be used to overcome candidate shortcomings...a stiff presidential candidate may choose a relaxed VP

In the 2000 elections, the choices were made somewhat differently. Al Gore chose Joe Lieberman, a senator from Connecticut. Lieberman was the first Jewish candidate on a major party presidential ticket and often expressed his faith during the
campaign. However, he was probably chosen because he was an active and outspoken opponent of some of Clinton’s excesses. Lieberman helped Gore distance himself from Clinton and regain some moral and ethical high ground after the peccadillos of the Clinton years. Cheney was also chosen to combat perceived negatives of his running mate. George W. Bush was considered a lightweight without significant experience by many. Cheney who had served in numerous offices and capacities in both the public and private sectors was seen as highly competent, very intelligent, and quite experienced. He helped Bush overcome his perceived weaknesses.

Some vice presidents have exercised powers given to them by the president. Walter 'Fritz' Mondale, Al Gore, Jr., and Dick Cheney were the examples given in the textbook of vice presidents who were particularly active. Since Dick Cheney presided over an evenly divided Senate for a time and is often considered to be more knowledgeable on many issues than the president, he is likely to be quite powerful.

**The Constitutional Powers of the President**

In contrast to Article I's laundry list of powers for Congress, Article II is quite short and details few powers. Distrust of a powerful executive is one reason for the vagueness in Article II. A lack of consensus among the delegates to the convention also contributed to the situation. The Framers also took great comfort in knowing that George Washington would be the first president. He was widely respected and seen as a statesman, not a politician. They believed that Washington would set a precedent of responsible exercise of executive power.

The president received certain enumerated powers in the Constitution that we will discuss shortly. But the first line of Article II may be the most important grant of power to the president. It states that "the executive power shall be vested in a President of the United States of America." Much like the 'necessary and proper' clause for Congress, the executive power clause has been the basis for implied powers or has been an elastic clause allowing the powers of the president to exceed the list of enumerated powers in Article II.

**The Appointment Power**

The president has the power to appoint 'ambassadors, public ministers, consuls, judges of the Supreme Court, and other officers' with the advice and consent of the Senate. The president today makes over 3,000 appointments to his administration. If you count military officers, he makes over 75,000 appointments. Through the power to choose his advisors and assistants, the president assembles a team that is extremely valuable in setting the agenda for the nation and formulating policies. Court appointments, to the Supreme Court and the federal bench, give the president broad influence that lasts beyond his term of office.

Traditionally, the Senate has approved presidential appointments to his Cabinet, an advisory group selected by the president to help him make decisions and execute the laws. Until recently, over 97% of presidential Cabinet appointments were approved. This has changed in recent years. This was a real problem during the Clinton administration. The Republican Senate refused to even hold hearings on over 140 federal judges who were nominated by Clinton. Even conservative Chief Justice William Rehnquist of the Supreme Court publicly stated that the quality of justice was being harmed by the
sheer number of vacancies on the federal bench and the Senate's refusal to allow President Clinton to fill them.

George W. Bush initially faced an evenly divided Senate and a highly partisan Congress still upset by the problems associated with Election 2000. Then he faced a Democratically controlled Senate and now a narrowly Republican one. He has had far better luck with appointments than Clinton. Bush was in office 14 months before he had a nominee defeated (Charles Pickering, a nominee for the federal bench).

Presidents today try to appoint a cabinet that ‘looks like America’ in terms of gender, racial, and ethnic makeup. Bush’s first 5 appointments were two blacks, two women, and an Hispanic. By June 2002, 21% of his appointments were women and 20-25% were minorities.

The Power to Convene Congress

According to the Constitution, the president must periodically inform the Congress on the state of the union. This has become an annual televised address to a joint session of Congress, though many earlier presidents sent a written statement over to Congress and dispensed with speechmaking altogether. The president can convene Congress at other times as well. Though today, the Congress is virtually full time and is in session almost year round, so the power is not as important as it once was.

The Power to Make Treaties

The president has the power to make treaties but two-thirds of the Senate must vote to ratify. The president also receives ambassadors. These powers have been interpreted to mean that the president also has the power to formally recognize the existence of a country.

The Senate does not always ratify treaties that the president feels are important. Over the years, presidents have gotten around the Senate through the use of executive orders. Executive orders allow a president to enter into secret and sensitive arrangements with foreign countries without Senate approval. Executive agreements are binding during the administration, but do not bind the next administration. However, as these agreements have become more common, it has also become common for incoming presidents to agree to abide by some executive agreements made during the last administration.

Veto Power

Presidents can reject any congressional legislation either through a general veto or a pocket veto (we talked about this during the Congress section of the course). The threat of veto can often have a significant effect on congressional action, thus allowing the president another influence on lawmaking. However, the Congress can override a veto with a 2/3rds vote of both houses. Historically, there have been over 2,500 presidential vetoes and only about 100 have been overridden.

The Line-Item Veto

Many governors have the power to strike out, or veto, specific lines within a bill. In 1996, the Republican Congress passed such a line-item veto as part of the Contract with America. The goal was to control pork barrel spending by allowing the president to
veto parts of a spending bill that would break the budget. In 1998, the Supreme Court declared the line-item veto unconstitutional.

**The Power to Preside Over the Military as Commander-in-Chief**

The president is commander in chief of the army and navy according to Article II. Though Congress also has war powers, the president has been considered preeminent in foreign policy.

Congress has attempted to assert control over aspects of foreign policy on a number of occasions, including in the mid-1970s with the War Powers Act, and again in 1999 over the air war in Yugoslavia. However, presidents have basically ignored these congressional attempts to control the presidential ability to wage war.

**The Pardoning Power**

Presidents have a check on the judiciary in the pardoning power. They can grant reprieves or pardons releasing an individual from the punishment or legal consequences of a crime before or after conviction and restore all rights and privileges of citizenship. The most famous pardons include the pardon granted to President Nixon by incoming President Gerald Ford over Watergate. President Jimmy Carter pardoned Vietnam draft dodgers. George Bush pardoned participants in the Iran-Contra affair in 1992, as well.

And when President Clinton left office, he pardoned 140 individuals. Not only was the number controversial, but who received pardons was as well. Among the recipients was Marc Rich, who was the ex-husband of a major Clinton donor. As a result, Congress passed a law {sponsored by Hillary Clinton (D-NY) and Arlen Specter (R-PA)} requiring anyone lobbying for a pardon to register as a lobbyist.

**The Development of Presidential Power**

The power and success of the presidency is dependent upon the nature of the person and of the office. The informal powers of the presidency are heavily dependent upon the personality and goals of the officeholder but all presidents have the same formal grants of power and constraints via the Constitution. And, of course, timing matters. Events often shape a presidency for example, crises often lead to an expansion of presidential powers.

The first three presidents set the tone for those who came after them. George Washington, John Adams, and Thomas Jefferson had a variety of impacts on the office. Washington chose to step down after two terms, hoping to set a precedent (which stood until the 1930s and FDR). John Adams had poor leadership skills and probably hastened the development of political parties, and Jefferson expanded the role of the president in Congress and expanded the idea of inherent powers through the Louisiana Purchase.

Despite the precedents set by the early incumbents of the presidency, Congress remained the 'heavyweight.' From Jefferson to FDR, Congress was the most powerful branch of government. Very few presidents during this period expanded the powers of the office. Andrew Jackson expanded the electorate, Lincoln fought the Civil War and took a number of other 'questionable' acts including ignoring Congress while pursuing the war, Teddy Roosevelt and Woodrow Wilson also expanded the powers of the office somewhat. Besides these few, most presidents limited their conduct to the enumerated powers flowing from the Constitution.
The Modern Presidency

In the 20th century, the presidency has become ever more powerful, beginning with FDR who served four terms during two huge national crises: the Great Depression and WWII. When FDR took office in 1933, the country was in the grip of the Great Depression. FDR asked for a huge grant of power to address the emergency from Congress and got it. He created the New Deal: a series of programs to invigorate the economy mostly through government spending. Among his programs that expanded presidential prerogatives were:

- a bank holiday to end public runs on the banks
- legislation passed by Congress to provide emergency relief, public works jobs, regulation of farm production, and improved terms and conditions of work for workers in industry
- a new standard that the executive branch sends legislative programs to Congress for approval instead of waiting passively to respond to congressional initiative
- an increase in the size of the federal bureaucracy from 600,000 to over 1 million workers

Following the Great Depression, WWII also allowed FDR to gather more power in the hands of the president. He also personalized the presidency through his use of radio to have 'fireside chats' with the nation. The result was the modern presidency in which the president leads a large government, plays an active and often leading role in foreign and domestic policy, plays a strong legislative role, and uses technology to get 'close to the people.'

The Presidential Establishment

As the powers of the presidency grew, so did the establishment around the president. Today, the president has numerous advisors, staffs, and interns to help make policy and fulfill the duties of chief executive.

The Cabinet

The Cabinet is not mentioned in the Constitution and is formulated by each president as he sees fit. Usually, the Cabinet consists of the heads of the major bureaucratic departments (State, Defense, Treasury, etc.). Most presidents include their VP and other agency heads or officials to whom Cabinet status seems necessary or appropriate.

Congress exercises some control over the bureaucracy—through advice and consent and budget controls. This coupled with the sheer size of recent Cabinets has served to reduce the importance of the Cabinet as an advising body.

The Executive Office of the President (EOP)

The EOP was established by FDR and has become a very important inner circle of advisors to the president especially when coupled with the White House staff. The EOP is staffed by persons responsible to the president alone and includes such important
offices as the National Security Council, the Council of Economic Advisors, and the Office of Management and Budget.

**The White House Staff**

The staff and advisors most directly responsible to the president are the White House staff, such as personal assistants, senior aides, administrative personnel and more. There is no Senate confirmation and their power comes solely from their personal relationship with the president. The White House staff reached a height of 583 members in 1972, but has gotten smaller since then, generally running at around 400-500.

**The Role of the President in the Legislative Process: The President as Policy Maker**

FDR broke with tradition and sent a legislative packet to Congress. FDR claimed the leadership and agenda setting for the president and got it. He shifted the president's powers from that of simply executing policy to making it.

That doesn't mean Congress always passes what the president and executive branch send over. Generally, presidents have a hard time getting Congress to pass their programs especially during periods of divided government—when the president's party does not control Congress.

**Presidential Involvement in the Budgetary Process**

A president also sets priorities and policy through the budget proposal. The Office of Management and Budget (began under FDR but renamed by Nixon) plays a strong role in presidential budget making. However, Congress remains a very important player in the budget. The lesson of 1998—the year of the balanced budget—was that Congress and the OMB and the president must work together to achieve their goals.

**Ruling Through Regulation**

Legislation is just one way to make laws. Major policy changes can also be enacted through executive orders. The Office of Homeland Security was established via executive order before it was raised to Cabinet department status by Congress. Bush also used an executive order to radically change the Presidential Records Act, thus allowing former presidents to block the release of documents from their administrations for up to 12 years. It also allows family members and former vice presidents to extend the secrecy of classified documents. Critics argue that President Bush is seeking to protect his father and members of the elder Bush’s administration by this act.

**Winning Support for Programs**

The ability of a president to be effective depends upon his ability to get his programs through Congress. A president must successfully lobby Congress to pass his agenda, and he can do that through:

- patronage—jobs, grants, and favors in exchange for support
- party—party discipline and campaign visits
- style and force of personality
- leadership
• persuasion—personality and public opinion can help the president persuade Congress to adopt his programs

The success of a president often seems to turn on this last strategy. Truly great presidents have known how to use the power, mystique, and majesty of the office to shape the national destiny.

**Presidential Leadership**

Leadership is difficult to define, but often easy to recognize. One of the best ways to exercise leadership seems to be by increasing public attention to particular issues, thus leading the way and setting the agenda. The State of the Union address is one way a president can do this.

**The Power to Persuade**

Formal powers are not enough to make a successful president. He must also be able to exercise informal powers, such as persuasion. Such political skills are not found in all presidents but are found in all successful presidents.

**Public Opinion and The President**

The president must persuade Congress but also must persuade public opinion. Presidential popularity has become very important, particularly in the relations between the president and Congress. The president has a much easier time passing legislation when his poll numbers are high.

But poll numbers are cyclical. Presidents often start out with very high ratings during the so-called honeymoon period. However, as the term progresses, the job approval tends to drop. Many factors affect the job approval rating of the president including the economic straits of the country, international events (sometimes war or international crises raise a president's approval ratings), party conventions, allegations of wrongdoing, or many other things.

Presidents today often use a strategy referred to as “going public,” meaning that they take their case directly to the people and over the heads of Congress. This can work if the issue is a popular one. People then bring pressure to bear on Congress. But it doesn’t always work.

**Presidential Approval Ratings**

Presidential popularity tends to be cyclical. Their first months in office are termed a honeymoon period when the public and the media are generally positive about the president. Usually, popularity begins to wane after this honeymoon and few presidents end their term with approval above 50%. Clinton was an exception. He ended his second term with historically high approval ratings.

**The Changing Presidency**

The presidency is a peculiar institution. The men who have had the job have been widely different in temperament, in stature, and in style. Each has wielded power differently. Some presidents have been successful, others have not. Some individuals
and groups have argued that the job is too big for one person that we expect way too much from one man. The line-item veto was an attempt to give the president more power and thus make him more effective. The Supreme Court ruled that it was unconstitutional.

Presidents do have a difficult set of jobs. They are a symbol of the country and a ceremonial leader. A president is a political organizer and a legislator and many, many more things. Some would like him to be a moral role model; others do not.

We know more about our presidents than ever before. We know what kind of underwear they prefer, what they eat, who they dated in high school, how much their haircuts cost.....maybe knowing so much has made us lose respect for the office? Maybe having him in our living room all the time has caused us to tune out the message? It wasn't so long ago when a presidential press conference made most people stop, look, and listen. Today, we groan. The prestige of the office is greatly tarnished. Perhaps we need to know less about our presidents, so that they may do more.

**Websites for Instructors**

**The Atlantic Monthly** offers a simulation of presidential decision-making. The scenario changes from time to time. During summer 1999, the issue was education standards. The reader is presented with pro and con memos by policy advisors and is then asked to make a decision. After the decision is submitted, there is an opportunity for interactive feedback about the effects of the decision. Simplified but useful tool to try to explain the politics of decision making and why the "best" decisions are not always the politic ones!

   www.theAtlantic.com/atlantic/election/connection/decision/decision.htm

The **University of Colorado, Colorado Springs** has a huge set of links about presidents including biographical data, information on first ladies, vice presidents, and more.

   web.uccs.edu/~history/index/presidency.html#general

The **Inaugural Addresses of Presidents** are available online.

   www.bartleby.com/inaugural

**Federal Web Locator** has links to all government websites including presidential ones.

   www.law.vill.edu/fed-agency/fedwebloc.html

**First Ladies.** The National First Ladies Library has a bibliography, information on their exhibits, and a gift shop.

   www.firstladies.org

The **National Archives and Records Administration** offers links to all presidential libraries.

   www.nara.gov/nara/president/address.html
The National Portrait Gallery's Hall of Presidents has information and portraits of American presidents.
   www.npg.si.edu/col/pres/index.htm

The University of North Carolina site offers biographies of the presidents and first ladies including links to presidential libraries.
   metalab.unc.edu/lia/president/

PBS series The American Experience has a website on the Presidency. Teachers’ guides, photo and video displays, and more.
   www.pbs.org/wgbh/amex/presidents/indexjs.html

One of several White House Websites that provide information on the president and vice president, virtual tour of the White House, and guide to the Federal government.
   www.whitehouse.gov/president/

Official White House site for news and information on George W. Bush and the office of the president.
   www.whitehouse.gov/news/

### Web Activities for Classes

1) Have students search the Web to determine how the first three presidents (or any group of presidents) affected the powers of the presidency.

2) Using the Internet, have students compare and contrast the nature and functions of the Cabinet, the Executive Office of the President, and other advisors. They should determine the current officeholders and how they have affected the office they hold, as well as the basic parameters of that office.

3) Have students do Web research on the nature of war powers. What are the presidential and congressional powers at issue and has this conflict been solved? What has been the role of the Supreme Court in this debate?

4) Have students find the homepages of three presidential libraries and compare what they find. What factors determine the focus of presidential libraries?

5) Have your students visit the Atlantic Monthly website and do the presidential decisionmaking simulation. Assign a class discussion or paper to follow.

6) Have students search the Web for copies of three executive orders on different subjects executed under one president. They should use these documents to write a paper on the nature and impact of executive orders.
7) Have students search the Web for public opinion on the presidency—both the office and current inhabit thereof. They should discuss why Americans are dissatisfied with the office of the presidency and whomever seems to inhabit it. What proposals have been made to reform the presidency? Do they adequately reflect the problems and conflicts of the office? Can we 'fix' the presidency so that the majority of Americans are satisfied? Discuss.

8) President George W. Bush was elected president without a majority of the popular vote in 2000. Discuss the impact of this situation on his presidency. Include discussions of the appointment process, relations with Congress, the effectiveness of the presidential bully pulpit, veto and pardoning powers, foreign policy powers, and other presidential prerogatives.

9) There was a huge outcry over some of President Clinton’s last minute pardons. Discuss the effects this will have on the use of the pardon by future presidents. Be sure to include a discussion of whether past pardons had been controversial or if Clinton’s were the first to make waves; how many pardons presidents tend to give and for what reasons; the process of gaining a presidential pardon; and so on.

General Class Activities and Discussion Assignments

1) Have students do some research on election 2004 to determine how the process has changed and is changing. Will primaries be earlier, later, or the same and why? Are certain candidates favored by new processes, why might that be? What about the way media covers the race? What effect will these changes have on Americans’ perceptions of the competency of the president? Who are the candidates likely to be? Have students discuss their ideas on the subject.

2) Assign students to do some research on the vice presidency Dick Cheney. The book calls him the most active vice president in history. What types of activities has he been involved in and why? Is it a function of a permanent change in the office of the vice president or his personal relationship with President Bush? Discuss in class or assign a paper.

3) We seem to be in period of 'divided government' where the Congress is of one party and the presidency of another. Have students do some research into public opinion on this issue. Do Americans like it? Why or why not? Also research the impact divided government has had on the policy process. Are more bills failing? Are Congress and the president more confrontational due to partisan differences? Discuss in class or assign a paper.

4) Have students choose two presidents from history and write a paper discussing the impact they had on the office. Two interesting variants would be: choose one
president who had a positive effect and one who had a negative effect or choose two extremely different personalities who seem equally successful and explain why.

5) Have students do a media analysis of presidential coverage. For one month, they should watch a variety of network and cable news programs, read a variety of newspapers and weekly news magazines, listen to talk radio (be sure they get right and left wing stations), and check out internet news sites. They should discuss the following questions: How is the president covered? What gets the attention of the media and why? Is the president 'staging' or 'spinning' any of the coverage or are the media in control? What implications do your findings have on how we perceive the president?

### Possible Simulations

1) Stage a presidential press conference including the pre-conference briefing of the president. A small group of students can be the president, press secretary, and major Cabinet/EOP personalities. The rest of the class can function as the press.

2) Choose the four or five "best" presidents in our history (have the class vote or just choose your own faves). Have students research the records of these presidents and stage a debate to determine who should be the first enshrined in a president's hall of fame.

### Additional Sources


CHAPTER 8
THE EXECUTIVE BRANCH AND THE FEDERAL BUREAUCRACY

Narrative Lecture Outline

The Roots and Development of the Federal Bureaucracy

Bureaucracy and bureaucrat are often tossed around like dirty words. These words seem to conjure up visions of slow, inept, gray, and faceless automatons that are avoiding work and responsibility. In fact, bureaucracies were developed in ancient China to rationalize the work of government, to make it more objective and less nepotistic, and bureaucracies were designed to ensure that someone was responsible for a specific issue area through specialization. So what happened? Did bureaucracy change or do Americans just have an extremely negative caricature in mind when they think of bureaucracies?

In order to come to a fuller understanding of the stereotypes about government workers and their validity, we must first understand what bureaucracies are, how they operate, who staffs them, and why they exist. We also need a basic understanding of the historical roots of our bureaucracy. That is what we will do here today.

The text gives many definitions of bureaucracy, including Max Weber's definition. The key factors are:

- an hierarchical chain of command
- division of labor and specialization
- clear lines of authority
- impersonal rules and merit-based decision making

This definition makes bureaucracy sound good. It is rational and based on merit. It divides up tasks and has clear lines of authority, and therefore accountability. The hierarchy and chain of command insure that someone is ultimately responsible. So how has this definition played out historically?

From George Washington to the Progressive Era

In 1789, George Washington headed a federal bureaucracy of three departments: State, War, and Treasury. The head of each department came to be called a secretary. The government slowly grew as needs arose and demands were articulated. In general, the government grew most during crises and times of war.

The Civil War

The Civil War (1861-65) permanently changed the nature of the federal bureaucracy. Thousands of employees were added in order to mount the war effort. Poor harvests were a serious issue during the war—the troops must be fed—so Abraham Lincoln created the Department of Agriculture in 1862.
After the Civil War, demands continued to grow. The government needed to pay pensions to veterans and the injured from the war. Legal issues became pressing so the Justice Department was created.

The types and nature of government service were increasing, and resulted in a rise in federal employment. You also need to remember that the U.S. was becoming more 'democratic.' From 1820 on, the electorate was expanding from white, male property owners to all white males and after the Civil War to black males (though this was short-lived and this group did not get full rights until the mid-1960s) and these newly enfranchised citizens were also making demands on government.

In addition to the War and increasing citizen demand for services, there was a good political reason for the expansion of the bureaucracy: politics. Government jobs were used by presidents and party leaders to reward electoral and financial support, so there were incentives for political leaders to expand public jobs.

The country continued to expand. New territories became new states and the federal government continued to get bigger in response. The industrial revolution of the late 1800s brought big business into the picture—particularly big railroads—and price fixing, monopolies, and unfair business practices became a growing problem. In response, Congress created the first independent regulatory commission called the Interstate Commerce Commission (ICC). This signified a shift in the powers of government from service to regulation.

In 1900, Teddy Roosevelt asked Congress to create a Department of Commerce and Labor to oversee employer-employee relations due to intolerable labor practices like child labor, low wages, long hours, unsafe working conditions, and the refusal of employers to allow unions to protect employees. Woodrow Wilson later separated this department into two since it was difficult for one organization to represent both sets of interests.

The ratification of the 16th amendment in 1913 also caused the government to get larger (and in other ways allowed and encouraged the growth of government). The 16th amendment allowed the government to tax personal income. This infusion of funds made it easier to support new services, agencies, and programs.

Government was regulating business, but there were people who did not think that was the proper role of government, even back in the 1800s. Some people followed a *laissez-faire* attitude toward business (remember this discussion back in Chapter 1?)

### The New Deal and Bigger Government

FDR faced high unemployment and weak financial markets during the Great Depression. In order to face that crisis, he created large numbers of federal agencies and many federal programs. The alphabet soup he created (AAA, NIRA, CCC, and so on) was quickly passed by Congress, but stalled by the Supreme Court. In 1937, the Court argued that far ranging authority to regulate the economy was beyond the purview of the president and Congress. The *laissez-faire* Supreme Court invalidated much of the New Deal (this was also covered in Chapters 3, 8, and 10).

FDR was frustrated and proposed adding appointees to the Court to change the majority vote. This is often referred to as FDR's plan to pack the Court. The Court quickly changed its mind and began voting in favor of the New Deal programs.
World War II and its Aftermath

WWII (like the Civil War and WWI) also caused the government to grow. Returning veterans demanded new services, resulting in the GI Bill for education and the Veteran's Administration housing programs. The Civil Rights Movement and its demands also caused government to grow through agencies like the Equal Opportunity Employment Commission (EEOC) and the Department of Housing and Urban Development. These changes and more lead us to a discussion of the nature of the modern bureaucracy, or what today's government is like.

The Modern Bureaucracy

From the 1830s until the 1880s, with a high water mark under Abraham Lincoln, public jobs came to be known as the 'spoils of politics' hence the name 'the spoils system.' The idea was that public jobs were the spoils for whomever won the election. So when one party won, the whole bureaucracy was fired and in came supporters of the winning party. By 1880, many were calling for a change. Government administration had become too political, had no job security, and people were not doing their jobs because they had no aptitude to do so, they were just someone's political friends.

Finally in 1883, Congress passed the Civil Service Reform Act, more commonly known as the Pendleton Act, in order to reduce patronage and build up a merit-based system of public jobs. The Act created the principle of federal employment based on open competitive exams and created a bipartisan Civil Service Commission to oversee the reforms. Initially, only 10% of federal jobs were covered by civil service; today, over 90% are. This system is known as the merit system.

This new system gives job security to federal employees because they cannot be fired due to election results or political whims. They can no longer be forced to donate money to a president's political campaign (in fact, under the Hatch Act they were prohibited from doing so.) People are now hired because they are appropriate for a job and have the right skills. The downside is that perhaps civil servants today have too much job security. It is very difficult to fire someone from the government. Some bureaucrats do behave badly and thwart the will of Congress, the president, and/or the people. Some are rude and incompetent. However, most of today's 2.8 million federal employees are competent, caring individuals who do a good job. Can you think of some examples? Perhaps some of you have parents or friends who work for the government. How do they approach their jobs?

Critics often complain that government is not run like a business. That is true and probably a good thing. Governments exist for the public good, not for profit. Government leaders are driven by reelection (and thus accountability) goals while businesspeople are out to increase their share prices on Wall Street. Businesses get money from customers, government gets it from taxpayers. Another big difference is that it is difficult to determine to whom bureaucrats are responsible: to the president? to Congress? to the people?

Who are the Bureaucrats?

There are 15 Cabinet level departments in the federal government today. There are more than 60 government agencies and 2,000 other subunits of the U.S. government.
There are about 1.78 million civilian employees in the executive branch. Nearly 30% of those work in the Postal Service and 33% work for the Department of Defense. The remaining workers are spread out among the rest of the government departments and agencies.

Most government employees are part of the civil service. That means they take a test and are hired, at least in part, based on their test scores. Mid- and upper-level employees generally do not take a written test, but are subject to strict qualification guidelines.

Ten percent of the federal bureaucracy is not covered by civil service laws. These positions include: appointed positions—about 600 people are appointed by the president, some with the advice and consent of the Senate—and senior presidential appointees appoint the next tier of appointees; independent regulatory commissioners appointed by the president; there are also some lower-level non-patronage positions.

Not all federal employees push paper. Some of the most highly skilled and efficient workers in the world work for the government from biochemists working in the National Institutes for Health to computer programmers in the Census Bureau, zoologists at the National Zoo, forest rangers, statisticians, and more. Federal employees are also a diverse lot, basically representing the racial and ethnic composition of the population at large though women are less represented than men and often have lower level positions under the proverbial 'glass ceiling.'

Only 11% of federal workers work in Washington, D.C. (325,000). The rest are scattered in regional, state, and local offices throughout the country. The federal government is not currently growing—as a matter of fact, the government has been getting smaller for years. Both of these facts are not well-known, and that fact seems to contribute to the bad rap given to bureaucrats. This, of course, must be tempered by the growing number of contractors who do jobs that used to be done by government employees.

**Formal Organization**

Agencies fall into four general types: Cabinet departments, government corporations, independent agencies, and regulatory commissions.

**The Cabinet Departments**

The 15 Cabinet departments are major administrative units that have responsibility for conducting broad areas of government operations. These positions account for 60% of the federal workforce.

Departments vary in prestige, power, size, and access to the president, but share a number of common attributes: each is headed by a secretary (except Justice, which is headed by the Attorney General); secretaries are assisted by deputies and undersecretaries; departments are subdivided into functional units (legal services, budgets, public relations, and so on).

**Government Corporations**

Government corporations began in the 1930s. They are businesses created by Congress to perform functions that could be performed by private business but aren't
usually because they are not profitable. These corporations include Amtrak and the Tennessee Valley Authority.

**Independent Executive Agencies**

Independent executive agencies have narrower mandates than a Cabinet department. They generally perform a service function, not a regulatory one. Some examples include CIA, NASA, and the EPA.

**Independent Regulatory Commissions**

IRCs exist to regulate a specific economic activity or interest such as the National Labor Relations Board or Securities and Exchange Commission. They are independent because once their membership is appointed by the president, they cannot be removed without cause. They also have staggered terms of office to ensure that no one party gets to appoint all members.

**Politics and Government Workers**

The Hatch Act, enacted in 1939, was designed to protect federal employees from being forced to contribute or work for election campaigns. It was also supposed to prevent federal employees from working in concert to elect members of Congress or the president. So the Hatch Act prevented federal employees from being directly involved in political campaigns. Under Bill Clinton, this was weakened somewhat.

The 1993 Federal Employee Political Activities Act allows employees of the federal government to run for office in nonpartisan elections (like school boards), contribute money if they wish, and participate in campaigns in their afterwork hours.

**Policy Making**

When Congress creates any kind of federal agency, department, or commission, it is actually delegating some part of its powers listed in Article I, section 8 of the U.S. Constitution. Congress sets parameters, guidelines, and then leaves it to the agency to work out the details. How agencies execute congressional wishes is called implementation.

**Iron Triangles and Issue Networks**

Agencies, interest groups, and congressional committees often have stable relationships and patterns of interaction that are referred to as iron triangles. The various components of the iron triangle tend to be fairly autonomous and agree strongly on their goals. An example would be the AARP, the Social Security Administration, and the House Subcommittee on Aging. All would have similar types of interests and expertise. Employees or members of one might easily take a job or work in one of the other sides of the triangle and all would agree on the goals they should attain.

An issue network is a fuzzier arrangement. Basically, the groups working on specialized sets of issues tend to get to know one another through their mutual interests and this has an impact on policymaking.
Administrative Discretion
In addition to making policy, bureaucracies also implement policy made by others. They take the laws made by Congress, the president, and courts and develop rules and procedures to make sure they are carried out. Since laws and regulations are often written in a vague way as the result of compromises during the policy making process, there is often a lot of ‘wiggle room' to decide what various passages mean. These choices are often called administrative discretion and allow the bureaucracy a lot of power over shaping policy. This power is also exercised through rule making and administrative adjudication.

Rule Making
Bureaucracies write regulations that have the force of law. All such rules are printed in the Federal Register. They take effect 30 days after printing. Many rules are written only after formal hearings and discussion.

Administrative Adjudication
Administrative adjudication is a quasi-judicial function in which the agency forces compliance with rules through a type of trial.

Making Agencies Accountable
The big question remains: is the bureaucracy accountable, and if so, to whom? Agencies are created by Congress, the heads of bureaus are appointed by the president, funded by Congress, governed by the president, paid for by the taxpayer.......

Executive Control
The president has the authority to:
- appoint and remove agency heads
- reorganize the bureaucracy
- make changes in budget proposals
- ignore initiatives from the bureaucracy
- issue executive orders
- reduce an agency's budget

Congressional Control
Congress has the authority to:
- pass legislation that alters an agency's functions
- abolish existing programs
- investigate bureaucratic activities
- influence presidential appointments
- write legislation to limit bureaucratic discretion
- limit the use of funds or reduce appropriations to the agency

Judicial Control
The judiciary has the power to:
- rule on whether the bureaucracy has acted within the law
- rule on constitutionality
force respect for the rights of individuals through hearings

Hence, the bureaucracy is subject to significant oversight. It is shrinking in size. A large and diverse number of people work for the government, mainly outside of the capital city of Washington, D.C. Is it a nightmare? Is it necessary? Is it something else? What do you think?

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<th>Websites for Instructors</th>
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**Federal Web Locator** has links to all government websites, including all governmental departments, agencies, corporations, and affiliates.

www.infoctr.edu/fwl/

**FedWorld** is a comprehensive index of federal government agencies, searchable by keyword. Access to thousands of U.S. Government websites, more than a 1/2 million U.S. Government documents, databases, and other information products, with links to the FedWorld File Libraries and other sources.

www.fedworld.gov

**The Departments of the Federal Government**

- **Department of Agriculture**
  www.usda.gov

- **Department of Commerce**
  www.doc.gov

- **Department of Defense**
  www.defenselink.mil

- **Department of Education**
  www.ed.gov

- **Department of Energy**
  www.energy.gov

- **Department of Health and Human Services**
  www.os.dhhs.gov

- **Department of Homeland Security**
  www.whitehouse.gov/deptofhomeland/

- **Department of Housing and Urban Development**
  www.hud.gov
Department of Interior
www.doi.gov

Department of Justice
www.usdoj.gov

Department of Labor
www.dol.gov

Department of State
www.state.gov

Department of Transportation
www.dot.gov

Department of Treasury
www.ustreas.gov

Department of Veteran's Affairs
www.va.gov

**Web Activities for Classes**

1) Have students research the roots and development of bureaucracy both in the U.S. and historically. They should write a brief paper on the topic.

2) Have students choose two departments, agencies, or other federal bureaucratic entities. They should use the Web to garner substantial amounts of information on the two components of the bureaucracy. Have them discuss it or write a paper. Alternatively, assign a number of students from class to each of the Cabinet departments and main agencies. They could prepare an oral presentation on their assigned department.

3) Have students search the Web for public opinion on the bureaucracy and discuss the fairness of what they find in class.

4) The FBI has been under fire since the discovery of thousands of documents that were withheld or misplaced pertaining to Oklahoma City bomber Timothy McVeigh. Some members of Congress have accused the FBI of a “cowboy mentality” that disregards the rights of the accused and sometimes the public. What have been the results of this probe into the problems with the FBI, not just with McVeigh but with Waco, Ruby Ridge, and other serious errors by the Bureau? There are a number of reform ideas out there, which ones might be the best avenues to take? Also discuss the broader issues, in a country where a growing number of people distrust the government and accuse it of police state
tactics, the FBI’s public blunders are probably making this worse. What can be done?

5) Have students debate the costs and benefits of the new Department of Homeland Security.

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**General Class Activities and Discussion Assignments**

1) Host a discussion on the checks and balances the president, Congress, and the judiciary have on the bureaucracy. Which techniques are used most often, and which are most effective and why?

2) Arguments about how to reform the bureaucracy are rampant throughout history. Have students determine what problems plague bureaucratic politics, and what reforms have been aimed at addressing them. How effective have these reform efforts been?

3) Service Learning (or learn by doing): Visit at least three federal offices in your area. Watch what goes on. Ask questions. Investigate the functions and efficiencies of the procedures used. If possible, schedule interviews with managers at these offices. Ask about misconceptions and problems with the bureaucracy. How does what you find compare with what you learned in the text?

4) One of the oldest bureaucratic departments is the Department of State. Have students do some research to determine how they have reorganized over the years to cope with new challenges and directives. How large is the DOS? What functions does it perform? What is its budget? How effective is it in carrying out its goals?

5) The Postal Service has changed its relationship with the government over time. Students should research the history of the Postal Service, its past and present ties to the government, its effectiveness, and reputation. Many of us complain incessantly about the mail. Are we justified? How are rate increases determined? If we are truly unhappy, what avenues of complaint are open?

6) Service Learning (or learn by doing): Write or go to your local congressional office. Ask to speak with one of the caseworkers who deals with bureaucratic snafus and red tape. Find out how they intervene, how effective they are, how many constituents avail themselves of this service, and their impressions of the bureaucracy. Have students write a paper or discuss in class what they have learned.

7) Have students consider the following questions: How does the bureaucracy affect you? Consider the innumerable ways that government helps or hinders your life.
Have students keep a journal for the semester and note in it ways that they interact with bureaucracy and government. At the end of class, have them compare notes with friends and colleagues. Discuss whether, in total, their experiences with government are positive, negative, or neutral.

### Possible Simulations

1) Discuss the Grace Report and other attempts to reform the bureaucracy, such as Gore’s Reinventing Government initiative. Stage a debate on two or more recent attempts to reform the bureaucracy. Have students research the Republican and Democratic views (note the plural...not just Republican and Democrat but multiple views in each camp) on the issue. Why has so much money been spent on reports and commissions? Has anything actually been done? Why or why not?

2) Have several groups of students analyze the following scenario:
The DoD is a mess. Each branch of the service has duplication with the others (special forces, aircraft, artillery, brass, etc.) The Pentagon is huge and the DoD has over 3 million employees both civilian and military. Base closings in the 1980s didn't work. Congressmen bringing home pork managed to thwart any real savings. It is now up to the bureaucracy to come up with a plan to streamline DoD while maintaining our military readiness. Using whatever resources you like, each group should attempt a reorganization of DoD and be able to explain how it meets the twin goals of efficiency and readiness.

3) Stage a Cabinet meeting. Assign students to play the roles of each secretary and the president. Give them an agenda of 3-4 important issues (choose items that have received recent press coverage) to discuss. Let them have the agenda a few days before the meeting so they can prepare their positions and hold an in-class Cabinet session. In large classes, other students can be aides, the press, or multiple Cabinet sessions can be held.

### Additional Sources


In many ways, the Supreme Court remains more cloaked than other branches of government. Congress and the presidency seem to actively seek publicity and public attention, while the Court seems to shun it. Congress can be seen daily on C-SPAN and its committee meetings and deliberations are usually open to the public. The president gives press conferences and is followed by the White House press corps. But the Supreme Court steadfastly remains private. Cameras are forbidden. Only recently did the Court begin to let tapes of oral argument be made public and then only weeks after the event. Several justices have been quoted as saying cameras would be allowed in their court only over their dead bodies.

However, public opinion does permeate the Court. Though it is slow, almost glacial at times, it does move. In the case of Bush v. Gore, to which national attention was focused for weeks, the Court released oral arguments on tape only one hour after arguments were concluded! There are still demands for a more public and transparent Court. Senators Arlen Specter (R-PA) and Joseph Biden (D-DE) sponsored a bill to require TV cameras in the courtroom but the bill did not pass. The Court remains committed to private deliberations without even secretarial help during its weekly conferences. As we discuss the history and role of the judiciary, and particularly the Court, keep this in mind and think about the implications of Court secrecy on democracy and of how you would keep the Court at least relatively independent if its proceedings were more open.

Alexander Hamilton once called the national judiciary "the least dangerous branch." This was probably true in the late 1700s, but today, the federal courts are significantly different and more powerful. Nevertheless, the courts still have two basic limitations: they have neither the power of the purse, nor the sword. In other words, the courts can rule on issues, but cannot fund programs or their implementation. They also cannot force compliance with their rulings. For those things, they must rely on Congress and the executive branch.

Most Americans do not know much about the judiciary and the role it has played in creating a strong national government and in social reforms. Most Americans are also unaware that at times in its history, the courts have obstructed popular programs and progress. Plus most Americans seem to think of the courts as apolitical. Courts, and especially the Supreme Court, are NOT above the political fray but part of it!

In this lecture, we will discuss the nature and history of the Supreme Court and the federal judiciary, as well as the processes and personalities associated with them.

I often find it useful to spend 15 minutes at the beginning of this unit defining general legal terminology for the class—it seems to eliminate some of their confusion. I usually cover jurisdiction, standing, precedent, stare decisis, appeals, etc. on the board.
Then as the lecture progresses, I remind them of the definitions and point them out on the board.

**The Constitution and the Creation of the National Judiciary**

Article III of the Constitution establishes:
- Supreme Court in which the judicial power of the United States is vested
- life tenure or 'good behaviour' for judges
- judges receive compensation that cannot be diminished during their service
- such inferior courts as Congress may choose to establish
- original jurisdiction of the Supreme Court

The intent of Article III was to remedy the failings of the Articles of Confederation that left judiciary matters to the states, and to avoid the experience of the colonial era of all powerful British courts that trampled on the rights of citizens.

As with the rest of the Constitution, Article III was the result of compromise. There were many debates at the Constitutional Convention and between the Federalists and Anti-Federalists during the Ratification Debates about the document including Article III. Among the key issues that did not make it into the new document were: no federal courts below the Supreme Court; explicitly giving the Supreme Court the power of judicial review (the power to review acts of other branches and rule them unconstitutional; limited terms for justices; and more. The limits—checks and balances—placed on the courts were also compromises between those who feared the chaos under the Articles or the excessive 'order' under British rule.

**The Judiciary Act of 1789 and the Creation of the Federal Judicial System**

Congress established 'inferior courts' through the Judiciary Act of 1789. This Act established the federal judiciary in the same three-tiered structure we know today. The main courts of fact in the federal system are District Courts, then come the Circuit Courts of Appeals, and finally the Supreme Court. The Judiciary Act also set the number of justices for the Supreme Court at 6 (the number has varied over the years, since it is not determined in the Constitution, from 5 to 10 and was set at 9 by the Judiciary Act of 1869).

At first, the Supreme Court was not a high status post. Justices left the Supreme Court to take 'better jobs.' All Justices ‘rode circuit,’ meaning they literally had to ride a horse around to hear court cases on appeal. Some justices tallied up 10,000 miles a year on horseback.

Although the Supreme Court was not considered prestigious at first, early Supreme Courts did decide some important cases. Among those cases was *Chisholm v. Georgia* (1793), in which the Justices ruled that the Court's jurisdiction in Article III, section 2 included the right to hear cases brought by a citizen of one state against the citizen of another. The states saw this ruling as an attack on their sovereignty, and they forced through the 11th Amendment to change the original jurisdiction of the Court and expressly prohibited such cases.
The Marshall Court (1801-1835)
President John Adams appointed John Marshall Chief Justice in 1801. He changed the Court in many ways and brought prestige and importance to the bench. He is often considered the most important Justice ever to serve the Court. Among the reforms and policies he instituted were: delivery of a single court opinion emphasizing unity whenever possible; deciding cases that would assure the Court to be the final arbiter of constitutionality; enforcing the authority of the Supreme Court to declare state laws invalid; broad interpretation of the "necessary and proper clause" and the supremacy of the national government.

Judicial Review
Judicial review is the power to decide if a law or other legal issue contravenes the Constitution, and overturn it. This power is not mentioned in the Constitution. The Marshall Court established the power of Judicial review for itself and posterity in Marbury v. Madison (1803). Marbury's long-term effect has been to give additional powers to the Court and allow it to determine what the Constitution means.

The American Legal System
The American legal system is a dual system:
- state courts—actually 50 different 'systems'
- federal courts

Both systems have three tiers:
- trial courts—litigation begins and courts hear the facts of the case at hand (original jurisdiction)
- appellate courts—decide questions of law, not fact (appellate jurisdiction)
- high or supreme courts

 Jurisdiction
Before a court can hear a case, it must have jurisdiction or the right to hear that particular case. There are two basic types of jurisdiction: original and appellate. Original jurisdiction is a court's authority to hear disputes and determine the facts of a case. Appellate jurisdiction is the power to review or revise a lower court decision.

The U.S. Supreme Court has both types of jurisdiction. About 6% of its caseload consists of original jurisdiction cases. These cases involve two or more states, the U.S. and a state, foreign ambassadors or diplomats, or a state and the citizen of another state. About 94% of the Supreme Court's cases come to it through the appeals process and have already been heard by the highest state court, the U.S. Court of Appeals, Court of Military Appeals, lower federal courts, U.S. regulatory commissions, or legislative courts.
The Federal Court System

District Courts

Federal courts of original jurisdiction are called district courts. There are 94 district courts with over 655 active judges and an additional 300 retired judges who assist by hearing cases on a limited basis. Every state has at least one district court and these courts do not cross state lines. The largest states—California, New York, and Texas—each have 4 district courts.

The bulk of the workload of federal courts occurs in district courts—over 290,000 cases in 2002. In general, federal district courts hear cases that involve:

- the federal government as a party
- a federal question, constitutional issue, treaty with another nation, or a federal statute
- civil suits in which parties are from different states, and the amount of money at issue is over $75,000

Each federal district has a U.S. attorney who is nominated by the president and confirmed by the Senate. He or she is the chief law enforcement officer for that district.

The Courts of Appeal

The United States Courts of Appeals (formerly known as the Circuit Courts of Appeals) are the intermediate appellate courts in the federal system. There are 11 circuit courts referred to by number, plus the D.C. Court of Appeals and the U.S. Court of Appeals for the Federal Circuit. The D.C. Court of Appeals deals with federal regulatory commissions and agencies and the Federal Circuit Court deals with patents, contracts, and financial claims against the federal government.

In 2003, there were 167 active judges and 80 senior judges appointed by the president and subject to Senate confirmation. Judges are divided into rotating three judge panels, and each circuit has a senior judge who is the chief judge of the circuit.

Courts of Appeals have no original jurisdiction. A litigant does not have an automatic right of appeal. Most cases do not go any further than district court and those cases that go to the Courts of Appeals rarely go further. Courts of Appeals try to correct errors of law and procedure. They hear no new testimony.

Decisions made by Courts of Appeals are binding on district courts within their geographic territory. Only the U.S. Supreme Court sets national precedents. Precedents are extremely important in our legal system based on common law. The doctrine of stare decisis is the key to our system and means "let the decision stand" in Latin. This means judges rely on case law (past decisions) to shape their opinions, which leads to continuity and predictability in the legal system.

The Supreme Court

The U.S. Supreme Court reviews cases from lower courts and acts as the final interpreter of the U.S. Constitution. It decides numerous cases of tremendous policy significance and ensures uniformity of interpretation for national laws and the Constitution. The Court resolves conflicts among the states and maintains the supremacy of national laws in the systems.
Since 1869, the Court has had 9 justices nominated by the president and approved by the Senate. The Constitution does not set how many justices should serve and the number has ranged from 6 to 10. One justice is nominated by the president to be the Chief Justice, the other justices are known as Associate Justices.

The Chief Justice presides over public sessions of the Court, conducts the Court's conferences, and assigns the writing of opinions (if he is in the majority, otherwise the senior justice in the majority assigns the opinion). By custom, he administers the oath of office to incoming presidents and vice presidents at the Inauguration.

The Supreme Court has a very small staff—about 400 people and clerks.

**How Federal Court Judges are Selected**

The Constitution does not set qualifications for federal court judges or Supreme Court Justices. The selection of judges is a very political process. Judges are nominated by the president and confirmed by the Senate. Often presidents solicit suggestions from members of the House of Representatives, Senators, their political party, and others.

In general, presidents try to select well-qualified individuals for the bench. However, they also use judicial appointments in order to advance their own political philosophies. When the Senate and president are of different parties (or if the majority in the Senate is thin) the process can be quite confrontational and politically charged. The process has been getting more confrontational since the early 1980s and continues in that vein. Even when a president tries to select moderate judges, as Clinton has, the Senate can often be obstructionist. In 1998, there was such a backlog of judicial appointments from the Clinton Administration that the Senate (Judiciary Chair Orrin Hatch (R-UT) refused to schedule hearings or pass the nominees to the floor) that Chief Justice William Rehnquist broke with tradition and publicly criticized the Senate for causing problems for the federal judiciary. He noted that 10% of the federal bench was vacant, and people were playing politics! When the Democrats controlled the Senate, they did not do much better with President Bush’s nominees. They began hearings on only eight out of the first 11 appointees in one year.

Typically federal judges have:

- held previous political office, such as prosecutor or state court judge
- political experience such as running a campaign
- prior judicial experience
- traditionally been mostly white males
- been lawyers

**Appointments to the U.S. Supreme Court**

Justices are nominated by the president and confirmed by the Senate. Nominations, in recent years, have been quite controversial and have engendered a substantial amount of debate.

**Nomination Criteria**

**Competence**—most nominees have prior judicial experience

**Ideological or Policy Preference**—most presidents seek nominees who share their political philosophy and policy preferences, however, it does
not always work out that way! Nixon nominated Warren Burger thinking he was highly conservative, and Burger was Chief Justice of one of the most activist Courts in history.

**Rewards**—often nominees are personal friends of the president or party activists

**Pursuit of Political Support**—sometimes a president will use an appointment to shore up political support, for example, he may appoint a woman or African American to gain support among those groups

**Religion**—traditionally there was a 'Jewish' seat on the Court though most justices have been Protestant

**Race and Gender**—only two African Americans (Thurgood Marshall and Clarence Thomas) and two women (Sandra Day O'Connor and Ruth Bader Ginsburg) have served on the Court

**The Supreme Court Confirmation Process**

Before 1900, about 25% of presidential nominees to the Supreme Court were rejected by the Senate. Ordinarily the Senate Judiciary Committee investigates nominees, holds hearings, and votes on a recommendation for full Senate action. A simple majority is required for confirmation. Today, nominations are far more contentious.

**Investigation**

Once a list of potential nominees is made, the names are sent to the FBI before a nomination is formally made for preliminary vetting. The president also sends the list to the American Bar Association (ABA), which rates the nominees based on qualifications as Well Qualified, Qualified, or Not-Qualified. This has been the policy of every administration since Eisenhower.

But President George W. Bush changed that. Like presidential candidate Bob Dole before him, George W. Bush campaigned on a platform that included barring the ABA from vetting judicial appointees. Republicans have claimed that though it is technically nonpartisan, the ABA has become more and more liberal and partisan over the years and therefore exercises too much influence on the process of judicial selection. On March 22, 2001, the Bush Administration told the ABA that the ABA will no longer receive the names of candidates for appointment to federal judgeships prior to their nomination. The ABA announced that it will continue to provide evaluation of the professional qualifications of nominees for the Administration, the Senate, and the public, despite the fact that they will now have to do it after the information is made public.

Then a formal nomination is made and sent to the Senate, where the Judiciary Committee conducts its own investigation. Each nominee is asked to fill out an extensive questionnaire about previous work experience, judicial opinions written, judicial philosophy, speeches, and interviews given to the press. Staffers contact potential witnesses who might offer testimony about a nominee's fitness for the post.
Lobbying by Interest Groups

Many groups play a role in the process of nominating and confirming Supreme Court justices, though this is a fairly recent occurrence. It is most common for interest groups to lobby against a nominee. The 1987 confirmation hearings for Robert Bork seem to have been a turning point. The process got nastier and interest groups became far more active. Bork was a conservative and was nominated by a Republican but had a distinguished record. Interest groups on both sides of the political spectrum were highly active.

The Senate Committee Hearings and Senate Vote

Not all nominees generate intense confrontations like Bork's. Indeed, the confirmation of Stephen Breyer (a Clinton appointee) was uneventful. But since the 1980s, it has become traditional to ask nominees probing questions and most nominees refuse to answer saying that the issue will come before the Court and they don't wish to prejudice their judgements. The Judiciary Committee recommends acceptance or rejection and then the full Senate votes.

The Supreme Court Today

According to a 2002 poll, only 32% of Americans knew how many justices sit on the Supreme Court, and two-thirds could not name a single member. The best known Justice is Sandra Day O’Connor, who was named by 24% of those polled. Six of the nine had name recognition in the single digits! Some of this is the fault of the American public's lack of interest. But the Supreme Court also relishes its sense of privacy and decorum.

Deciding to Hear a Case

Nearly 9,100 cases a year come to the Supreme Court and in 2001-2002, the Court held arguments on 88 cases and handed down signed opinions in 76 cases. The discrepancy is because the Court has total control of its own docket. The Court decides what cases to hear. It hears from 2 to 5 original jurisdiction cases a year, the rest are appellate cases. There are two avenues to the Supreme Court for appellate review: a writ of certiorari and an in forma pauperis. A writ of certiorari, or cert, is a request for the Supreme Court to order up the records of a lower court for review. Since 1988, nearly all appellate cases begin with a writ of cert. In 2001-2002, 42% of cases dealt with issues related to the Bill of Rights.

Five percent of Supreme Court cases consist of cases of original jurisdiction, and the rest are appellate. About one-third of the caseload deals with criminal law and many of these are filed in forma pauperis or a pauper's petition by indigent prison inmates. These petitions do not have filing fees or printing costs, and do not have to be typed. The Court has been denying most of these since the late 1980s. Many of these petitions were by the same people over and over and about frivolous matters.

The Rule of Four

All petitions of cert must meet two criteria:
• the case must come from a U.S. Court of Appeals, a special three judge district court, or a state court of last resort (in other words, all other avenues must have been exhausted)
• the case must involve a federal question meaning a question of interpretation of federal constitutional law or a federal statute or treaty

The Clerk of the Court sends the petitions to the chief justice's office. His clerks review the petitions and then they go to the associate justices. Noteworthy cases are put on a 'discuss list' and all other cases are dead listed and go no further unless a justice asks that they be activated during conference session.

During the weekly conference session, the justices review the discuss list in order of seniority and the justices vote. If four justices want to hear a case, cert is granted.

The Role of Clerks
Clerks are generally from top ranking law schools and are near the top of their graduating class. Clerking for the Supreme Court is highly competitive and difficult to attain. They search for facts and do research, they read and summarize cases, go over writs of cert, help write opinions and more. Sometimes they play tennis and take walks with their justices as well. It is unclear how much influence clerks have on the writing of opinions. Relationships tend to be close and confidential. In 1998, a former clerk, Edward Lazarus (he had clerked for Harry Blackmun), wrote a book explaining how the Court really works and charged that the justices give too much power to very young and very ideological clerks.

Recently clerks have been in the news due to the small numbers of women and minorities who have had the opportunity to clerk at the Court. Groups have picketed the Court on behalf of better diversity among clerks.

How Does a Case Survive the Process?
It is difficult to guess why certain cases are heard and others are not. And since the Court does not announce its reasoning, we do have to guess. In general, cases that tend to be accepted share the following characteristics:
• federal government asked for the review
• conflict among circuit courts on the issue
• civil rights or civil liberties questions
• an ideological or policy preference of the justices
• significant political or social interest as evidenced by the presence of interest group amicus curiae briefs

The Federal Government
The solicitor general handles all of the appeals for the U.S. government to the Supreme Court. The solicitor general has a special relationship with the Court and is party to over half the cases heard by the Court. The Court usually hears between 70-80% of the cases in which the government is a party, compared with 5% of other types of cases.
Conflict Among the Circuits

Justices often take cases when the circuit courts have ruled in different ways in order to establish consistency in federal laws.

Interest Group Participation

*Amicus* briefs, or friend-of-the-Court briefs, are also a good indicator of whether the Court will hear a case. Cases with lots of *amicus* briefs are often heard.

Starting the Case

Once accepted, the lawyers prepare a written argument for the Court and *amicus* briefs are filed by interested parties (these briefs are a form of lobbying).

Oral Arguments

The Supreme Court's term begins the first Monday in October and runs through June or July. Oral arguments are generally scheduled from October through April at the beginning of a week (Monday through Wednesday). Each attorney gets 30 minutes, but is constantly interrupted from the bench with questions and comments.

Oral arguments are an opportunity for the public to watch the Court. The arguments also ensure that justices hear the most important facts and arguments in a case. They provide the justices with additional information, including the broad political implications of a decision. And the justices can highlight issues for each other throughout the process.

The Conference and the Vote

The justices meet on Fridays for closed conferences. Justices present their ideas in order of seniority, and a vote is taken to see how each justice thinks he or she will vote. Conference votes are not final, just indicative of positions prior to the writing of an opinion.

Writing Opinions

Opinion writing serves a number of functions. First, it is an opportunity for the justices to discuss their ideas in writing. Second, the process is a cumulative one in which the point of each successive draft is to build a consensus or marshall a majority. The drafting process leads to many iterations, much discussion, and the changing of minds on the Court.

There are five kinds of opinions:

- *majority opinion*—reflects the ideas of a majority of the Court (5-4, 6-3, 7-2, and so on). The legal reasoning of a majority opinion becomes legal precedent for future cases. Stronger majorities mean stronger precedents.
- *concurring opinion*—a justice agrees with the verdict but not the reasoning
- *plurality opinion*—three or four justices sign an opinion. Often these are on the 'winning' side, accompanied by concurring opinions
- *dissenting opinion*—one or more justices disagrees with the opinion of the majority or plurality
- *per curiam opinion*—unsigned opinion issued by the Court
If the Chief Justice is in the majority, he assigns the writing of the opinion. Otherwise the senior justice in the majority assigns the opinion. Drafting an opinion is important and allows a justice to have a huge impact on how issues are framed and decided.

**How the Justices Vote**
Justices do not make decisions in a vacuum. They are part of the social and political worlds and they operate according to principles such as *stare decisis*.

**Legal Factors**

- **Judicial Philosophy and Original Intent**
  Judicial Restraint vs. Judicial Activism: the former advocates minimalist roles for the unelected court system, and the latter feels that judges should use the law to promote justice, equality, and personal liberty.

- **Precedent**
  Court decisions always refer to previous legal decisions—ours is a system of precedents and *stare decisis*. So it is often difficult to overturn a bad precedent, but it does happen.

**Extra-Legal Factors**

- **Behavioral Characteristics**
  The personal experiences of the justices affect how they vote. Early poverty, job experience, friends and relatives all affect how decisions are made.

- **Ideology**
  Ideological beliefs probably influence justices' voting patterns.

- **The Attitudinal and Strategic Models**
  A justice's attitudes affect voting behavior and they may act strategically, trying to gauge the possible behavior of their fellow justices.

- **Public Opinion**
  Justices watch TV, read newspapers, and go to the store like everyone else. They are not insulated from public opinion and are probably swayed by it some of the time.

**Judicial Policy Making and Implementation**
All judges make policy. That's just a fact. Judges can interpret laws and clauses in new ways or discover 'new rights' in their reading of the Constitution. More than 100 federal laws have been declared unconstitutional since 1803. This gives the Court power. The Court can also, occasionally, overrule itself that also adds to its power. Plus the type and nature of cases considered by the Court is growing. Prior to 1962, the Court would
not get involved in redistricting and now it is often involved. This enlargement of jurisdiction also enhances its powers.

**Implementing Court Decisions**

Courts do not have the power to implement their decisions. The executive does that. This was particularly noticeable following the *Brown* ruling. The Court ordered desegregation in 1954. Implementation is still below par.

**Conclusion**

The Supreme Court, and the federal court system, has a number of powers and some significant limitations. They are peopled by individuals like us who are influenced by participation in society, by the media, and by politics.

At the Founding, women and minorities were largely excluded from the courts and were often precluded from being attorneys, judges, jurors, or litigants. Today, while still below par, the federal benches are far more representative than they once were. And the courts continue to change today.

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**Websites for Instructors**

The **Federal Judiciary Homepage** offers a wide variety of information about the U.S. Federal Court system.

www.uscourts.gov

**Findlaw** is a searchable database of Supreme Court decisions plus legal subjects, state courts, law schools, bar associations and international law.

www.findlaw.com

**FLITE: Federal Legal Information Through Electronics** offers a searchable database of Supreme Court decisions from 1937-1975.

www.fedworld.gov/supcourt/fsearch.htm

**The Legal Information Institute** offers Supreme Court opinions under the auspices of Project Hermes, the court's electronic-dissemination project. This archive contains (or will soon contain) all opinions of the court issued since May of 1990.

//supct.law.cornell.edu/supct/

**Oyez-Oyez-Oyez** is a comprehensive database of major constitutional cases, including multimedia aspects such as audio.

www.oyez.nwu.edu

**Rominger Legal Services** provides U.S. Supreme Court links including history, pending cases, rules, bios, etc.

www.romingerlegal.com/supreme.htm
The site of the **Supreme Court History Society** covers basic history of the Court and has a gift catalog.

www.supremecourthistory.org

**U.S. Supreme Court Plus** has decisions from the current term as well as legal research, bios, basic Supreme Court information, and more. It also offers a free email notification service of Supreme Court rulings.

www.usscplus.com

### Web Activities for Classes

1) Have students do some research on the Court's current docket. How many cases will it hear? How many came to the Court through *cert*, and how many through *in forma pauperis*? What types of cases will the Court hear? What constitutional issues are at stake? Have students discuss why the Court has chosen to rule on these cases orally or in a paper.

2) Have students use the Web to do some biographical research on the current Supreme Court justices. What is their background? Why were they chosen for the Court, and by whom? How are they perceived by 'court-watchers'? (In other words, what do the experts think of them?) Is there a definite majority on the Court for any single set of constitutional issues? The Warren Court was characterized as very activist, particularly regarding due process rights. Can the Rehnquist Court be characterized? If so, how? You can use either class discussion or assign papers addressing these issues.

3) Have students choose two well-known Supreme Court cases. They should use the Web to do some research to determine how much interest group activity and how many attempts at public persuasion there were on the Court during that case. Using those examples and the text, have students write a paper (or prepare a short talk) about the impact of public opinion and lobbying on the Supreme Court.

4) Have students search the Web and find a Supreme Court case with a majority opinion, concurring opinion, and a dissenting opinion. They should read each and discuss what they mean in real terms and as precedents.

### General Class Activities and Discussion Assignments

1) Stage a discussion about how state court judges, federal judges, and Supreme Court justices are selected. The class should address at least the following: Do the processes differ? How and why? Is there an optimum way to select judges? Who should sit on the bench? Who should determine that—public opinion, legislators, the Bar Association, or?
2) Shakespeare, loosely quoted, once said that to fix our problems we should first kill all the lawyers. Have students contemplate that scenario and answer the following: what is the current state of our justice system? Have them do some research on court filings, plea bargains, violent crime, white collar crime, and other issues. Is America getting more violent or just more litigious? What are the effects of all this litigation? On individuals? the body politic? public opinion? And what is the effect of Court TV, Burden of Proof, and other TV-ified judicial proceedings?

3) Assign the following problem:
   Constitutional law is taught very textually. This means that many ConLaw professors read aloud from Court opinions quite extensively. The language and nuance of what the Court says in its opinions is very important. Choose five cases and read the actual opinions. What types of language does the Court tend to use? Are rulings broad or narrow? How often are precedents overturned? How does the Court use precedent generally? What kinds of things did you learn about the Court from reading opinions? Be sure to explain ‘why’ for each of your answers.

Possible Simulations

1) States use a number of different ways to select judges. Stage a debate about the relative merits and deficiencies in these selection methods.

2) The president has just nominated a new member to the Supreme Court. Have students stage a confirmation hearing. (Have them research previous hearings and the Senate Judiciary Committee) Then have them discuss the implications of such a hearing on who wants to serve and on the integrity and independence of the judiciary.

Additional Sources


CHAPTER 10
PUBLIC OPINION AND THE NEWS MEDIA

Narrative Lecture Outline

What is Public Opinion?
Public opinion is 'what the people think about an issue or set of issues at any
given point in time,' and opinions are normally measured by opinion polls. Polls are
interviews or surveys of a sample of citizens (it is too expensive and time-consuming to
ask everyone!) used to estimate how the public feels about an issue or set of issues.
Okay. Seems straightforward but I see several problems just in the definitions.
Let's see how many problems we can discover here. First, the phrase 'at any given point
in time' implies that opinions change over time. Second, we are assuming that people
know what they think and that polls measure those thoughts. Is that a fair assumption?
Sampling could also be problematic. How can a subset of the population represent the
views of everyone? We are going to use polls to 'estimate' public opinion—hmmm. And
those are just a few of the problems that I can think of. In this lecture, we will address
these problems and the nature of public opinion and polling, as well as the uses of polls
and whether those uses are in the public good or whether polls are a serious problem for
democracy.

I usually ask students to surf the Web and bring in examples of what they see as
good and bad polls. All of the students turn them in and I choose a few as examples to
illustrate possible problems and possible benefits of polling. Some even bring in direct
mail polls that are a lot of fun to discuss in class.

Early Efforts to Influence and Measure Public Opinion
Public opinion polling as we know it today developed in the 1930s. Pollsters used
scientific methods to measure attitudes. Methods of gathering and analyzing data
improved over the years, and survey data began to play an important role in politics and
social life.

Early Election Forecasting
As early as 1824, newspapers have tried to predict election winners using polls.
In 1883, the Boston Globe used exit polls to try to predict winners. And in 1916, Literary
Digest mailed survey postcards to potential voters in an attempt to predict the outcome.
From 1920 to 1932, they predicted every presidential election correctly.

Literary Digest used straw polls that are now seen as highly problematic. They
lucked out by correctly predicting four elections, but their luck ran out in 1936 when they
predicted that Alf Landon would beat FDR. FDR won in a landslide taking all but two
states.
What Went Wrong?

Straw polls simply ask as many people as possible a given set of questions. They do not choose a sample in a random and scientific manner so that the sample will represent the population. *Literary Digest* made several important errors: 1) they sampled from telephone directories and car ownership records, thus oversampling upper and middle class people and those with Republican sympathies; 2) they mailed their questionnaires in early September and opinion changed before the November elections; and 3) they committed the sin of self-selection. Only highly motivated people returned the survey, so the survey oversampled better educated, politically interested, and wealthier people, again more Republicans.

George Gallup, however, successfully predicted the 1936 election. His company, the Gallup Corporation, continues to be quite successful in predicting electoral outcomes.

**Political Socialization and Other Factors That Influence Opinion Formation**

Political attitudes are grounded in values. We learn these values by a process known as political socialization. Many factors influence opinion formation. (*I usually ask the students how they think their political attitudes have formed and what factors have influenced them the most. I also ask them about their formative political experiences—nowadays many only remember the Persian Gulf War or Clinton's early travails—and how that affects them). The most important are:

- The Family
- The Mass Media
- School and Peers
- The Impact of Events
- Social Groups
  - Religion
  - Race
  - Gender
  - Region
- Political Ideology and Public Opinion About Government

*We then discuss what each of these factors is and how they affect political attitudes.* For example, if your parents are Republicans, what are you likely to be and why? *Is this always the case? How might religion affect political attitudes? The most obvious would be the Christian Coalition or Jews supporting Israel...but what else? Do race and gender matter and if so how and when? What effect do events have? Watergate affected an entire generation...will the Clinton troubles affect this one? How and why?*

**How We Form Political Opinions**

*Personal Benefits*—conventional wisdom holds that Americans are more "me-oriented" today than ever before. People therefore tend to choose policies that will benefit them. For example, the elderly favor Social Security. When policies don't affect us personally, we often have trouble forming an opinion. Foreign policy is a prime example because most Americans know little about the rest of the world.
Political Knowledge—Americans are highly literate and over 82% graduate from high school. We also have access to a wide range of higher education. However, we don't know much about politics! In 1994, fewer than 50% of people could name the Speaker of the House, and 94% could not identify the Chief Justice of the Supreme Court. Only 33% of people could identify their own representative to Congress. We are also generally geographically illiterate, with most Americans unable to find the Persian Gulf or Vietnam on a map. However, most of us have political opinions guided by issues, events, people, ideology, or something else.

Cues from Leaders—Low levels of knowledge make public opinion highly changeable. Rapid opinion shifts are common when the public does not have much information on an issue or if the information is bad. Political leaders and the media can often have a large effect on public opinion since we don't know much and don't seem to care much either.

How We Measure Public Opinion

Public officials learn about public opinion in many ways: through election results; citizen contact such as phone calls, faxes, and emails about issues and policies; letters to the editor in newspapers or magazines; and public opinion polls or surveys. In order for a poll to be reliable, it must have several characteristics:

1) Question wording. You need to know how the questions are phrased. Bad questions lead to bad results. There are thousands (or more) bad polls out there. An example of a bad question would be: "If the government takes our guns that we use to protect our families away from us, only criminals will have guns and we will all be in danger. Are you in favor of placing your family in greater danger? Yes/No"

2) Sampling. In order for a poll to be reliable, the sample must be taken accurately. The best method is a scientific random sample. Such a sample guarantees that each person in the population has the same statistical chance of being selected.

There are a number of sampling techniques. Some of the techniques are poor and should be avoided such as nonstratified sampling, straw polls, and most nonprobability sampling methods. A more reliable nonprobability method is a quota sample in which a pollster ensures representativeness using quotas. For example, in a citywide survey, respondents should reflect the make-up of the city—so 30% African American, 15% Hispanic, and so on.

Most national surveys use stratified sampling. A simple random sample of the American population would not be a very good predictor of election results since not everyone votes.

3) Contacting respondents. The method of contact is important. Since 95% of Americans have phones, random phone calling would be a valid method. This should not be the method of choice in Sudan though. Some surveys are done in person as well, but many worry that the presence of the interviewer causes problems.
In general, you should never trust a poll that does not tell you the question wording, the sampling method, and the ways in which respondents were contacted. Reputable and reliable pollsters will also tell you the number of respondents (the 'n') and the error rate (+ or - 5%) so that you can determine for yourself whether to believe the results. Any poll that tells you to call 555-9712 for yes and 555-9713 for no is unscientific and unreliable. The same is true of Internet polls that say you should register your opinion now. These are not random samples at all!

**Political Polls**

**Tracking polls**—continuous surveys that enable a campaign to chart its daily rise and fall in popularity. These are small samples and conducted every 24 hours. They are fraught with reliability problems but may be a decent measure of trends.

**Push polls**—push polls try to lead the subject to a specified conclusion and the worst are designed simply to ‘push’ subjects away from candidates by linking them to negative events or traits in the question.

**Exit polls**—polls conducted at polling places on election day.

**Deliberative polls**—a new kind of poll first tried in 1996. A relatively large scientific sample of Americans (600) was selected for intensive briefings, discussions, and presentations about issue clusters including foreign affairs, the family, and the economy. A deliberative poll attempts to measure what the public would think if they had better opportunities to thoughtfully consider the issues first.

First, the people were selected and brought together. They were polled about their attitudes and then spent days discussing and learning more about those issues in a carefully balanced manner. They were then polled again.

**Shortcomings of Polling**

Bad reporting and bad polling can change political campaigns, hurt careers, and have other bad consequences. And there are large numbers of bad polls out there. It is our job to learn how to consume polls critically so that we ignore the bad polls and take 'good' polls with an understanding of their shortcomings.

**Sampling Error**—the margin of error or sampling error is quite small if the sample is carefully selected. All polls contain some error, 3 to 5% is considered a reasonably small rate of error. A 3% error rate means that the poll is 97% accurate! These rates become extremely important if a race is close:

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Percentage</th>
<th>Margin of Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Al Gore</td>
<td>48%</td>
<td></td>
</tr>
<tr>
<td>George Bush</td>
<td>52%</td>
<td></td>
</tr>
</tbody>
</table>

Do these numbers tell you anything? No. The contestants are only 4 points apart, given the error rate the real race could look like this:

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Percentage</th>
<th>Margin of Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Al Gore</td>
<td>53%</td>
<td>(48% plus 5)</td>
</tr>
<tr>
<td>George Bush</td>
<td>47%</td>
<td>(52% minus 5)</td>
</tr>
</tbody>
</table>
Limited Respondent Options—have you ever taken a survey (or a test) and said you don't like any of the answers? If the options are not broad enough, you get bad results.

Lack of Information—if surveys ask questions about things that the respondents don't understand or don't know about, the answers will often be invalid. The use of filter questions is helpful here, such as "have you thought about...?"

Intensity—polls do not measure intensity well. You will learn a position on an issue but not how strong that opinion might be.

Elitism—deliberative polls have been accused of elite bias. Time will tell whether this new form of polling will catch on.

How Polling and Public Opinion Affect Politicians, Politics, and Policy

Now comes the most important questions of all: So What? Do polls affect the political process? If so, how and to what effect? Are they benign ways of measuring the attitudes of a democratic citizenry or are they malignant attempts to control and manipulate the people?

Politicians and others (including the media) spend millions of dollars on polls. How are they used? What is their effect? These are difficult questions. How good and accurate are most polls? Do politicians know much about polling? Do they attempt to make sure that their polls are accurate, reliable, and scientific? Or not?

Polls can actually change opinions too. Is all this polling really measuring public opinion or forming it? And is the answer to that question a problem or concern?


After discussing polls and attitudes, what do you think?

The News Media

The news media are a diverse lot of individuals and institutions that can have enormous influence on the political process. However, in some situations, they seem to have little influence. It is important for us, as citizens and scholars, to understand the influence of the media and to learn how to critically consume it. Often we blame the 'messenger'—the media—for problems in society but perhaps we should also take responsibility and think about not only the 'message' but in how we think about that message. Are we unthinking consumers of media, believing all we see and hear? Or do we try to think about what we see and hear and come to our own conclusions about what to believe? These and many other questions should be kept in mind as we talk about the media.

It is also important to remember that media encompasses a variety of outlets and perspectives from CNN to Fox News on cable, from CBS to NBC, from The Economist to Newsweek, from The New York Times to The Grand Rapids Press, from The Drudge Report to AllPolitics.com and Policy.com, and from Hardball to Geraldo.

All media have biases, though it is rarely simple enough to say those biases are liberal or conservative. Usually they have multiple perspectives and multiple biases, and
The best way to discern those perspectives and biases is to compare a number of
canals, papers, websites, and so on until you can decide where they are coming from.
(An important skill we can teach our students is to be educated consumers of the
media and not passive recipients.)

The American Press of Yesteryear

The first newspapers were printed in the 1690s in the American colonies and the
number grew throughout the 1700s. In the late 1780s, newspapers were controlled by
political parties, and by the 1890s 'yellow journalism' was in vogue—untrue,
oversimplified, sensationalized stories designed to titillate the readers. Doesn't that sound
familiar? Muckrakers were the original investigative reporters who saw it as their job to
expose real and apparent misconduct by government and business in order to force the
pace of reform. Again, sounds awfully familiar.

Throughout the 19th century, payoffs to the press were not uncommon. Editorial
pages or editors were bought, investigations were halted after payoffs, patronage
positions were exchanged for good press, and so on. By comparison, today's media are
Boy Scouts!

Technological advances caused a rapid transformation of journalism. Papers
became cheaper and easier to produce and distribute, the telegraph and telephone made
reporting simpler and faster, and the invention of radio and television changed things
entirely. It is easy to forget what modern inventions radio and TV are. Radio only
became widely available in the 1920s and television was introduced in the late 1940s and
was not common until the 1950s. Cable was invented in the 1970s, CNN was founded in
1980, and the Internet didn't become well-known until the late 1990s.

The Contemporary Media Scene

Today, there are thousands of daily and weekly newspapers, periodicals,
magazines, newsletters, and journals, also known as the print press. And there are the
electronic media—television, cable, radio, and the Internet. It often seems like the media
are everywhere today. The political press corps alone consists of more than 2500 people.

The options are there, but not everyone takes advantage of them. Fewer than 50%
of the adult population reads a newspaper regularly. Less than 30% of those aged 18 to
29 read newspapers. Magazines seem to sell best when Freddie Prinze, Jr. or Madonna is
on the cover.

Network television stations also have reduced viewership. The number of people
who get their news from TV remains quite high but there are such a large number of
options now that the viewership has splintered. Cable TV has taken away a lot of the
folks who used to watch ABC and Peter Jennings. Now when the president addresses the
nation, he does not get everybody or even most people with their TVs on. Large numbers
of people are watching Hawaii Five O or The Brady Bunch on cable.

As we get busier, we take less time to inform ourselves. Newspapers take too
much time to read so we rely on television that is shallow and based on image. How
much information can you get from a 60-second story on welfare reform? We demand
Headline News—around the world in 30 minutes. Is it possible to know everything that's
happening in 30 minutes including commercials?
The quality of reporting has declined since the 1950s. Television news desks are now owned by corporations who want to maximize profits. Research assistants, junior reporters, and desk assistants no longer chase down loose ends for senior correspondents. Stories needing extensive research generally aren't done. Instead we get sexy, simple, and shallow eye-catching stories.

Still, a number of newspapers have a national audience and are considered quite influential:

- The New York Times
- The Wall Street Journal
- USA Today
- The Christian Science Monitor
- The Washington Post
- The Los Angeles Times

These newspapers have a huge effect on television. The networks and cable outlets usually pick up these newspapers' top stories. Millions of people also subscribe to news magazines such as *Time* and *Newsweek*. The Web also supplements other media outlets and in some cases is replacing them.

For fun, have students subscribe to, or regularly read, a non-U.S. based news source. *Maclean’s* (Canada) and the *Economist* (UK) offer unique perspectives about U.S. politics that we might not otherwise consider.

**How the Media Cover Politicians and Government**

For our purposes, we are primarily interested in how media covers government. So let's look at how the press covers each branch of government and how the tenor of coverage has changed since Watergate.

The president gets the most news coverage of any political figure. Presidents hold press conferences to shape public opinion and explain their actions. Today, a press secretary often briefs the media on a regular basis instead of having regular press conferences with the president personally. Many scholars feel that the president does get lots of attention but most of it is negative. Negative coverage encourages cynicism in the population at large and alienates people from politics.

The media have encountered challenges in covering George W. Bush’s administration. President Bush prides himself on the “tightlipped, no leaks nature” of his White House. No one from the administration appears in the media without prior approval and no one talks about what goes on behind closed doors. The administration is happy, the media are unhappy, but the effect on the public and whether this is a good or bad thing for the public remains to be seen.

Coverage of Congress is different. Congress has 535 members and is quite decentralized. Not everyone knows each member of Congress. The committee system is unfamiliar and confusing to many citizens. Given these problems, the media tend to focus their coverage on the leadership: the Speaker as well as the majority and minority leaders. Key committee chairs may also get some attention and local stations and papers cover local favorite sons and daughters.

The media also tend to cover congressional investigations of which there seem to be an ever-growing number. From McCarthy in the 1950s to Watergate in the 1970s to
Iran-Contra and the various Clinton-gates, we get first row seats to some incredible dirty laundry and a lot of partisan rhetoric. Again, most of the coverage is negative, focusing on conflicts among members or parties or conflicts between the president and the Congress. This negative coverage is probably at least partly responsible for the public's negative perceptions of Congress.

Coverage of Congress has also greatly expanded thanks to C-SPAN and C-SPAN2 that show gavel-to-gavel coverage of the legislature.

The courts receive little media coverage. This is partly because many judicial deliberations and decisionmaking are conducted in private. Court TV and expanded coverage of hot topics in front of the Supreme Court are slowly changing the amount of media coverage the courts receive.

Investigative Journalism

Watergate—the scandal during the Nixon administration that included wiretapping, burglary, and cover-ups to win the 1972 presidential campaign—changed the nature of journalism in a couple of ways, especially when coupled with the Civil Rights Movement, Vietnam War issues and protests, women's rights movements, and other societal events. Journalism began to focus more on prescribing solutions and less on reporting facts (this is reminiscent of the muckraking era of the early 1900s).

Investigative reporting came into vogue. And there were no limits to the inquiry of journalists ferreting out the public good. Politicians' private lives became headlines. Clinton was not the first Lothario in government—JFK was notorious and FDR died in his mistress's arms! But the press had a gentleman's agreement not to cover such unsavory material. That bargain was gone after Watergate.

Watergate also made the reputations and careers of a number of journalists. In addition to the guilt many reporters felt at missing the story, many were extremely keen not to miss the next big scoop that could make their career.

After Watergate, newspapers and TV stations invested heavily in investigative units to catch the next great scandal. Perhaps that is one reason why the media seem to find so many scandals—real and manufactured.

Character has become a catch word in the media. They are all looking for character flaws in politicians. Few public figures get any privacy these days. Plus, we buy more papers, magazines, and watch more TV if there are scandals and character assassination! Media often are only giving us what we want even if we don't admit it.

Today's press can also do more investigation into character because the libel laws have been so loosened that they are meaningless with public figures. In *New York Times v. Sullivan* (1964), the Supreme Court ruled that publishing a defamatory statement alone did not constitute libel for public figures instead one had to prove "actual malice—a very difficult thing to do. The Court said that the 1st Amendment requires that a publisher knowingly published a falsehood with reckless disregard for the truth. Libel used to be quite a deterrent against the publication of stories whose facts had not been thoroughly checked and rechecked. Now we are lucky if they check the facts at all! There are still lawsuits but they are expensive and media outlets often have lots of money and lawyers.
Bias and the Media

Are the news media biased? If so, how? Of course they are! Journalists are people with preferences, attitudes, and values just like us. Many journalists lean to the left and many talk radio commentators lean to the right. Do their biases and political preferences affect their reporting? Sometimes. But good, responsible journalists will give all sides of a story and be objective despite their personal biases.

Studies have shown that on some issues, there is a routine liberal bias. Abortion is one example in which studies have shown a clear preference among major media outlets on the pro-choice side/liberal side of the debate. And there are also conservatively biased networks like FoxNews. Three of FoxNews’ biggest news shows feature conservative hosts: Sean Hannity, Bill O’Reilly, and Brit Hume. And AM talk radio is definitely of a conservative bent.

It is not that simple however. There is not only one set of biases in journalism—liberal/conservative. There are many sources of bias. The media love to create controversy and make horse races out of campaigns (focus on winners/losers). Reporters like some politicians and give them good coverage and dislike others and give them poor coverage. TV has biases in favor of good images and pictures. Many media outlets are now owned by huge corporations who want profit...that's a bias, isn't it?

The Media’s Influence on the Public and Public Opinion

The press has surprisingly little effect in most cases. People see and hear what they want to see. They focus on parts of a story that reinforce their attitudes.

Reporting can sway the public in certain cases:

• if people are uncommitted and have no strong opinions
• if a topic is distant and far from our everyday lives—like foreign policy reporting
• the press can't tell us what to think but can decide what we will think about and discuss—they can set the agenda

In recent polls, only 11% of people said they had a great deal of confidence in the media. By contrast, 50% had confidence in the president and 71% in the military. A majority of Americans see the media as liberally biased and feel that the media often report inaccurately and are unwilling to admit their mistakes.

The public briefly felt more favorably about the media after the terrorist attacks on September 11, 2001 but the numbers rapidly returned to normal. Fewer than half of Americans think the media behave in a highly professional manner and fewer than half of Americans think the media stand up for the country (behave patriotically?).

True, the media cover politicians. But good politicians can also use the media. They can stage events in order to gain free media coverage. They can go after positive publicity.

The media do have a limited ability to shape public perception and this power can have implications for candidates and their success or failure. This makes media control or 'spin' an important part of every campaign.

Candidates, politicians, and their minions also 'leak' stories to the press for a variety of reasons. Often they hide behind phrases like "highly placed White House source" or "on background" or "off-the-record." This enables them to get their story out without being the focus of that story.
Government Regulation of the Electronic Media

Print media are exempt from most governmental regulation. Electronic media are not. Airwaves are considered public property and are leased to networks and private broadcasters by the government. Government also allocates the use of frequencies and channels so that radio and TV do not overlap and jam each others' signals.

The Federal Communications Commission (FCC) is an independent regulatory agency that oversees electronic media. It oversees radio, television, telegraph, satellite, and foreign communications in the United States. In 1996, Congress passed the Telecommunications Act, which deregulated whole segments of the media like local phone service, cable television, and more. The hope was that increased competition would lower prices and improve quality. The Act also raised the cap on how many TV and radio stations a single group or person could own in any market. Two of the more controversial portions of the Act were the part on Internet decency (struck down by the courts on 1st amendment grounds) and requiring TVs to have v-chips so parents could monitor content for their kids.

Content Regulation

Since they use public airwaves, the electronic media are forced to "serve the public interest, convenience, and necessity." Hence the commercials you see about school bus safety and anti-smoking messages. Stations also run 'public interest shows' like carrying the State of the Union Address, campaign debates, and so on.

There are also a number of rules (some now defunct) that television and radio are subject to:

- Equal Time Rule. This rule requires that IF a station sells time for campaigns, it must sell it equally to all candidates. An exception is made for political debates where minor party candidates may be excluded.
- right-of-rebuttal. This requires that a person who is attacked be offered the opportunity to respond.
- Fairness Doctrine (now defunct—1949-85). This required broadcasters to be fair in coverage of news events and present contrasting views.

Censorship

Many countries have substantial amounts of media censorship including Great Britain. In Great Britain, the Official Secrets Act prevents civil servants from writing books about their years in office. The BBC is owned by the government and does not have nearly as much leeway as our television does.

The Department of Defense in the U.S. restricted access and information to the press during the Gulf War. This caused considerable controversy after the war when the media learned they had been lied to.

Conclusion

Television (network and cable) has transformed American society. There is a large amount of competition among media outlets and audience share is dropping for any given outlet.
Is it all that different from the 'early days of journalism' though? In some ways yes, and in other ways no. Scandals made headlines in 1790 and do so today. Corrupt politicians have always been newsworthy. The Internet changes the way information is disseminated and pushes us ever closer to a true 24-7 lifestyle. But it is still information.

Do the media have too much influence? If so why? If not, why do so many people think the media are so influential? What should be the role of the consumer? When an advertisement tells us something is "all new" or "the best ever," do we believe it? Should we always believe the news media when they make claims? How can we become better consumers of information? These are not easy questions, but highly worthy of thought and discussion.

### Websites for Instructors

The **American Association for Public Opinion Research** is a professional association that publishes *Public Opinion Quarterly* whose tables of contents are available at this site.

www.aapor.org

The **Annenberg Public Policy Center** at the University of Pennsylvania conducts content analysis on TV coverage of politics.

www.appcpenn.org

**Fairness and Accuracy in Reporting (FAIR)** is a liberal watchdog group looking for media bias. In their own words: "FAIR believes that independent, aggressive and critical media are essential to an informed democracy. But mainstream media are increasingly cozy with the economic and political powers they should be watchdogging. Mergers in the news industry have accelerated, further limiting the spectrum of viewpoints that have access to mass media. With U.S. media outlets overwhelmingly owned by for-profit conglomerates and supported by corporate advertisers, independent journalism is compromised." The website offers examples of bias and more.

www.fair.org

The **Gallup Organization** is one of the best known and most well respected polling agencies. Their website offers access to reports, polling data, and more about a variety of issues.

www.gallup.com

The **General Social Survey** site of the National Opinion Research Center (NORC) offers access to their annual surveys of American attitudes and opinions.

www.norc.uchicago.edu/gss.homepage.htm

**Media Research Center** is a conservative group that claims the media have a liberal bias. Offers links to conservative media and political sites.

www.mediaresearch.org/
The **National Election Study** at the University of Michigan offers regular polls on elections, voting behavior, and electoral issues.  
www.umich.edu/~nes

**Newseum** is the museum dedicated to the history of news and media scheduled to reopen near the National Mall in D.C. in 2006. Its website currently operates in lieu of the museum and has some interesting cyber exhibits including coverage of 9/11, war correspondents, editorial cartoonists, women photographers, and front page stories from around the country.  
www.newseum.org

**The Pew Center for Civic Journalism** works to encourage 'good journalism.' The institute is trying to battle cynicism and re-engage citizens in the political process.  
www.pewcenter.org/index.php3

**The Pew Center for People and the Press** is an independent opinion research group that studies attitudes toward the press, politics and public policy issues. Its website offers the results of numerous surveys, including those of public attitudes toward the media's coverage of politics and offers information trends in values and fundamental political and social attitudes.  
www.people-press.org

**Politics.com Polls** is part of a self described “avant garde” politics site…visit and judge for yourself.  
www.politics.com

**The Project for Excellence in Journalism** is sponsored by Pew, Columbia School of Journalism and the Committee of Concerned Journalists. It is trying to raise the standards of journalism and is running several projects including one on local TV news and the state of newspapers in America. This and more is available at:  
www.journalism.org/

**Public Agenda OnLine** offers nonpartisan issue guides on a variety of topics, links to other sources of public opinion information, and its own research.  
www.publicagenda.org

The **Research Industry Coalition** is an organization promoting professionalism and quality in public opinion and marketing research. Site includes an interesting article on the problems with the proliferation of "Call in" polls and 900 number polls.  
www.researchindustry.org/index.html

**Roper Center for Public Opinion Research** located at the University of Connecticut is the largest library of public opinion data in the world. The Center's mission focuses on data preservation and access, education and research. Includes the GSS—General Social Survey.  
www.ropercenter.uconn.edu/
The Virtual Reference Desk at Binghamton University offers a site devoted to polling and public opinion, including information on bad polls and techniques. It also offers links to some opinion sites.

library.lib.binghamton.edu/vrd/polls.html

The Washington Post Data Directory is a guide to public opinion data published on the Internet by nonpartisan organizations.

washingtonpost.com/wp-srv/politics/polls/datadir.htm

Zogby International has been polling for over 16 years. Among the interesting info on their site: an article by founder John Zogby about the nature of polling that is very good and explains why your students may not know a single person who has been asked his/her opinion about current issues, an archive of e-clippings from media stories using their data, and a search engine for polling data (a search on George Bush pulls up a huge list). Also offers subscriptions to its newsletter “Zogby’s Real America” that appears monthly and offers a “comprehensive resource for finding out where Americans stand on topics ranging from politics to social issues, with analysis from John Zogby in a new style.”

www.zogby.com

### Web Activities for Classes

1) Have students use the Internet to find a number of polls. Have students bring them to class and in discussion groups analyze the quality and reliability of those polls. Be sure to discuss sampling, error rates, question wording, how respondents are contacted, and other factors that affect the results.

2) Assign students to surf the Web to find glaring examples of "bad polls." The discussion that follows is often quite fun!

3) Have students look at campaign and related websites to determine how politicians and the media use polls. Hold a class discussion on the implications of these uses.

4) The Web is crawling with "unscientific polls" of varying natures. Have students count the number of such polls they can find in 30 minutes or so. The top three students can share the most heinous examples with the class.

5) Have the students find good, reliable, scientific polls and poll results on the Web. Have them write a paper explaining why they classify these polls and results as reliable.

6) Have students find three or four credible news sites on the Internet. What types of information are you finding there? Does it differ from more traditional types of media? How and why?
7) Have the students search the Web for media bias and bring in examples to discuss.

8) Each of the TV news organizations also has a website. Have students check out CNN, ABC, FOX, etc. on the web and compare the coverage to that of the TV version. Discuss why they differ and which offers 'better' information.

### General Class Activities and Discussion Assignments

1) Have students address the following: Write a paper based on your own political ideology and opinions. How were they formed? Consider those who have influenced these opinions and political views. Is the text correct in asserting what the dominant factors of political socialization are? Have students compare their experiences with those of their classmates.

2) Most people's opinions are affected by what can be called a "formative political event." For some people this event was the assassination of JFK, for others it was Watergate or the Iranian hostage crisis, and for still others it was the Persian Gulf War. Have students think about their "formative political event" or first political memory. Have them write a paper or discuss: How did that event shape your political ideas and world view? What about your parents and grandparents? Ask them what major events affected their political perceptions. Have them compare notes with your classmates.

3) As a class project, choose an issue of interest and formulate a class poll. Then have students administer it on campus. Discuss the process, the results, and problems of your poll and extrapolate that to polling in general.

4) Assign students to watch two weeks of TV news and pay attention to newspapers during the same time frame. Have them write a paper analyzing the ways in which the media use polls. What are the implications of their findings?

5) During the past decade, television news has changed dramatically. One aspect of that change is the recent acquisition of all major news organs by large corporations. ABC is now owned by Disney, others by GE, etc. Hold a discussion on the impact of these media mergers/buyouts on the amount and types of information available to American citizens, as well as on the 'quality' of news we now get.

6) Hold a class discussion on the relative merits of network, cable, and Internet news sources.

7) Hold a class discussion on what kind of influence the media have on the public's attitudes and opinions.
8) Hold a debate on media bias. Have at least three sides: liberal, conservative, and profit-oriented biases.

9) The airwaves are a public good. Hold a debate on whether and how the government should regulate those airwaves.

10) Have students do the following: For several days, tape each of the major networks newscasts (ABC, CBS, NBC) and the two largest non-networks (FOX and CNN). View at least two days of each broadcast. Pay attention to the order and length of each story, the tone of the report, and the graphics/images used. How are these broadcasts similar or different? Which reports seem most objective and why? What kinds of information are they offering? Is it the type of information you need to make educated decisions about politics and world affairs? Why or why not?

11) Have students choose a current event and compare the coverage in local press, national press, network news, and cable news. How and why do the ways each of these types of media cover the issues differ? How are they similar? What media outlets do you find most useful?

12) Have students do the following: Using a major national newspaper (The New York Times, The Washington Post, or the like), analyze the way in which the current president is treated. Is he treated well or poorly? Why? Is there an obvious bias? What is it? Is he treated similarly or differently than other major political figures? Why?

13) Hold a discussion on media coverage of a specific issue, event, or person. Choose a political event such as an election, a scandal, a Supreme Court ruling, an issue, or something like that. Discuss the nature of the coverage it receives from a variety of media sources and discuss why that coverage may differ or be similar.

**Possible Simulations**

1) Stage a debate in class. One side should argue that public opinion polling is inherently problematic and should not be used by government or politicians. The other side should argue that polling is a valid way to determine the will of the people. Each side should do research to flesh out its arguments.

2) Divide the class into "x" number of groups. Give the whole class a series of topics and have each group write two good survey questions and two bad ones for each topic. Have the class share the results and discuss why certain questions are good and others are bad.
3) Print off the AP wire stories for the day (or contact a local TV station and ask for theirs). Divide students into groups. Each group, using the same list, should operate as a news director/producer and determine what items will go—in what order, and at what length—into the 24 minutes of news that evening. They should be prepared to defend their choices.

4) Hold a class press conference on an issue or the week's events. Assign some students to be reporters, others government officials, others 'spin' doctors. Discuss what happens afterward.

### Additional Sources


CHAPTER 11
POLITICAL PARTIES AND INTEREST GROUPS

Narrative Lecture Outline

What is a Political Party?
At the most basic level, a political party is a group of office holders, candidates, activists, and voters who identify with a group label and seek to elect to public office individuals who run under that label. This is a practical definition in keeping with the practical nature of American politics. Our parties tend not to be as ideological as parties in other countries. Ours is a centrist party system.

Our system contains two major parties: the Democratic Party and the Republican Party. We also have a number of minor, or third parties, at any given time. Among the more important third parties today are the Reform Party and the Libertarian Party.

Parties are made up of three types of ‘members’:
• governmental party—the office holders and candidates
• organizational party—workers and activists
• party-in-the-electorate—those who vote for the party or consider themselves to be allied or associated with it

What Are Interest Groups?
There are a number of definitions of an interest group in your text as well as a number of aliases—pressure groups, lobby groups, special interests, etc. Some of the definitions point out the function of interest groups (to influence public policy), others point out what interest groups are not (political parties—they run candidates, while interest groups influence government), or focus on membership (shared interests or attitudes).

Interest groups may be best understood using examples. Let's list some interest groups on the board. Then ask questions like: Does anyone know what the largest and most powerful interest group in this country is? The AARP—American Association of Retired Persons with 32 million members. Many students seem to think the answer would be the NRA (the National Rifle Association) which has only 1 million members or the AFL-CIO (14.1 million members) or the American Medical Association (300,000 members) but they would be wrong. What makes them successful and powerful? What else do you know about the interest groups we listed here?

Political scientists tend to talk about interest groups in a variety of ways: how they form (Truman and disturbance theory), how many issues they deal with (multi vs. single), or as types (economic, public, governmental). You should be sure to read and understand that portion of the text, but today we will focus on the development of interest groups, their functions, and how to determine if they are successful.

First, we’ll discuss parties and then move on to interest groups.
Political Parties
The Roots of the American Political Party System

Americans have had a love-hate relationship with parties since the beginning of the republic. George Washington despised parties and used his Farewell Address to warn against them. However, Hamilton and Jefferson, as heads of the Federalist and Anti-Federalist groups respectively, are often considered 'fathers' of the modern party system. By 1800, this country had a party system with two major parties that has remained relatively stable ever since. We have had doomsayers sound the death knell for both parties on a variety of occasions but they always seem to survive somehow.

From 1817 to 1825 was called the Era of Good Feelings, and party politics practically disappeared at the national level. However, parties were alive and well at lower levels. The electorate expanded dramatically at this time—the U.S. pushed westward, most states abolished property requirements, and immigration continued.

Nomination processes and the electoral college also opened up to additional participation. This broadened the base of the parties. Conventions were held beginning with the 1832 Democratic Convention to nominate presidential candidates. Andrew Jackson was the first so nominated.

Jackson's populism and strong personality polarized politics, and the Whig Party emerged to oppose him. The Whig Party was descended from the Federalists and its early leaders included Henry Clay (Speaker of the House). The Whigs and Democrats were fiercely competitive. However, the issue of slavery plagued the Whigs and they soon dissolved to be replaced by the Republican Party, formed in 1854. The Republicans set their sights on the abolition of slavery and by 1860, elected Abraham Lincoln as president.

From the presidential elections of 1860 to the present, the same two major parties have contested elections in the United States: Republicans and Democrats. Control of the major institutions of government has seesawed between them.

Reconstruction—Republican dominance
1876-1896—closely competitive system
1896-1929—Republican dominance
1930s and 1940s—Democratic dominance
1950s and 1960s—mixed
1970-present—neither party dominant

The 'Modern Era' versus the 'Golden Age' (1870-1920). Party and government in large cities seemed interchangeable. This was the era of political machines, bosses, and patronage. Political machines—party organizations that recruit members by offering tangible incentives such as jobs, money, favors, and so on—were central to the lives of millions of people. They helped new immigrants settle in, they provided social services, jobs, sponsored community events, and gave food and housing to the poor. All in exchange for votes.

Government has gradually taken over many of the functions that were performed by the party-based political machines. Government now prints ballots, provides social welfare monies, conducts elections, and so on. So party organizations have fewer functions and less ability to enforce party-line votes and strict discipline.
Several other developments have decreased the power of parties:

- **direct primary**—the selection of candidates was moved out of the smoked filled room and into a more public setting. Qualified voters now determine who runs
- **civil service laws**—have removed patronage or the spoils system from the control of parties. Now government jobs go to people who pass merit based tests, not to loyal party workers
- **the rise of issue-oriented politics**—social changes and broad based education has led to more thoughtful voters and issues that cut across traditional party lines like environmentalism, and ticket-splitting has become commonplace
- **television**—TV emphasizes individuals and personalities over party labels
- **the rise of political consultants**—these hired guns often work for both sides and use whatever works. They are the new intermediary between the voter and candidate and thus weaken the parties

Political parties have changed a lot over the years but remain reliable vehicles of mass participation. Parties have adapted to changing conditions just as the Constitution has adapted.

**The Basic Structure of American Political Parties**

- **National Committees**—The Democratic National Committee (DNC) and the Republican National Committee (RNC) are the national policy organs of the parties. They choose national chairpersons and run the quadrennial conventions. In addition, the Senate and House parties also have committees that are located with the national committees in D.C.

- **Leadership**—The party chairpersons are usually selected by the sitting president for the party in power, and the party national committee usually selects the other national chairperson. The chair is an important spokesperson for party interests.

- **National Conventions**—Every four years, the national committees put together the presidential nominating conventions. Until 1984, they got gavel-to-gavel coverage by media outlets. Today, coverage is more selective. The conventions allow parties to nominate candidates, but also to discuss party organizational matters.

- **States and Localities**—Parties are structurally based at the state and local levels. Much of the work of the party is carried out at the precinct, city, county, and state levels.
• **Informal Groups**—Parties are supplemented by a number of other groups such as the National Federation of Democratic Women, the Young Republicans, State Governor's Associations, interest groups, PACs, and many more. In addition, there are think tanks such as the Heritage Foundation for the Republicans and the Progressive Policy Institute for the Democrats.

**The Two Party System and Third Parties**

Though traditionally a two party system at the national level, many states have had party systems that were not highly competitive. One of the most significant political trends of recent times is the demise of this one-partyism or one party dominance of elections in a given area. The formerly "Solid South" is no longer solidly Democratic. There are no truly Republican or Democratic states at this time. This growth in competition among the parties seems to be a sign of party weakness. More and more individuals split their vote between the parties, and sometimes vote for third parties.

Third parties appear sporadically. These minor parties are not a threat to the two major parties. As a matter of fact, only eight third parties have ever won any electoral votes in a presidential contest, and only five have ever won more than 10% in a presidential election. Among the third parties that have had some success are:

- 2000: Ralph Nader and the Green Party
- 1996 and 1992: Ross Perot's Reform Party
- 1968: George Wallace and the American Independent Party
- 1924: Robert LaFollette's Progressive Party
- 1912: Teddy Roosevelt and the Bull Moose Party
- 1856: Millard Fillmore's American Party

Third parties generally arise from one of the following causes:

- sectionalism—Dixiecrats in 1948
- economic protest—Populists in 1892
- specific issues—Green Party and the environment
- ideology—Socialists, Communists, Libertarians
- charismatic personalities—George Wallace's American Independent Party
- failures of the major parties—Ross Perot arose out of the major parties' failures to deal with the deficit and debt as key issues

Although third parties form for a variety of reasons, usually the issues are almost always coopted by the major parties. Third parties help the major parties change and force them to acknowledge alienated groups, incorporate new ideas, and nominate more attractive candidates.

**The Roles of the American Parties**

For 150 years the two party system has been used to organize and resolve political and social conflicts. They are less popular today than at earlier points in history but remain a vital agent of change and representation in our system. One of the most important roles the parties fulfill is that they convert a huge array of ideas and opinions
(of millions of voters) into a comprehensible pair of ideas. They aggregate public opinion to a manageable level.

**Mobilizing Support and Gathering Power.** Members of the party can usually be counted on to support office holders elected under the party banner. Party is a fairly simple way of determining how much support one has in Congress or among the electorate.

**A Force for Stability.** Parties promote stability and act to moderate public opinion due to their pragmatic drive to win elections.

**Unity, Linkage, Accountability.** Parties provide linkages among branches and levels of government. They allow the often disparate parts of our political system to work together. Parties also link voters and elected officials and parties can hold office holders accountable at periodic party meetings.

Because parties must win national elections, they can also function as unifiers of the country. They dampen sectionalism and give people in remote parts of the country something in common with other Americans far away.

**The Electioneering Function.** Parties organize and compete in elections. The parties recruit candidates, provide staffing, give money, and provide numerous other important services during election cycles.

**Party as a Voting and Issue Cue.** A voter's party identification acts as a filter for information. It provides the single most important cue for voting. If citizens do not know much about a candidate or race, they generally vote for the party they prefer.

**Policy Formulation and Promotion.** Parties formulate and convey their ideas about public policy through the national party platform. Every four years, the party gathers and writes a lengthy document explaining its positions on key issues in advance of the presidential nominating convention. About two-thirds of platform promises have usually been implemented when the party's candidate wins the election.

**Interest Groups**

Interest groups have been around at least since the founding of this country. James Madison in *Federalist #10* warned of the 'mischief of faction' and argued that the best way to control it was through the proliferation of groups so that no one group could get hegemony over the other groups.

It was not until the 1830s that the first national groups began to form. Many were single-issue groups deeply rooted in Christian revivalism and concerned with issues such as temperance (anti-alcohol), peace, education, and slavery. After the Civil War, more groups were founded, such as the Women's Christian Temperance Union and the Grange.

**Why and How Interest Groups Form and Maintain Themselves**
Why do interest groups form? How would you measure the success of an interest group? (Discuss.)

Groups often claim credit for 'winning' legislation, court cases, or elections. But in general three things tend to lead to the formation of an interest group and their ability to succeed and maintain themselves:

**Leaders and Patrons**—having a prominent leader who also finances the group aids the reputation of the group, and enhances a group's ability to attain its goals.

**Funding**—funding is critical. If a group does not have money, it is hard to get your message out.

**Members**—a group must have members to be successful. The whole purpose of organizing is strength in numbers...so you need numbers!

### The Rise of the Interest Group State

**Public Interest Groups.** The next big explosion of new group formation began in the 1960s and continued into the 1970s. The rise of public interest groups during these years was reminiscent of the Progressive Era. The new groups were devoted to the interests of blacks, women, the elderly, the poor, and consumers as well as to the environment. These groups were strongly influenced by the Civil Rights Movement and the Vietnam War and the movements opposed to it. Other groups, formed long ago, found new vigor like the NAACP and the ACLU. Foundations like the Ford Foundation funded groups liberally. Among the most influential of the public interest groups formed at this time were Common Cause and Public Citizen the latter formed by Ralph Nader.

**Religious and Conservative Groups.** The growth and success of public interest groups, civil rights organizations, and women's rights movements in the 1960s and 70s led to a conservative backlash in the late 70s and 1980s. Religious and ideological conservatives became a potent force in U.S. politics with the founding of the Moral Majority by Jerry Falwell in 1978. This group was widely credited with helping Ronald Reagan win the presidency. In 1990, Pat Robertson of the TV program *The 700 Club* formed a new group called the Christian Coalition. Religious conservatives accounted for one-third of votes cast in the 1994 elections. Following IRS troubles in the 1990s, the Christian Coalition had its tax-exempt status revoked and the group began to restructure as a for-profit entity with a smaller non-profit affiliate. The religious right continues to pressure Congress and others in power for bans on abortions, repeal of the marriage penalty, and a constitutional amendment allowing prayer in schools.

This leaves a quandary for the Republican Party. The religious right can really deliver votes but they turn off moderate Republicans and business groups who donate most of the money for campaigns.

**Business Groups, Trade, and Professional Associations.** Business and other groups also rallied in the 1970s and 1980s. In 1972, they created the Business Roundtable to encourage business leaders to directly lobby government officials. Most large
corporations have their own lobbyists in Washington and give huge sums to favored politicians.

**Organized Labor.** The political clout of organized labor has been falling since its heyday (the late 1950s after the merger of the AFL and the CIO). Union membership has been falling for decades as the economy has been shifting from industry to service and now high-tech. In 1997, only 13.9% of workers were unionized. In 1996, the unions seemed to reclaim some of their clout. They went back to basics and ran grassroots campaigns and did lots of soft money advertisements. In 1998, they moved away from the ads and vested more heavily in grassroots campaigning. Union members went to the polls in record numbers, voting mostly Democratic.

**What Interest Groups Do**

As an example of what interest groups do, let's take the 1993 health care reform proposal put forward by President Clinton. More than $100 million was spent in campaign contributions, television ads, expense paid trips for lawmakers on both sides, and more. Campaign contributions alone were over $25 million and over $8.2 million of that went to members of the five committees most likely to have jurisdiction over the legislation. 650 health-related groups made contributions. The AMA sponsored 55 trips to sunny spots where lawmakers addressed groups, played golf, and sunned themselves. At least 80 former executive and legislative branch officials went to work for health interests at this time. But this is an extreme example.

Interest groups also do a lot of good. And some groups with little political clout and little money have made a huge difference like the NAACP for example. Interest groups allow individuals to gather together to multiply their political power. A member of Congress may not meet with you as an individual, but will meet with a representative of an association with 800,000 members! Banding together promotes common interests.

The downside is that most interest groups make claims without regard to broader interests or the effects of their demands on other groups or individuals. This selfishness is not positive for society as a whole and can lead to increased costs on programs or efforts that don’t benefit society as a whole.

**Lobbying Congress**

The most common and effective interest group technique is lobbying or seeking to influence and persuade others to support your group's position. Lobbyists are hired by universities, businesses, foreign countries, trade associations, and anyone else wanting their voice heard on the Hill.

The most popular ways to lobby include:

- testifying at legislative hearings
- talking directly to government officials
- helping to draft legislation
- alerting state legislators of a bill's effects on their districts
- having influential constituents contact a legislator's office
- mounting grassroots campaigns
- letter writing
- donating money
However, a lobbyist cannot lie or misrepresent the truth if he or she wants to remain effective. Access to lawmakers is critical and if you get the reputation of being untruthful or disingenuous doors will close all over Washington. Of course, lobbyists put their group's position in a favorable light but good lobbyists will also make lawmakers aware of the downsides of a bill and the arguments on that side as well.

**Attempts to Reform Congressional Lobbying**

The Federal Regulation of Lobbying Act in 1946 was the first attempt to regulate lobbying. The Act required lobbyists to register as a lobbyist and file quarterly financial reports. Few did. Public opinion polls continued to show that Americans think Congress is often 'bought' so in 1995 Congress passed the Lobbying Disclosure Act. Lobbyists (those who spend over 20% of their time in lobbying activities) are required to register with the Clerk of the House or the Secretary of the Senate, report their clients and the agency or house they lobbied, and estimate the amount they were paid by each client. In 1998, 14,000 lobbying groups were registered in Washington, D.C.

**Lobbying the Executive Branch**

In the executive branch, lobbyists work closely with the administration to try to influence policy at the formulation and implementation stages of the process. There are many points of access in the executive from the White House to the agencies and beyond. Especially strong links exist between interest groups and regulatory agencies (remember from the bureaucracy chapter?). Groups monitor and report on laws and the expertise of the lobbyists is often needed by various agencies as well.

**Lobbying the Courts**

Many court cases are either sponsored by an interest group or an interest group will submit a friend of the court brief to lobby the courts. Interest groups also attempt to influence judicial appointments aiming for judges who might be sympathetic to their issues.

**Grassroots Lobbying and Protest Activities**

Interest groups also mobilize individuals at the grassroots through door-to-door campaigns or petition drives. Fax campaigns and Internet lobbying are also becoming popular. The goal is to get constituents to argue your case for you. They are often quite influential.

The Civil Rights Movement used non-violent protest to excellent effect and others have used more violent forms of protest to draw attention to problems. This has been an American tradition since the Boston Tea Party.

**Election Activities**

Interest groups can also have an effect by electioneering such as:

- Endorsements
• Rating the Candidates or Office Holders
• Creating Political Parties
• Get out the vote campaigns
• Giving money
• Creating political parties

**Interest Groups and Political Action Committees (PACs)**

Since the 1970s, most interest groups have formed PACs. A PAC is a political arm for a business, labor, trade, professional, or other group legally authorized to raise funds on a voluntary basis from employees or members to contribute to a party or candidate. PAC money plays a significant role in campaigns.

**Conclusion**

So in the final analysis, what can we say about interest groups and political parties? They are both democratic and anti-democratic, they are part of the system and hurt the system, in truth they are a paradox. Was Madison right? Does the proliferation of groups keep a balance in the system and prevent any one group from getting too powerful or has money corrupted the whole theory?

Your answers may rest on what you think of government. If you believe that government is made up of self-seeking, power and money hungry, dishonest rats—then interest groups are bad because they encourage the corruption inherent in the system. And you believe that congressmen and deputy secretaries can be bought. On the other hand, if you believe people go into government for good sound reasons like helping others or solving societal problems. And believe most are honest and have principles...then they probably can't be bought. Alternatively, you can think of it this way: Do interest group contributions change minds? Or do interest groups contribute to like minded people? Could the NRA give enough money to Jim Brady to change his pro gun control stance? I seriously doubt it. Could the Abortion Rights League give enough money to an anti-abortion congressman to change his or her vote? No. So are interest groups good, bad, or indifferent? You decide.

Should there be one, two, or multiple parties? The same types of arguments apply. Discuss the merits of each type of party system and what the costs or benefits might be for the United States.

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**Websites for Instructors**

**University of Michigan**, as well as links to congressional party leadership and platforms.

www.lib.umich.edu/libhome/Documents.center/psusp.html#party

**Third Party Central** offers links to third parties.

www.3pc.net/index.html
**Politics 1** offers links to political parties, campaign information, candidate information, and more. They also offer a free email newsletter. Their parties information is excellent including descriptions of who belongs to which wing of the major parties and all the minor parties in existence.

www.politics1.com

**Major Parties**

The **Democratic National Committee** site.
www.democrats.org/index.html

The **Republican National Committee** site.
www.rnc.org

**Third Parties**

**America First Party**
www.americafirstparty.org

The **Libertarian Party**
www.lp.org

The **Green Party**
www.greenpartyus.org

**American Association of Retired Persons (AARP)** is an interest and advocacy group devoted to the interests of those over 50.
www.aarp.org

**Interest Groups**

**American Civil Liberties Union (ACLU)** offers information on the entire Bill of Rights including racial profiling, women's rights, privacy issues, prisons, drugs, etc. Includes links to other sites dealing with the same issues.
www.aclu.org

**AFL-CIO** is the largest trade union organization in America. Its website offers policy statements, news, workplace issues, and labor strategies.
www.aflcio.org

The **U.S. Chamber of Commerce** is a business-oriented interest group whose website offers articles of interest, policy information, and membership info.
www.uschamber.org

**Common Cause**, founded by Ralph Nader, was one of the first public interest groups. It promotes responsible government.
www.commoncause.org
Mexican American Legal Defense and Education Fund (MALDEF) website offers information on Census 2000, scholarships, job opportunities, legal programs, regional offices information and more.
www.maldef.org

Native American Rights Fund (NARF) website offers profiles of issues, an archive, resources, a tribal directory, and treaty information as well as a lot of other information.
www.narf.org

The National Association for the Advancement of Colored People (NAACP) website offers information about the organization, membership, and issues of interest to proponents of civil rights. Has sections on the Supreme Court, Census 2000, the Education Summit and includes links to other websites.
www.naacp.org

The National Rifle Association (NRA) offers information on gun ownership, gun laws, and coverage of legislation on associated issues.
www.nra.org

National Organization of Women (NOW) website offers information on the organization and its issues/activities including women in the military, economic equity, reproductive rights, and so on. They offer an email action list and the ability to join NOW on-line. Also has links to related sites.
www.now.org

Public Interest Research Group (PIRG) is a public interest group that promotes issues such as the environment, anti-tobacco, and so on.
www.pirg.org

**Web Activities for Classes**

1) Congress currently has a small number of independent members. Assign students to do some research to determine whether their independent status truly makes them different from the Democrats and Republicans. What kinds of compromises must an independent member of Congress make? How about independent governors? What can this tell us about the role of parties?

2) Have students use the Internet to look up state party organizations in three states that have the potential to be different from one another (for example a Southern state, a New England state, and a Western state). Have them compare the Democratic and Republican parties from those states on a variety of indicators including issue positions, platforms, and organization. Are they different? How and Why?
3) Have students use the Web to research the Republican and Democratic stands on various issues or have them compare and contrast the platforms. Also ask them to compare the major party stands with some of the larger minor parties.

4) Find copies of the most recent national platforms for the two major parties. Compare them on a variety of issues. Then look at public opinion polls to see how the party positions correspond to those of average Americans. What do you find? Why do you think that is the case?

5) Using the Internet, have class members find polling data about the reliability of interest groups and the attitudes of the public towards them (Try Gallup Polls, Roper Polls, and Congressional Quarterly sources among others). Do the public attitudes found correlate with what you have learned about interest groups in this chapter? Why or why not?

6) Assign students to visit the Websites of a number of interest groups. What are they doing? What are their key issues and tactics? Who are their members? How many members do they have? How does this information correlate with what you have learned in this chapter?

7) Have students look for interest group polling data (this works best if you have already covered the chapter in the text on polling and political socialization). They should find examples of good and bad polling by interest groups and discuss why some groups use egregious and wrong polling methods and others do not. Ask them to speculate about how these tactics affect the interest groups relationships with Congress, the executive, the public, and the media.

8) The largest and most powerful interest group in America today is the AARP. Have students visit the AARP website. Using what they learn from the website, the text, and class lectures/discussions, have them write a paper explaining why the AARP is successful in both membership and lobbying.

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**General Class Activities and Discussion Assignments**

1) During the 1980s, the Democrats had serious problems and until Clinton had not been elected to the presidency for two consecutive terms since FDR. In 1994, the Democrats looked dead in the water and in 1999, the Republicans struggled on a variety of fronts. By 2001, the Republicans seemed to have recovered. Hold a class discussion on party decline and resurgence dealing with these and other issues.
2) Hold a discussion on the role of the national platform or, using discussion, compare and contrast the Republican and Democratic platforms.

3) Break the students into groups of 3-4 students and have them devise a new third party that they believe could have success given current political attitudes. They should choose a name, a candidate for some offices, and write up a platform of issues to present to the class. Do the groups come up with similar parties? Discuss widely.

4) Have students debate the desirability of the two-party system. You can frame it in a variety of ways: as a proposal for proportional representation; as a statement about third parties and how they show the 'bankruptcy' of the current American system; etc.

5) Have students go and visit, or you can invite to class, some local party activists. Ask them to talk to you about what they do in the party, why and how they got involved in politics, and the issues that they consider important. Does the information you learn jive with what you read in the text? Why or why not?

6) Have class members interview several lobbyists (or invite several lobbyists to talk to your class). Discuss how they see their job and what tactics work and which ones don't. What issues do they deal with and what do they offer to politicians? How do they define a successful lobbyist? After talking with the professional lobbyists, what do you think about lobbying now? Does it seem less 'unsavory'? Do the media do lobbyists justice in their coverage?

7) Assign a group project: Form an interest group. Have each group decide what issue(s) it will promote and how it would promote them. What strategies and tactics would it use? How would it attract members? How would it ensure the success of the group?

8) Have members of the class interview your member of Congress or their staff members about their views of interest groups and lobbyists (or invite them to class to discuss the issue). Have students write a paper addressing the following questions: What do they say? How much access do lobbyists actually have? How much influence? What kinds of tactics work best with Congress? Has your attitude towards lobbyists changed now that you know more about the process? Why or why not?

Possible Simulations

1) Stage a debate about the nature of the political machine in American party politics. One side will argue that machine politics were a positive force in party development, the other will argue the opposite.
2) Run a mock party caucus. Assign students to be various wings of each party and have them debate which issues should be covered in the 2004 presidential platform and how they should be covered.

3) Divide the class into party groups. Tell each group that they have the funds to run four ads as independent expenditures during the 2004 congressional campaign. Have them craft the four commercials and explain why they further the interests of their party.

4) Have the class divide into several sections. Two-thirds of the groups should be lobbyists (pro and con of a given issue) and the one-third will be lobbied. This works best if you present them with issues first, for example, one set of groups would be assigned the issue of social security reform, another set of groups, gun control legislation, a third set of groups would get campaign finance. Each is then assigned a perspective. To take only the one example (gun control): group 1 would be a congressional committee taking up the issue, group 2 would be pro gun control and group 3 is anti-gun control. It is most interesting if you give a scenario in which the answer is not cut and dried. So: after Columbine High School, Congress is beginning to deliberate about measures to keep guns out of the hands of minors. The specific legislation that the group will address is asking all gun sellers to ensure that no minors have access to weapons of any kind. This will entail a law requiring gun sellers to ID all purchasers and double check dates of birth with a federal databank. The NRA and other groups are adamantly opposed. Gun control advocates are for the measure. Congress has a lot of undecided members. After the simulation, have students write a paper about the results.

5) Have students form groups and have each group pick an interest group that they perceive to be unsuccessful. Have them discuss strategies to make the group more successful and then discuss why.

### Additional Sources


The election of 2000 started off like many others. The candidates started early, raised money, and gave speeches. Who knew it would turn out to be a truly historic election? The presidential election of 2000 was the first election in a very long time in which one candidate won the popular vote and the other won the electoral vote. It was a very messy and very partisan ordeal to determine who truly won, and to many it was not settled fairly. To others, the true winner’s victory was tarnished by the lack of one candidate’s ability to lose gracefully.

While every race is not this contested, it highlighted much of what is good and bad about the American system. The election was exciting and interesting but there was a lot of bad behavior and poor sportsmanship too. Can the 2000 election teach us anything beyond adding cool new words like *chad* to our vocabulary? Was it really that different from other elections? How might the next election go? Keep these questions in mind as we look at voting and elections.

**The Purposes Served by Elections**

Most change in this country comes about on the basis of elections. Popular elections allow us to avoid the unpleasantness of political change in some countries where riots, strikes, and coups d'état are fairly routine. Elections also serve to legitimate governments. They serve to fill public offices and organize governments. Elections allow people with different views and policy agendas to come to power. Elections also ensure that a government remains accountable to the people.

The winner of an election often claims a mandate or a command from the people to implement their agenda. Sometimes this claim is true, other times it is not. That is because people may be voting for you based on the promises of your campaign (prospective judgement), or they may have been voting against your opponent or an incumbent or a party that was in power (retrospective judgement). In the former case, you can claim a mandate; in the latter, it would be a difficult task to do so.

**Types of Elections**

**Primary Elections**

In a primary, the voters choose who will carry the party's banner in the general election. So it is an election that occurs within a party. There are several different types of primaries:

- closed primaries: only party members are allowed to vote
- open primaries: allows independents and members of other parties to vote
- blanket primary: voters may vote in either party's primary, but not both, on an office-by-office basis
runoff primary: a second round contest between the two candidates with the most votes

Closed primaries allow the party maximum control and promote party strength. Open primaries are considered more democratic since participation is open to all voters regardless of party affiliation.

**General Elections**

Once the parties have chosen their candidates, the general election is held. The general election is a contest between parties and fills a public office.

**Initiative, Referendum, and Recall**

Used in 24 states and D.C., initiative, referendum, and recall are three other types of election. Initiatives and referenda involve voting on issues. Initiatives allow citizens to propose legislation and submit it to popular vote. Each state that has initiative determines the requirements for ballot access, usually a certain number of signatures on a petition. A referendum allows the legislature to submit proposed legislation for popular approval. Some referenda are voluntary—the legislature wants to get voter input. Others are mandatory—more and more states are requiring referenda for tax increases and such.

Recall is different. Recall elections allow citizens to remove someone from office. They are very rare, but allow for another level of accountability for public officials.

All three types of elections are often referred to as direct democracy, and were first proposed during the Progressive era. They are democratic, but not problem-free. Several problems occur. First, the number of initiatives and referenda on ballots can be mind-numbing. In California, there are so many that they needed to produce a two-volume guide in order to explain them. Additional choices, particularly ones that are often poorly worded and controversial, may not be a good thing. People often vote on the basis of highly emotional campaign commercials and slogans without even reading the actual proposed initiative or referenda. Laws can end up on the books with no debate and no real understanding. Courts have struck down or stopped via injunction several initiatives on the constitutional grounds. Can you think of some other drawbacks to direct democracy? How about the benefits of these processes? Is there a clear-cut conclusion on whether these are good, bad, or indifferent?

**Presidential Elections**

Held every four years, the presidential election is the biggest and most popular of all American elections. The presidential election is actually 50 separate state elections in which delegates to each party’s national convention are allotted. Following the national conventions at which the party’s candidate and running mate are annointed are another set of 50 state elections held on the Tuesday after the first Monday in November. It is a long, exhilarating, exhausting process that often begins even before the previous election ends!

Convention delegates, selected at state primaries and caucuses from January through early summer of election year, are chosen in a variety of ways, based on rules enacted by each party:
• winner-take-all: primary win gets all delegates
• proportional representation (PR): candidates are awarded delegates according to the percentage of the vote they won provided they reached a minimum threshold (usually 15%)
• three other ways, used rarely
  1. PR with bonus delegates: awards delegates according to popular vote with a bonus delegate to each district
  2. beauty contest with separate delegates: primary gives direction as to public opinion but delegate selection is not bound by the election results
  3. delegate selection with no beauty contest: delegates are chosen by election but are not linked to any one candidate
• caucus: the oldest, most party-oriented method of choosing delegates. A caucus is usually a closed-party meeting to select delegates

The Nomination Campaign
In recent years, the trend in pre-convention contexts has been away from caucuses and toward primary elections. Primaries are often seen as more democratic because they allow and encourage a broader range of people to participate in selecting the parties' candidates for president. They measure a candidate's popularity with the rank and file, thus better approximating the candidate's likely support in the general election. And they require candidates to campaign broadly and serve as a rigorous test for the candidates.

Not everyone agrees. Critics of primaries argue that caucuses are better because participation is deliberative and thoughtful. In a primary, voters who know nothing about the candidates and who are overly swayed by 30 second sound bites cast ballots. But in a caucus, people invest several hours in meeting, discussing the election and issues, and generally offer higher quality participation than do primaries. These critics also argue that the scheduling of primaries affects their outcome and that New Hampshire's place as first primary state skews the results since New Hampshire is hardly representative of the country at large. Critics also say that primaries merely test a candidate's media appeal and skills as well as his/her stamina. A successful president needs more than stamina and media appeal to govern well.

So far, the consensus seems to favor the primaries as a vehicle for choosing presidential candidates. The debate continues as does the debate over the schedule for primaries. States are clamoring to be first in an already front-loaded primary system. In 2000, New Hampshire jealously guarded its position as first, willing even to move its primary into January 2000 or earlier if necessary. However, February 1st turned out to be early enough to remain first.

One proposal suggests regional primaries. There would be five or six regions—such as Midwest, South—and all states in the region would hold their primary on the same day. There could be one regional election each month from February through June of election year. This would cut down on candidate wear and tear. It may reduce costs by reducing travel expenses and might inspire a focus on regional issues. Though some argue the costs would remain about the same. Some argue that the system would intensify rifts among the nation's regions and thus be a poor choice.
Occasionally, a regional plan is adopted. In 1988, 14 Southern states began Super Tuesday to maximize the impact of the South on presidential politics sponsored by conservative Democrats. The plan did not work out as expected because primary voters in the Democratic Party tend to be more liberal than the rank and file even in the South. In 1996, a Yankee primary was scheduled with five New England states and New York holding primaries on the same day.

The primary season is now 'front-loaded' and the trend seems to be earlier and earlier primaries as states vie for maximum effect on the process. In 2000, 70% of all delegates were chosen before March. This has some negative effects, including a heavier emphasis on early money-raising that seems to ratchet up costs of an already outrageously expensive enterprise. Early primaries also favor front-runners who might not stand up to the scrutiny by the electorate and the media in longer contests, and might prevent the emergence of dark horse candidates.

Who are the Delegates?

Delegates are, as a whole, an unusual and unrepresentative collection of people. They tend to be keenly interested in politics and more ideologically pure than the rest of us. Democratic delegates tend to be more liberal than the rank and file and Republicans tend to be more conservative. Delegates tend to be better educated and wealthier than the average American.

The Party Conventions

The out-of-power party generally holds its convention in late July and the party-in-power holds its in August. Conventions have become four-day long media extravaganzas with few surprises and tight scripts designed to emphasize party unity and consensus. They are a huge prime-time electioneering event to kick off the general election season. Conventions used to be more deliberative and surprising than they are today. Today, they tend to ratify the choices made during the primary season.

Changes in pre-convention political processes have lessened the importance of the national convention and reduced the control of local and state party leaders on the process.

Delegate selection is no longer the province of party leaders and smoke-filled rooms. Today, it is generally done through primary elections. Plus most delegates are committed to a candidate at the convention so the deliberative nature of traditional conventions is hampered.

The mass media have also changed the nature of conventions. They provide minute-by-minute information about committed delegates and nomination politics. Their scrutiny prevents backroom dealing and forces the party to consider how it 'looks' on television. Debate within the party may look divisive and that appearance may weaken them in the public eye—so conventions have become stage-managed public relations campaigns geared to play in prime time. The ironic thing is that as the parties have tried to package their candidates and conventions for TV, TV has started to decide that the conventions have no surprises and are not as newsworthy as they once were.
The General Election Campaign

The ultimate goal for all candidates is to win the general election so they must avoid becoming too extreme during the nomination phase because that may alienate the more moderate voters in the general election.

The Personal Campaign—The candidate makes personal appearances, often with family and supporters, to meet voters, hold press conferences, and give speeches.

The Organizational Campaign—Behind the scenes, every candidate needs an organization that can write press releases, distribute literature, organize events, raise money, and contact voters. Among the many people working on this aspect of the campaign are consultants, campaign managers, finance chairs, and more. Many are paid, but the most of these workers are volunteers.

The Media Campaign—All campaigns use media whether paid or free, print or electronic. Paid media are television and radio commercials extolling the candidate's virtues or the opponent's vices. Free media is coverage on the news or press. The campaign tries to attract lots of free media, but only positive free media, so they often try to 'spin' or influence the coverage.

The Electoral College: How Presidents Are Elected

The object of the presidential election is to win a majority in the Electoral College. This is a unique institution created by the Framers to ensure that the president was chosen intelligently and with the input of the states. Like most decisions at the Constitutional Convention, the Electoral College is the result of compromise. In this case, it is compromise between those who wanted direct popular election of the president and those who wanted Congress to choose the president. Electors were to be men of character with a solid knowledge of national politics who would choose a prominent national statesman for president, not a mere politician. The Framers designed the Electoral College to work without political parties, to cover both the nomination and general election phase of the president's selection, and it was constructed to choose a nonpartisan statesman-like president.

The election of 1800 revealed a serious flaw in the method of choosing a president. The original method led to a tie for the presidency between Aaron Burr and Thomas Jefferson because electors were not allowed to designate their choice of president and vice president. The Constitution says in the case of a tie, the House of Representatives chooses the president. This resulted in the 12th Amendment that provides for separate elections for president and VP.

The number of electors is determined by the federal representation for each state. For example, California has 53 members of the House of Representatives and 2 Senators—54 electoral votes. Ohio has 18 Representatives and 2 Senators—21 electoral votes. Delaware has one Representative and 2 Senators—3 electoral votes. This is what you see on election night on TV. The anchors are reporting state electoral votes. There are a total of 538 electoral votes (535 members of Congress and 3 for the District of Columbia), a majority of 270 wins the presidency.
Despite the 12th Amendment, the process is still not perfect. Third parties could potentially throw the election into the House of Representatives. A candidate could win a majority of electoral votes, but a minority of popular votes as happened in election 2000. Given that most Americans are unaware of the role of the Electoral College, either of these could be quite unpopular occurrences and election 2000 was definitely unpopular in some circles because of the contested nature of the win.

Throughout the 2000 presidential campaign, pundits warned that it was likely to be the closest since the 1960 Kennedy – Nixon election. Few realized that it would take 5 weeks for a winner to be declared or that the entire election would come down to the state of Florida and a decision by the U.S. Supreme Court.

There have been calls for Electoral College reforms before. A bill is introduced in almost every session of Congress calling for its abolition, but it never passes. Given the hotly contested 2000 election, calls for change may gain strength. There are three basic reform ideas:

**Abolish the EC:** 2000 was the 4th election in which a president was elected without a popular majority. Many believe the EC is archaic and anti democratic and the U.S. should have a popularly elected president. This is unlikely given the process by which it would have to occur…the House and Senate would have to pass an amendment or the state legislatures could do it. Neither is a likely occurrence.

**Congressional District Plan:** Each candidate would get one electoral vote for every congressional district he or she wins in a state. The winner of the popular vote in the state would get two bonus votes (remember, the number of electors is determined by adding up federal representation so House districts get one, and there are two Senators). Maine and Nebraska currently do this and it would not take a constitutional amendment to implement. It would change the winner take all nature of the EC and thus make sure that popular majorities elect the president.

There are some drawbacks. First, it could further cause candidates to focus on a few competitive districts and ignore huge swaths of the country; it might further politicize the redistricting process following the census, it would dilute state power, which would not be popular in large states; and it would have to be adopted state-by-state meaning a patchwork quilt of differing laws for years.

**Keep the College, Abolish the Electors:** No longer designating actual electors would remove the problem of “faithless electors” those who change their votes on the day they are supposed to cast them. But this is a rare problem and wouldn’t solve the real problems of the system.

**Patterns of Presidential Elections**

**Party Realignments**

A party realignment is a rare occurrence in which existing party affiliations change dramatically and the change lasts over several election cycles. Until recently, such changes in party support occurred about 36 years apart. A major realignment is ushered in by a critical election that polarizes or challenges voters to reconsider their party attachments. Sometimes a war, economic crisis, or other such event precipitates a realignment. Sometimes a realignment occurs due to a mobilization of new voters or existing voters may be converted from one party to another on the basis of issues or
candidates. Recent research suggests that party affiliation may be in a continual state of flux and some voters are highly responsive to individual candidates and issues. That would make realignments simply an extreme case or change in party loyalties.

Secular Realignment
The gradual shifting of party coalitions is often called secular realignment. In recent years with increases in ticket-splitting, partisan independence, and voter volatility, it is difficult to determine in what direction party support is going and who might come out a winner. The system remains quite fluid.

Congressional Elections
Congressional elections differ from presidential elections because:

- congressional candidates tend to labor in obscurity
- the vast majority of candidates are little known state legislators
- name recognition is often the most important battle of the campaign
- they receive little media coverage

The Incumbency Advantage
Incumbency, the condition of already being in the office, is often an electoral advantage because

- incumbents have:
  - taxpayer funds that can enhance their profiles and prospects
  - $750,000 to run an office in the House
  - the franking privilege—free mass mailings
  - constituency service—helping constituents unravel red tape
- they are highly visible in the district
- easy access to local media
- speak frequently at events and meetings

In the House, reelection rates for incumbents are above 90% in most years.

Scandals, Coattails, and Midterm Elections
Of those few in the House who lose reelection bids most due so because of redistricting, scandals, and coattails. Every 10 years the Census counts the people of the United States, and the House is then redistricted according to the population shifts so that each legislator represents approximately the same number of people. State legislatures redraw the districts (though sometimes courts do it if the legislatures did it poorly). The party that controls the state legislature tries to gain political advantage in the redistricting process but if the process is too political, it is called gerrymandering and that is when courts often end up drawing new boundaries. Sometimes an incumbent ends up in the same district as another incumbent, in some cases the new district may have a different partisan make up, and sometimes the redistricting is unfavorable in other ways.

Scandals can also defeat incumbents. Some have been bribery, other monetary crimes, personal impropriety (sex scandals), and conflicts of interest.
Incumbents can also lose if a successful presidential candidate pulls his party along on his coattails. However, the coattail effect seems to be weakening in modern times.

In 2000, the census was taken again. This means for the next several years, state legislatures will be battling over the redrawing of district lines. The courts also tend to get involved if too much gerrymandering occurs.

An off-year election occurs in the middle of a presidential term, hence the synonym 'mid-term elections.' In off-year elections, it is incumbents in the president's party who are at risk of losing. The president's party often loses seats in off-year elections.

The 2002 election bucked the conventional wisdom. The incumbent president’s party, the Republicans, won big. It was the first time since 1934 that a first term sitting president’s party gained seats in both houses of Congress at midterm.

How can we explain that result? Some possible factors include: President George W. Bush did huge amounts of campaigning in key battleground states, Bush and VP Cheney raised over $141 million for the party and Republican candidates, the war on terrorism and the media coverage of impending war on Iraq gave the president’s party large amounts of free media time, the D.C. sniper dominated the news for weeks, thus squeezing out other news, and all of these things meant the Democrats had a very hard time getting the word out about their issues: a weak economy, corporate scandals, and other domestic issues.

Modern Campaign Challenges

The High Cost of Campaigns

Campaigns are VERY expensive. In 2000, George W. Bush spent over $193 million and Al Gore spent over $132.8 million to run for the presidency. House races can cost over $1 million. Democratic incumbents spent, on average, $670,000 in 2000. Republican incumbents spent an average of $782,000. Challengers spent an average $50,000. In 1992, the average cost of a House campaign was $750,000. In races for an open seat, spending by both sides is significantly higher. Senate races, on average, cost $8 million in 2002. The North Carolina Senate seat, for which there was no incumbent, was the most expensive race. Elizabeth Dole and Erskine Bowles spent $26 million.

Sources of Campaign Financing

Public Funds—Only presidential candidates are eligible for public funds (monies coming from tax revenues). Once a major party candidate has raised $5,000 in individual contributions of $250 or less in 20 states, he or she becomes eligible for federal matching funds. The government will match whatever money you raise in increments up to $251. This money comes from a check-off box on your taxes where you designate $3 to go to the campaign fund (fewer than 20% of Americans do this). For the general election, each candidate gets a lump sum payment ($62 million in 1996) and they are limited to spending this amount. Third party candidates receive smaller amounts proportional to their vote total in the last presidential election as long as they broke the threshold of 5% of the vote. They only get their federal funds after the general election, though.
Individual Contributions—Donations from private citizens can be up to $2,000 per election, per candidate (so $4,000 to a single candidate from primary and general elections). Individuals may give a total of $95,000 in gifts to all candidates in a 2 year election cycle. Very few Americans donate in excess of $200 (0.3% of all Americans, and only 0.12% give more than $1,000).

PAC Contributions—PACs give a substantial amount of money. But most PAC money comes from a small number of political action committees.

Member to Candidate Contributions—Individual donations or through personal PACs, some members give to other members. Secure incumbents often will donate to the party’s needy members.

Candidate’s Personal Contributions—The candidates themselves or their families may donate to the campaign and there is no limit. Spending one’s own money has been deemed free speech by the Court in Buckley v. Valeo.

Political Parties—The Democratic and Republican Parties also give money, both soft and hard money.

Independent Expenditures and Soft Money—Individuals, parties, and PACs may spend an unlimited amount of money directly advocating the election or defeat of a candidate as long as the spending is ‘independent’ of the campaign itself. This is also deemed free speech. Hard money is overseen by the FEC; soft money, on the other hand, is not subject to regulation. Hard money directly influences electioneering, soft money does not. But that is a slippery slope! Soft money ads can’t say ‘vote for’ or ‘vote against’ but the impact can be the same.

Campaign Finance Reform

The elections of 2004 will be interesting as they will be the first run under the new rules. No one knows what the impact will be. Some argue that since Republicans are better at raising hard money, the law will benefit Republicans. Others argue that the law strengthens the media and since the media supposedly tend to be liberal, it will benefit the Democrats. Most analysts agree that it will benefit incumbents who rely less on party monies and can raise significant hard money on their own.

In addition, who knows which provisions will stand up to court tests already under way. Several lawsuits have been filed on the basis that limits on soft money abridge people’s first amendment rights.

The Internet may change campaign finance quite radically. The cost of raising money on the Internet is much lower than direct mail or pricey fundraising events. John McCain raised more than $5 million on the Internet in 2000.

However, websites tend to be passive and so the initiative to give would have to come from the individual who would take the time to search out a website and then contribute. In addition, there is no personal touch, but that can also be said of mass mailings regardless of whether our names are plugged into a mail merge or not, so it may
not be highly effective. There are push strategies such as sending mass emails or advertising the URL of the website that make the medium less passive.

And the FEC has to come up with new rules for this new medium. For example: Is maintaining a website an in-kind contribution? And how does the FEC value that contribution?

**Voting Behavior**

**Participation**

Turnout refers to the proportion of the voting age public that actually votes. About 40% of the eligible adult population votes regularly, 25% are occasional voters, and 35% rarely or never vote. So who votes?

**Income**—people with higher incomes have a higher tendency to vote. In part this is because income and education are correlated and people with more income tend to have more education. Plus wealthier citizens are more likely to think the system works for them and that their votes make a difference. Lower income citizens are often alienated from politics and are apathetic.

**Age**—older people tend to vote more often. Less than half of eligible 18-24 year olds are even registered to vote.

**Gender**—women have had the vote since 1920. Since 1980, there has been talk of a gender gap. This means that women have a higher tendency to vote for Democrats than Republicans. The size varies election to election but is usually around 5-7%.

**Race**—in general, whites tend to vote more regularly than African Americans, though this may be due to income and education not race. However, middle class and wealthy African Americans are also less likely to vote. In general, African Americans tend to vote Democratic though that is becoming less true of late. Hispanic Americans tend to vote Democratic except for those of Cuban heritage, who vote Republican. Asian Americans have considerably more diversity in their voting choices. For example, Chinese Americans tend to vote Democratic, but Vietnamese Americans tend to vote Republican.

**Interest in Politics**—people who are interested in politics tend to vote more often than those who are not. This may be socialization—they came from politically active and interested families or related to other socio-economic factors. Only a small number of Americans, about 5%, are highly active politically and participate in more time-consuming and costly ways than simply voting.
Why is Voter Turnout So Low?

Voter turnout is low—and is the lowest in the industrialized world—for a variety of reasons:

**Too Busy**—according to the U.S. Census Bureau, 21% of Americans said they didn’t vote because they were too busy or had schedule conflicts.

**Difficulty of Registration**—in the U.S. the individual must take the initiative and make an effort to register to vote. In many countries, it is automatic or the government does it for you.

**Difficulty of Absentee Voting**—absentee ballots are often difficult to get in the U.S. Many states require that you apply in person, but then, why would you need an absentee ballot?

**Number of Elections**—the number and frequency of elections in this country may also contribute to low turnout. People just burn out on all the choices: township, city, county, school board, state, and national elections as many as three branches of government, and a variety of other posts.

**Voter Attitudes**—voting is not compulsory here. Some voters may choose not to vote because they are alienated, others because they do not like any candidate, and others because they see no difference among the choices offered.

**Weak Political Parties**—political parties today do not mobilize voters as well as they once did. Today's campaigns are more candidate-centered.

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**Websites for Instructors**

The Brookings Institution's Campaign Finance Web Page
www.brookings.org/GS/cf_hp.htm

C-Span shows up-to-date information about the workings of Congress and includes information on elections.
www.c-span.org

CQ's American Voter is a new service by Congressional Quarterly that focuses on Congress and elections.
voter.cq.com/

Campaigns and Elections magazine's website is oriented toward campaign professionals but is also useful to teachers and students. It offers articles, their tables of contents from the print version, job opportunities, and more.
www.campaignline.com or www.camelect.com
The Center for Responsive Politics site documents the money raised and spent by congressional candidates, individual donors, and PACs. It includes information on large soft money donations and the financial disclosure reports of members of Congress.

www.crp.org

The Citizens' Research Foundation on the history of campaign finance reform since 1971. The site includes court orders and decisions, reform legislation, ballot initiatives on campaign finance reform, and the full text of Comparative Political Finance Among the Democracies.

www.igs.berkeley.edu:8800/research-programs/crf

Common Cause offers information on soft money donations, PAC contributions, and voting records on campaign finance issues as well as other information.

www.commoncause.org

The Democracy Project of PBS offers a website called "Dissect the Ad" that features a changing set of campaign ads that visitors are asked to criticize, dissect, and discuss. The point is to determine how the message is constructed—what images, tones, music, etc and how it is designed to sway us. There are numerous current and past ads on which to practice from all ends of the political spectrum. You can read the content of the ads or, by downloading a player, you can view them. Following each ad are commentaries on both sides discussing the ad and you get the chance to post your comments if you are so inclined and read the comments of others. It's fun!

www.pbs.org/pov/ad/

Democratic Congressional Campaign Committee - DCCC

www.dccc.org/

Democratic Senatorial Campaign Committee-DSCC

www.dssc.org

The Federal Election Commission (FEC) website offers campaign finance information, a citizens' guide to political contributions, news and information about elections and voting. Includes data about state regulations on voting (registration and residency rules etc.) as well as elections data from a variety of elections.

www.fec.gov

Federal Election Commission website on campaign finance laws.

www.fec.gov/pages/fecfeca.htm

The National Election Studies are a key source of data on voting behavior.

www.umich.edu/~nes

National Republican Congressional Committee-NRCC

www.nrcc.org/
National Republican Senatorial Committee-NRSC
www.nrsc.org

OpenSecrets.org is the website of the Center for Responsive Politics and offers lots of information about campaign finance and other political issues. The site won a 2002 “Webby” award for best politics site on the web.
www.opensecrets.org

Project Vote-Smart is a nonpartisan information service funded by members and nonpartisan foundations. It offers "a wealth of facts on your political leaders, including biographies and addresses, issue positions, voting records, campaign finances, evaluations by special interests." It also offers 'CongressTrack' a way for citizens to track the status of legislation, members & committees, sponsors, voting records, clear descriptions, full text, and weekly floor schedules. As well as access to information on elections, federal & state governments, the issues, and politics. Includes thousands of links to the most important sites on the Internet.
www.vote-smart.org/

The Public Campaign offers articles on campaign finance reform at the state and national levels as well as numerous links.
www.publiccampaign.org

Rock-the-Vote is an organization dedicated to getting young people involved in politics.
www.rockthevote.org/

The U.S. Census Bureau has information on voter registration and turnout statistics.
www.census.gov/population/www/socdemo/voting.html

U.S. News and World Report has articles on campaign finance reform.
www.usnews.com/usnews/wash/8camhigh.htm

University of Michigan Library has a great set of political science resources, including lots of elections links at:
www.lib.umich.edu/govdocs/psusp.html

The Washington Post reports on campaign finance.
www.washingtonpost.com/wp-srv/politics/special/campfin/campfin.htm

Web Activities for Classes

1) Have students look at several sources discussing the Electoral College (there are many on the Web). What reforms have been proposed? How useful is the Electoral College now? Would you advocate a different approach? What is the impact of the 2000 election in which one candidate, George W. Bush, won the
Electoral College but not the popular vote? Hold a debate in class on the merits of the various routes to reform.

2) Citizens ages 18 to 24 are the least likely to vote. Have students search the Web and find sites that they find appealing and persuasive and other sites that "turn them off" to politics. Hold a class discussion of why certain sites engage them and others don't and how politicians can hope to connect with their generation.

3) Have students do research on how campaigns are financed, in the United States and abroad, as well as proposals to "fix" campaign financing. Have them discuss whether the passage of the McCain/Feingold reform has, or will, work to address the problems of financing campaigns. Hold a discussion on what they find.

4) Have students identify and analyze the appeal of each of the possible political contenders for the 2004 presidential election on the Web. Which websites are best? To whom do they address their messages, and why? What are their messages? and so on.

5) Have students search the Internet and find a cache of campaign commercials and free media coverage of one of the last few elections. They should: Compare tactics, strategies, and content of the ads. How would you classify them? How effective is each ad? To whom are they targeted? Discuss what these ads tell you about the political process and the candidates.

6) Have students use the Web to research the current campaign finance laws and the reform proposals that have been discussed. Have them devise a reform plan of their own. And consider how they would sell it to the people, the incumbents in the House and Senate, the president, and other interested parties.

7) Have students go to Campaigns and Elections magazine on the Web. Each student should choose two issues that have not been covered in class on campaigning and write a short paper or do a short oral presentation.

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**General Class Activities and Discussion Assignments**

1) Hold a class discussion on the following: What impact could regional primaries and front loading have on the process of nominating the president?

2) Many reform proposals argue that the U.S. should adopt proportional representation. In this method of election, voters choose a party list as opposed to an individual candidate. This method strengthens parties and tends to increase voter turnout and the number of parties in the political system. Among those countries that use PR are: Holland, Poland, and others. Have students research the nature of PR, and how it might work in the United States.
3) Some theorists argue that low voter turnout is due to electoral rules, frequency of elections, and other causes. Hold a class discussion of how you would change these impediments to voting and the impact of increased voter turnout on the electoral process. And is that a good thing?

4) Hold a class discussion on the proposal to have five regional primaries with order determined by lottery. What are the costs and benefits of this method? What problems does the reform address and what new ones might crop up if it is adopted? If time, discuss the following: How else might you change the primary system? Consider the issue of campaign finance (shorter primary seasons cost less), the ideal of democracy (competition is good and everyone should have a fair chance to win), the way the media tend to cover elections, and other issues.


6) Hold a discussion on independent expenditures. What are the constitutional issues and concerns surrounding them. In particular, have students find information on Mitch McConnell’s challenge to the new campaign finance laws. What is the likelihood such challenges will prevail?

7) Hold a discussion on candidate debates. How effective are they? Are they truly debates? How might they be changed to make them more effective and useful?

8) Discuss the following: Can the press be 'handled'? Does 'spin' work? How do the media cover political campaigns?

9) You could have students watch “The West Wing” or tape an episode that deals with campaigning and play it in class. Have them talk about how realistic it is and what effects of incumbency or spin they might see in the episode.

10) Have students read and analyze the Congressional Record of debates surrounding McCain-Feingold and its reemergence as the Bipartisan Campaign Finance Reform Act. Discuss the motivations of the major players: incumbency, partisanship, personal fundraising experiences, party experiences, and so on.

11) Stage a debate on negative advertising and campaign ethics.

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**Possible Simulations**

1) Run a party convention in class. Nominate candidates, write a platform, and deal with media coverage of the event. Compare various methods of running a party convention and discuss which ones work 'best.'
2) Puerto Rico (or a fictitious entity) becomes the 51st state. Have the class debate what type of primary election system they would like to have. Assign sides for the debate (Democratic pro-caucus, Democratic pro-open primary, Republican pro-closed primary, and so on). Afterward, hold a discussion on why the choices were made.

3) Revisit the 2000 presidential election. Have students role play the various stages from the Florida courts to the U.S. Supreme Court. Then discuss what happened from an institutional and a partisan perspective.

4) As a class project, run someone (or several people) for Congress. Call both local political parties and ask for copies of their grassroots electioneering materials or candidate training course materials. Using those materials, write up a campaign plan for a candidate for the House or Senate. Be sure you can explain why you choose your tactics and strategies.

5) As a class project, run someone (or several people) for the presidency. Begin with the primary season to choose the parties' nominees, then square off a Republican, a Democrat, and if you like, a third party candidate. Have a plan for media, fund raising, scheduling and travel, get out the vote, and other aspects of the campaign.

6) Stage a candidate debate. Meet in groups to determine what the format of the debate should be, who should be allowed to participate, and where the debates will be held. Each group should prepare their candidate to 'perform well' in the debate. Choose a strategy and a message for your campaign. What tactics, etc. will help you win the debate?

7) If you have already done the Court and want to integrate two sections of the course: Assign Supreme Court roles and two teams of lawyers (pro and con). Stage an oral argument on the merits of the new campaign finance law.

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**Additional Sources**


Public policy is “an intentional course of action followed by the government in dealing with a problem or matter of concern.” Policies are laws and if you don’t follow the policies, you can be sanctioned in various ways, ranging from fines to jail time. In this section of the course, we will look at social and economic policy.

**The Policy Making Process**

Public policy is the way that government deals with problems and concerns. They are laws or regulations that are authoritative and binding. It is important to remember that policy is a process not a point in time. Policy begins with an idea, moves through a number of stages, becomes a law by passing Congress and the president, then the bureaucracy implements and interprets it, sometimes the courts get a shot at that as well....and all the time policy is shifting. Laws are amended, executive orders are issued, the bureaucracy chooses to enforce or not, and so on. The best example to which we can all relate is the speed limit. A speed limit is set by law. But are you going to be stopped? Let's say the law says 55 mph. If you are travelling down Interstate 15 in Nevada miles from nowhere, is a state policeman going to ticket you for going 65? Probably not. If you are going down the same road inside the Las Vegas city limits, are you going to get a ticket? Probably. Police use administrative discretion to determine whether to stop you. Sometimes there is a decision rule—in x state we will only stop speeders if the speeder is going 5 or more mph over the speed limit. In other places, there may be zero tolerance. The rules depend upon a lot of factors such as manpower, danger to people (hence more strict enforcement in the city), common sense, road conditions, and many more.

We are going to discuss one of many models of the process by which policy is shaped. Because this is a model, it is a simplified version of reality. It is useful to think of policy making this way, but usually it is much more complicated than this model would lead us to believe.

**Problem Recognition and Definition**

The first stage of the policymaking process is the recognition of a problem and its definition. Not all problems are, or should be, the purview of government. However, these lines change all the time. In 1920, the federal government thought it should have no role in income security, the alleviation of poverty, and health care. By 1934, that idea had radically changed. So just because something is not a relevant problem today does not mean that it will never be a problem that could be addressed by public policy.

For the purposes of this model, a problem must be something that the government can remedy, fix, ameliorate, or affect. A government cannot prevent a flood or earthquake (at least not totally) but it can address the damage from a flood or earthquake and establish policies about building in flood and earthquake prone areas.
Enter politics. Not everyone will agree that there is a problem or on the definition of that problem, let alone how to address it. Here is where some really interesting political struggles occur. Individuals, political parties, interest groups, members of Congress, members of various executive agencies, and many more discuss, argue, and debate the 'problem' in a variety of venues, from Sunday morning talk shows to town hall meetings to administrative hearings to congressional testimony and beyond. Probably the KEY struggle is the struggle to define the problem. The book highlights this with the example of transportation for the disabled. If the problem were defined as access to transportation then there were several acceptable solutions. Special access van service is an example. If, however, the problem is defined as a civil right, then the only acceptable solution is full access to all public transport. The difference is huge, particularly in terms of cost. Neither solution is cheap, but outfitting every bus, train, plane, taxi, trolley, and so on for disabled use is a huge and expensive undertaking. The Americans with Disabilities Act mandates just that.

It is also important to remember that public policies can also cause problems. For example, many people think that gun control is a solution to gun violence, while others see gun control itself as a problem.

**Agenda Setting**

Once a problem is defined, it needs to be put on the agenda for consideration. There are two basic kinds of agenda:

- **systemic agenda**—a discussion agenda of all issues that are seen as meriting public attention.
- **governmental or institutional agenda**—only problems to which legislators or public officials feel obliged to devote serious time and attention.

**Getting on the Congressional Agenda**

For our purposes, the agenda that everyone wants to be on is that of Congress. There are many ways to get on the congressional agenda. First, the president sets agenda priorities in the State of the Union address, the budget, and special messages throughout his administration. In this way, the president presents Congress with a legislative program for its consideration. Of course, the president does not always win and Congress does not always respond to his agenda items in the way he might wish. Second, interest groups and lobbyists help to shape the congressional agenda through their efforts. Third, events may dictate an agenda item, such as flooding in the Midwest, mine explosions, nuclear accidents, or earthquakes. The news media may force an item onto the agenda such as hunger in Somalia, ethnic cleansing in Bosnia, or the Rwandan genocide. However, the media are usually more important in developing and sustaining interest in a problem than in identifying those issues. Private citizens may bring issues to the attention of Congress as John Walsh did when his son was abducted (he is now the host of *America's Most Wanted*). Some legislators are elected on the basis of issues they want to strive to get on the agenda such as gun control, environmental issues, poverty relief, tax reform, a balanced budget, and many more. And lastly, political changes may contribute to agenda setting. LBJ and Reagan both won elections that changed the political face of the country. LBJ brought in a Democratic majority for programs designed to eliminate poverty. Reagan's conservative revolution changed the popular
notion that government was a force for good. After Reagan, the conventional wisdom became that government was bad and not to be trusted.

It is important to remember that Congress has limited time and attention. Many worthy agenda items are always competing at any one time. So it is crucially important to skillfully guide issues onto the agenda if you want congressional action.

**Policy Formulation**

Policy formulation is the crafting of appropriate and acceptable courses of action to ameliorate or resolve a public problem. Basically, a wide variety of political actors try to come up with suggestions about how to approach a problem. The possible solutions may be similar to those tried in the past or entirely new and creative. In the formulation of policy, all groups must consider what is politically and technically feasible, as well as optimal solutions.

**Policy Adoption**

Policy adoption is the making of a law or laws that gives the policy legal force. Remember how a bill becomes a law? The process of policy adoption is a complicated and messy one that virtually assures compromise on a variety of fronts in order to achieve success. In addition, laws often are written in very vague ways to ensure that they offend no one and will pass. Negotiation, bargaining, and compromise are the hallmarks of any legislation. Often, policy promoters decide that it would be technically or politically impossible to get the ideal policy passed, and so they try for a smaller part. Much legislation is incremental in this way. And still many bills die.

**Budgeting**

In order to be carried out, a policy must have a budget. Whether a policy is well or poorly funded has a significant effect on its scope, impact, and effectiveness. Sometimes, policies are not funded or so underfunded that they cannot function.

**Policy Implementation**

Policy implementation is how policies are carried out. Most policies are implemented by administrative agencies. They may use a number of techniques to implement policies, including:

- authoritative techniques—rules and standards are enforced through sanctions such as fines, jail time, revocation of funding, etc.
- incentive techniques—policies are enforced and encouraged through positive sanctions such as tax deductions to encourage charitable giving, subsidies for farmers, and so on.
- capacity techniques—provide people with information, education, training, or resources that will enable them to undertake desired activities such as job training, reliable interest rate information, truth in advertising rules, etc.
- hortatory techniques—try to enforce policy by appealing to people's best instincts. Slogans like "Give a Hoot, Don't Pollute," "Only YOU can prevent forest fires," and so on.
The ability of an agency to adequately administer public policies has a lot to do with whether it can use the appropriate technique, adequacy of funding, political support, and the will and skill of agency personnel.

Policy Evaluation

Policy evaluation is a way of determining whether a policy is working and whether it is being adequately administered. Some evaluation is based on anecdotal evidence (stories from a few people that make their way to the ears of an evaluator), some on political considerations (if it's popular, it must be good), and some evaluation is built on good solid facts and thorough analysis.

Evaluation is undertaken by many players, often each with different political or other goals. The demise of a program is rare though, usually troubled programs are modified or amended or allowed to limp along.

Social Welfare Policy

Social welfare policy covers a broad swath of issues from public education to food stamps. Many people seem to think that 'welfare programs' only benefit the poor and are 'handouts.' This is simply not true. There are many welfare programs that are targeted toward the middle class (think of the mortgage interest deduction), for all groups of people (unemployment could hit any of us at any time), toward a specific age group (the elderly and social security and education for the young). However, even though many of these programs are targeted to a group or segment of the population, they often benefit us all.

Who benefits from food stamps? Is it simply the people receiving the food stamps? No. They are primary beneficiaries, of course, but think a little more deeply—who else benefits? Farmers get higher prices for their crops, grocery stores make more profits and hire more help, food processors have increased business, trucking companies to haul the food to stores, and so on and so on. The same is true of most other benefit programs, not only do their benefits help people but they are actually more far reaching than one might initially think. Education is another program that benefits society as a whole. Think for a moment, what would this country look like if no one had an education? Even if you do not have children, education is a benefit. How does it benefit everyone?

There are compelling moral and national security arguments as well. For example, did you know that the school lunch program was started because young men drafted for the Korean War were often deemed unfit for service because they were poorly nourished? The government initiated school lunches to protect national security—to ensure that all young men would be fit to serve in the armed forces in time of war. Morally speaking, most of us give to charities of some kind. Ideologically, we debate whether the public or private arena does a better job of taking care of the less fortunate, but few argue that we, as a rich society, should do something.

I hope that today you come away with several basic ideas about social welfare policies: 1) what kinds of policies does the U.S. have 2) a deeper understanding of why we have those policies and who truly benefits from them. (Those are just the academic arguments) 3) Think about the moral and other types of reasons that we have such programs as well.
The Roots of Social Welfare Policy

The Great Depression of the 1930s revealed that state governments and private charities could not provide economic security for the majority of the population. The programs we currently have that are thought of as social welfare, generally date from these years and this crisis.

Income Security

In 1934, only 28 states had assistance programs for the elderly and many of them were closed due to lack of funds. The 10 states that had functioning programs paid pensions of less than $10 per month (ranging from 69 cents to $4.50). The Great Depression and massive unemployment meant that many people were destitute, and the elderly were particularly hard hit because their families and private charities no longer had the ability to help them out. There was also no unemployment insurance or other programs for the needy.

The Roosevelt administration began to design programs to help the needy, and established the Committee on Economic Security to make recommendations. Most of its proposals were later endorsed by the president and enacted by Congress in 1935, as the Social Security Act.

The Social Security Act made the government the major contributor to income security. Three programs were created out of this act: 1) old age insurance (what we now call Social Security); 2) public assistance for the needy, aged, blind, and families with dependent children (the disabled were added later); and 3) unemployment insurance. There have been modifications since that time, but the basic programs remain intact.

National Health Insurance

In late 1945, Harry S Truman again put national health insurance on the policy agenda. Initial public reaction was quite positive—58% approved of the idea. The AMA was still opposed, as were drug companies, private insurance companies, and conservatives. The opposition managed to invoke the spectre of Communism and equated health insurance with 'socialized medicine,' and given that the ‘Red Scare' was sweeping the country, the proposal died.

The idea did not die. In 1958, Democrats in Congress proposed health care for the elderly and by 1964 got it passed and the program became known as Medicare. At the committee stage of the process, the chair of the Ways and Means Committee added provisions to cover the poor (Medicaid), and the bill passed. We'll come back to these programs in a bit.

Other federal programs also work on public health issues: the surgeon general, U.S. Public Health Service, the Centers for Disease Control and Prevention, the National Cancer Institute, and the Department of Health and Human Services, to name just a few. Medical research funding has been, and remains, quite popular. Congress often increases presidential budget requests for such appropriations. But in 1993, a Clinton administration proposal to enact national health insurance failed with the same basic opponents as the attempt by Truman in 1945.
Public Education
While public education has mainly been a state power (remember federalism?), the national government has been involved in public education since the passage of the Northwest Ordinance in 1785.
More recently, the GI Bill transformed public education in America. Prior to WWII, few people went to college. But the GI Bill allowed millions of WWII veterans to go to college by providing funds. Pell grants help poor students pay for college. Federally guaranteed student loans, and other programs also help a larger number of people than ever before afford higher education.
The national government has also been involved in the national standards movement and many of the new testing requirements as well. While federal funding for education is less than 10% of education spending, federal interest and intervention in the schools seems to be increasing.

Social Welfare Policies Today
Now that we know a little about how policy is made, let's turn again to social welfare policies. In particular, we are going to talk about three areas of social welfare policy: income security, health care, and public education.

Income Security
Income security programs are supposed to protect people against loss of income due to retirement, disability, unemployment, or death of the family breadwinner. Thanks to these programs, cases of total deprivation are now rare but many people cannot afford themselves or their families a decent standard of living. However, even with these programs many families still struggle to survive and never manage to dig their way out of poverty.
The official poverty line for a family of four in 2001 was $18,267 a year. That is about $8.75 an hour if working full time. Income security programs are intended to help people below, at, or near this poverty level.
There are two kinds of income security program: non-means based and means-tested programs. Non-means-based programs provide cash assistance to any qualified beneficiary. Social security is this type of program. Means-tested programs require that beneficiaries first meet certain tests such as falling below a certain income level. Food stamps are such a program.

Social Insurance: Non-Means-Based Programs
Old Age, Survivors, and Disability Insurance—provides benefits to retired workers, survivors of covered workers (spouse, children), and the permanently disabled. This is usually referred to as Social Security. It is not a pension program but a system in which current workers pay taxes that support current retirees. A payroll tax of 7.65% on the first $84,900 of wages or salaries is paid by the employee and matched by the employer is paid into the Social Security Trust Fund in 2002. Social Security is considered a regressive tax because the burden hits the poorer groups hardest. People making over $62,700 do not pay these taxes on amounts they earn above that figure. Nor is Social Security tax paid on non-wage, non-salary income like dividends.
Social Security is the primary source of income for many retired people. In 2002, the average social security benefit was $874 and the maximum benefit was $1,660 per month. This is enough to keep many elderly people out of poverty but it's not a lot of money. It was never intended to be viewed as a pension and was not supposed to be the primary source of income for most people. Social Security was originally envisioned as supplemental retirement income! This is not how it is viewed today, but that is changing. Congress recently removed the limit on how much a retired person could make in income. Now there is no limit on earnings for those over 65 who receive Social Security.

People live longer lives now than 50 years ago and the number of retirees is growing while the number of working people is shrinking. These demographics mean that Social Security is in trouble. More than 40 million people, including 3 million permanently disabled people receive benefits making Social Security the largest entitlement program offered by the federal government. What to do about it continues to be a huge political hot potato.

**Unemployment Insurance**—Financed by an employer paid payroll tax, unemployment insurance pays benefits to covered workers who are unemployed through no fault of their own for example those laid off in a recession. It does not cover those who have been fired or quit or who are willing and able to work but refuse to do so. The program is run by the states and benefits and eligibility vary dramatically. In 2002 the weekly benefit ranged from $167 in Alabama to $401 in Arizona. Nationwide, only half of the people counted as unemployed receive benefits.

**Social Insurance: Means-Tested Programs**

**Supplementary Security Income**—SSI began as a grant to help the needy, aged, or blind. To be eligible, one must have very few possessions (in other words, be truly poor and have no real assets). In 1997, monthly payments were $360. The federal government pays most of the bill but many states supplement the federal benefits.

**Family and Child Support Act**—In 1950, Aid to Families with Dependent Children (AFDC) rolls were quite limited because there were few unmarried mothers in the 1930s (or at least few who were willing to admit it or accept the federal dole!) and most were considered to be widowed (again, a dubious claim). But regardless, since 1960, the number of unmarried mothers has exploded due to unwed mothers, a growing divorce rate, and the migration of the poor to cities where they are more likely to need and apply for federal benefits.

Since at least 1980, this program has generated a lot of controversy and is the program most people refer to when they say "welfare" in a negative way. Critics claim AFDC encourages poor women to have more children by paying more per child and that it encourages promiscuity because it pays regardless of marital status, thus creating a permanent underclass of dependent citizens on welfare. In reality, few 'welfare queens' exist. The average woman on AFDC is on the program for less than a year, is white, and has one child!

There have been numerous attempts to reform AFDC in many ways, including through adding education and training programs. Most recently, the 1996 Welfare Reform Act abolished AFDC as a program providing cash benefits. It was reworked as
block grants with a number of stipulations: 1) mothers of children over age 5 must work within two years of receiving benefits; 2) unmarried mothers under age 18 must live with an adult and attend school to be eligible; 3) a five year life time limit for aid was established; 4) mothers must provide information about the child's father to be eligible; 5) food stamps and SSI are cut off for illegal immigrants; 6) cash welfare benefits and food stamps are no longer given to convicted drug felons; and 7) food stamps are limited to three months for persons aged 18-50 who are not raising children or working. The results of these dramatic changes are only just beginning to be felt.

**Earned Income Tax Credit Program (EITC)**—This program was designed to help the working poor and provides an average tax credit of $1,470 to almost 19 million workers and their families. This program was designed to help encourage people to move from welfare to work. It would also help redress the regressive nature of the Social Security tax.

**Food Stamp Program**—Originally, food stamps were an effort to increase the domestic market for farm commodities. The average participant received $73 worth of stamps a month in 1996, and to qualify had to be a family of four earning less than $1,642 per month (that's $19,700 per year or about $10 per hour). Other food-based programs include nutritional assistance for women, infants, and children (WIC), school breakfast and lunch programs, and emergency food assistance programs.

**General Assistance**—These are generally state programs for persons not covered under federal programs. Many states have ended or reduced these programs in recent years.

**The Effectiveness of Income Security Programs**

Many income security programs are called entitlement programs because Congress sets eligibility criteria (age, income level, employment status...) and those who meet the criteria are legally 'entitled' to receive benefits. And spending for entitlement programs is mandatory. Funds must be provided unless the laws creating the programs are changed. This makes it very difficult to control spending for entitlements.

Income security programs have not cured poverty. They are basically alleviative not curative. They make life a little easier but don't solve anything.

**Health Care**

The government has been involved with health care since the early republic. In 2000, the U.S. government spent $3,724 per person on health, more than any other country, and yet the United States ranks 37th in quality of health care. Billions of dollars are spent on research, doctors, institutes, and the public health. Much of the money goes to two programs: Medicare and Medicaid.

**Medicare**—covers people who receive Social Security benefits. Medicare Part A covers all Americans automatically at age 65 and covers hospitalization, some skilled nursing care, and home health services. Individuals pay about $700 in medical bills before Part A kicks in. Medicare is financed by a payroll tax of 1.45% paid by employers and employees on total wages and salaries.
Part B is optional and covers physicians’ services, outpatient and diagnostics, X-rays, and other items not covered in A. Excluded are eyeglasses, prescription drugs, hearing aids, and dentures. Beneficiaries of Part B must pay about $42.50 a month (in 1996).

As people live longer, Medicare has become more costly. The elderly need more medical services and medical care costs are rising. Attempts to control costs have not been very effective and the lobby in favor of these entitlements is quite strong.

**Medicaid**—Medicaid provides medical insurance to the poor, including hospitalization, physicians’ services, prescription drugs, and long-term nursing care (unlike Medicare) to all who qualify as needy under AFDC and SSI.

Medicaid is jointly financed by states and the national government. The national government pays from 50-79% of Medicaid costs based on average per capita income (meaning poor states get more federal monies).

**Economic Policy**

The U.S. economic system is basically a free market one, but one in which government has a role. The government provides laws, contract enforcement mechanisms, rules for business and bankruptcy, definition of property rights, issues patents and copyrights, provides a common monetary system, and grants corporate charters. Few of those governmental powers are controversial or contested. However, government regulation and intervention in the market mechanism are often hotly contested. In this lecture, we will look at the history of the role of government in our economy from the 19th century through the Cold War and into the present debates about the nature and extent of government regulation in the economy.

**Roots of Economic Policy**

In the first 100 years of our country, most economic issues were controlled by the states, not the national government. The national government's roles were limited to public lands policies, a few public works projects, and the encouragement of business and certain economic policies through the use of taxes and tariffs.

The states were quite active in promoting and regulating private business activities. They built the Erie Canal, roads, and railroads. States licensed, regulated, and inspected many factories and businesses. During the 19th century when the country was mostly rural and small-scale, this worked fine.

Following the Civil War, the country became more and more industrialized and many large-scale factories were created. Cities grew up around the factories and were home to large numbers of workers and their families. Industrial accidents, disease outbreaks, labor conflict, unemployment, and exploitation of workers were problems too large for state governments alone.

Another problem was the business cycles or fluctuations between periods of economic prosperity and economic downturn that were common, and thought to be laws of modern economics. Economic downturns caused real hardships due to unemployment.
and poverty and prosperity was rarely long enough for all to recover. The economic swings were difficult to deal with personally and as a country.

States were not up to the task. So many people turned to the national government to address the problems. But many people subscribed to the idea of *laissez faire* that governmental regulation is wrong and the only proper roles for government are to maintain order and justice, to conduct foreign affairs, and provide public works such as lighthouses and roads that would be unprofitable for private businesses.

Many businessmen followed this philosophy but also demanded that the government protect their industry with tariffs or subsidize the construction of railroads, use the military to put down labor unrest, and give them public lands for free. Hardly ideas Adam Smith would have advocated! Essentially, most businessmen wanted governmental policies that would help them amass huge profits.

Small business, reformers in the cities, the Grangers, and agrarian protest groups banded together over time and forced the national government to reign in what they saw as capitalism run amok. In 1887, Congress began to regulate the railroads by adopting the Interstate Commerce Act. The Act required that railroad rates be "just and reasonable," and prohibited rate discrimination, the practice of charging substantially more for short hauls than long ones.

Three years later, the same coalition of political forces forced Congress to deal with the "trusts" or large-scale monopolistic businesses that dominated industries like oil, salt, whiskey, meatpacking, and sugar. The Sherman Anti-Trust Act of 1890 prohibits restraints of trade and monopolies.

**The Progressive Era (1901-1917)**

The Progressive Movement was a middle class reform movement designed to change the political, economic, and social system of the United States. In general, they wanted to rein in corporate power and make it more responsive to society and the democratically elected government.

A variety of legislation was discussed and passed by Congress that made consumer protection an important government mandate, that strengthened anti-trust measures, that regulated the banking system and evened out the business cycles, and protected American industry through tariffs. Congress created the Food and Drug Administration, the Federal Trade Commission, the Federal Reserve, and more. Government was taking on new roles and growing dramatically.

These extra duties meant that the government needed new sources of revenue. Public officials instituted an income tax. In 1895, the Supreme Court ruled that the income tax was a direct tax and therefore, according to the Constitution, had to be allocated among the states in proportion to their population or was unconstitutional. This ruling made an income tax cumbersome and expensive to implement. So in 1913, Congress passed the 16th Amendment to overrule the Court's decision and then initiated an income tax. These taxes are now a major source of revenue for the government.

**The Great Depression and the New Deal**

World War I ended the Progressive Era. During the 1920s, *laissez faire* returned under Harding, Coolidge, and Hoover. The economy was booming and all was right with the world. Then came October 27, 1929.
The Great Depression began with a stock market collapse, followed by rising unemployment, dropping prices, falling production, and financial panic. It was a catastrophic worldwide economic downturn that produced large amounts of economic distress. All sectors of the economy were hurt. No social groups or classes were spared, though some fared better than others.

President Hoover announced that there was nothing wrong and the economy was fundamentally sound. The panic got worse. During the 1932 presidential elections, the country was still gripped by Depression. Franklin Delano Roosevelt called for a "New Deal" for America and favored strong government action to relieve economic distress and reform capitalism. This was a major turning point for the U.S. from a basically laissez faire economy to an interventionist state. The New Deal established the national government as a major regulator of private businesses, a provider of social security, and as responsible for maintaining a stable economy.

Much of the 'alphabet soup' that was the New Deal became a permanent part of our public policy landscape. The New Deal also signaled the end of a passive government and the rise of an active one and established the legitimacy of national government intervention in the economy.

The Post-World War II Era

During the 1940s and 1950s, most policies remained fairly stable. However, as we came out of WWII, many policymakers worried that the conversion from a wartime to a peacetime economy might trigger another great depression. Two significant developments during this era were the Employment Act and the Taft-Hartley Act—both of these pieces of legislation were controversial and dealt with issues of jobs.

The Employment Act was a watered down version of the Murray Bill, introduced by Senator Murray (D-Mont). The Murray bill guaranteed a right to employment for anyone willing and able to work. The hope was to maintain full employment and stave off another depression. The mechanism Murray advocated to attain full employment was government investment during times when private investment proved inadequate. Conservatives opposed the bill strongly. The resulting compromise was the Employment Act of 1946 that stated the federal government had a responsibility to use all practicable means to promote maximum employment. The Act also created the Council of Economic Advisors to advise the president on economic issues and the Joint Economic Committee in Congress to study economic policy.

The Taft-Hartley Act also dealt with labor issues but in a different way. The Wagner Act of 1935 that gave trade unions the right to collectively bargain had been strongly opposed by conservatives and business. In 1946, the Republicans became a majority in Congress and vowed to change the law and increase the power of management in labor disputes. The result was Taft-Hartley. The Act prohibited a number of union activities such as featherbedding, jurisdictional strikes, and coercing employees to join a union. Unions were directed to file detailed reports on finances to the Department of Labor and there was to be an 80 day injunction against strikes. The closed shop arrangement under which an employer could only hire union workers was prohibited. The goal was to hamstring labor unions that seemed to be getting too powerful.
The Employment Act was a 'liberal' demand on government to get involved in employment policy and Taft-Hartley was a 'conservative' demand for the same type of involvement. Obviously, the government was now firmly entrenched in the economic life of the country.

Economic and Social Regulation

Most of the policies of the 1940s and 1950s were economic regulation, however, in the 1960s and 1970s the government turned to social regulations. Social regulations deal with the quality and safety of products. Agencies such as the Consumer Product Safety Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, the National Transportation Safety Administration, and more, were created to protect consumers and citizens from a variety of threats.

Four factors contributed to the surge of social regulation: 1) the 1960s and 1970s were a time of social activism. Consumer and environmental movements flourished and public interest groups were formed that demanded government action; 2) modern technology proliferated and highlighted unsafe products like chemicals, DDT, cigarettes, leaded gasoline, the Corvair, phosphates, and more. Industries were spewing toxic substances into the air, pouring them into the water, and burying them in the ground. And television showed us these problems. People got mad; 3) congressmen saw advocating safety and social regulation as a way to enhance their reputations and electoral prospects. This in and of itself is not new but TV was still pretty new! 4) the presidents in office (LBJ and Nixon) supported the movement. It was good politics.

Deregulation

In the 1970s and 80s, a new movement arose, deregulation. Economic regulations came under fire from a variety of angles as anti-competitive and anti-consumer. Many people saw the regulating agencies as protecting the industries' profit margins rather than the public good. During the Carter Administration, deregulation was a high priority and railroads, commercial airlines, financial institutions, and more were deregulated.

Deregulation still has its champions but it also has its critics. While airline deregulation initially opened up the skies and many new competitors jumped into the business, the new airlines were unable to compete. Some rates were lowered but today we have fewer airlines than there were under regulation. Also, many routes have been abandoned, the hub and spoke system alienates passengers, and safety is becoming more problematic. Savings and loan deregulation was a debacle, costing taxpayers hundreds of billions of dollars.

The ardor over economic deregulation seems to be waning. Consumer protection is gaining popularity. The corporate scandals and major bankruptcies of companies like Enron and WorldCom, the dotcom bust, and the falling stock market have caused Congress and pundits to look again at the wisdom of total deregulation. Arthur Andersen’s problems stemming from its Enron business have led to substantial attention being paid to accounting practices. Telecommunications have been in a freefall with many analysts blaming deregulation for the problems. And the California power problems were also directly related to too little government oversight.

It seems that the deregulation pendulum has started swinging back towards moderate and rational oversight policies. September 11, and the accompanying problems
for the airline industry, caused many to discuss reregulating airlines. Environmental legislation is highly popular.

Companies like Coca Cola are leading the way in ‘cleaning up’ the image of corporate America. Coke has announced that it will no longer announce its earnings estimates every quarter. It announced that the stock market, and stock sellers/analysts, have been placing way too much emphasis on earnings estimates and not enough on the bottom line of a company. So they are going to lead the pack back to a more traditional way to evaluate their stock. Instead of windfall profits and devastating losses each quarter depending upon whether a company achieved its earning estimates or not, Coke says you should judge it by its manufacturing capabilities, its management strategies, and its sales.

**Stabilizing the Economy**

The government is involved in other economic issue areas as well. The two we will discuss today are economic stabilization (evening out those business cycles) and environmental controls.

Since FDR and the Great Depression, the government has taken a much more activist approach to macroeconomic problems. Following the advice of economist John Maynard Keynes, many presidents have sought to "prime the pump" through deficit spending. In other words, government spending can be used to offset a decline in private spending and help maintain levels of spending, production, and employment, thus avoiding the huge swing of cycles that caused depressions in the past.

Economic stability means the economy is growing, there is rising national income, high employment, and stable prices. Any other condition, such as inflation (rising prices due to an under-supply of goods), is to be avoided through government action.

**Monetary Policy**

Monetary policy involves the regulation of the country's money supply and interest rates in order to stabilize the economy. The primary responsibility for monetary policy rests with the Federal Reserve.

**The Federal Reserve System**

The Federal Reserve System, or the Fed, was created in 1913 and is a mixture of private interests and public authority and consists of:

- Federal Reserve Board (FRB)
- Federal Open Market Committee
- 12 Federal Reserve Banks

The FRB is made up of seven members appointed by the president for 14-year overlapping terms with approval of the Senate. A member can be removed for stated causes but this has never happened. One board member is designated by the president to serve as chair for a 4 year term. The chair's term runs from midway through one presidential term to the middle of the next to ensure economic stability during changes of administrations.

In order to control the money supply, the Fed has a number of tools or levers, including:
• manipulating the reserve requirement—the amount of deposits member banks are required to keep on hand and not loan out. Raising the reserve requirement is a limit on loan making by banks and therefore restricts the money supply.
• changing the discount rate—the rate of interest that member banks have to pay to borrow money from the Fed. If the Fed raises the discount rate, it makes loans more expensive and so restricts the money supply.
• open market operations—the buying and selling of securities by the Fed in the securities markets. When the FRB buys securities, banks have more money to make loans and therefore the money supply is enlarged. If the FRB sells securities, the opposite is true.

The President and the FRB

Though technically the FRB is independent of the president, there is a lot of informal contact during luncheons and meetings. More formal meetings are also helpful. The president thus expresses his views on monetary policy and the FRB chair can explain his reasoning to the president.

Fiscal Policy

Fiscal policy involves taxation and government spending policies to influence the overall operation of the economy. Fiscal policy is formulated by the president and Congress through the budget process.

John Kennedy was the first president to actively use fiscal policy. He deliberately ran a deficit in order to fuel economic growth. And tax cuts would stimulate private sector spending and thus would also be a stimulus to the economy.

Conclusion

The federal government is involved in economic policies in a large number of ways. Some programs are popular, others are highly controversial, and most are poorly understood by the American people. The bottom line, though, is that the government has managed to prevent any large-scale depressions like those in 1890 and 1929. While we have had bad economic periods – recessions – business cycles are less violent than they were 50 or 100 years ago. This may be due to economic policies like monetarism and fiscal policy. It may be due to something else entirely (like defense spending and the national security state since 1945).

Websites for Instructors

The American Enterprise Institute is a conservative think tank that addresses a variety of issues. Its website offers information on its calendar of events, a variety of articles, and links.

www.aei.org
The **Brookings Institution** is the oldest think tank in America and has the reputation of being fairly moderate. Its website offers policy briefings, articles, books, *The Brookings Review*, discussion groups, and links.

www.brook.edu

The **Cato Institute** is a libertarian think tank promoting free market ideas. Its website offers a variety of articles and links.

www.cato.org

The **Children's Defense Fund** website has many articles and links of interest to advocates for issues affecting children and families. It offers a listserv and publications.

www.childrensdefense.org/

The **Concord Coalition** is a nonpartisan, grassroots organization dedicated to eliminating federal budget deficits and ensuring Social Security, Medicare, and Medicaid are secure for all generations founded by Paul Tsongas (D) and Warren Rudman (R). The Coalition Website offers lots of information about the debt and deficit as well as some social policy issues. It offers email newsletters, grassroots initiatives, statistics, and more.

www.concordcoalition.org/

**Congressional Budget Office (CBO)** website offers Congress's opinions on budget matters, including statistics, reports, budget reviews, testimony, and more.

www.cbo.gov/

The **Council of Economic Advisors** website offers the Economic Report of the President and CEA publications, as well as basic information about the CEA and its members.

www.whitehouse.gov/cea/about.html

The **Economic Policy Institute (EPI)** is a nonpartisan think tank devoted to economic issues. This website offers a variety of reports on economic issues and a monthly newsletter delivered by email. Despite its self-classification as nonpartisan, its board of directors is predominantly left leaning (liberal).

www.epinet.org/

**Federal Reserve Board** website has basic information about the FRB, its structure, and purpose. Also has publications, announcements, lists of related websites, biographies of members, reports, and statistics.

www.federalreserve.gov

**GPO Gate** by the University of California offers the full text of many Government Printing Office publications on the web including the economic indicators prepared for the Joint Economic Committee by the Council of Economic Advisors; updated monthly. Among the growing list of titles available are the Federal Register, the Congressional Record, Congressional Bills, United States Code, Economic Indicators, and GAO Reports.

www.gpo.ucop.edu
The Joint Center for Poverty Research offers numerous working papers, policy briefs, research summaries, and so on through its website. It also sponsors conferences and events.

www.jcpr.org

The National Debt Clock offers a running account of the public debt and offers links to a variety of groups and organizations interested in the debt and/or deficit.

www.brillig.com/debt_clock

Northwestern University’s Politics, Institutions, and Public Policy Program has information about social welfare issues and links to other sites, including information about welfare states in comparative perspective.

www.northwestern.edu/ipr/research/welfarestates.html

Office of Management and Budget (OMB) website offers budget information, reports, testimony, regulatory policies, and more from the perspective of the administration.

www.whitehouse.gov/OMB/

The Social Security Administration (SSA) website has information on rules, regulations, and policies of the federal government on social security both active and proposed. It offers information for citizens, scholars, and recipients. The website also offers historical perspectives on social security and its funding.

www.ssa.gov

The U.S. Department of Education offers extensive information about the Bush Administration policy “No Child Left Behind” as well as other Department of Education programs. Numerous statistics and facts are easily accessible from the homepage.

www.ed.gov

### Web Activities for Classes

1) Go to the website of the House of Representatives or call your local representative's office. Find out what social welfare laws are on the agenda for this session of Congress. Choose one and follow it over the course of the semester. Pay attention to partisan issues, which interest groups get involved and how, which members of Congress sponsor the bill, and how this bill fits the policy process you have learned about in this chapter.

2) Go to the library or the Internet and find out what the official poverty level is in this country and the demographics of poor people and folks who receive federal assistance (one possible source is Meredith Bagby's *The Actual State of the Nation*). In addition, do some additional research about the policies designed to
help the poor. Discuss what the country is doing for the poor. Is it enough? Why or why not?

3) There has been a debate recently about how appropriate the current poverty line is. Have students research the debate and find out how the U.S. comes to this number and how other countries compute the statistic. Discuss the ramifications of different outcomes if the poverty level were refigured.

4) There is a huge debate in this country over the pros and cons of a constitutional amendment requiring a balanced budget. Have students do some research on this topic on the Web. Have them look at the 27 amendments we have and how a budget amendment would fit in. Ask them to discover who supports and who opposes such an amendment in Congress, among interest groups, among governors, and be prepared to discuss why each actor supports or opposes.

5) The Chairman of the Federal Reserve Bank is often described as the most powerful man in America. Have students do some research on the Web to determine why he is so powerful, who he is, and what his policies are. Have them compare our Fed to the Central Bank of another country. Do they have similar powers? (you might suggest the Bank of England, DeutscheBank, or Bank of Japan.)

6) Have the students look at the current Congress on the Web and write a paper about some of the bills currently under consideration on economic and environmental policy.

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**General Class Activities and Discussion Assignments**

1) Have students do some research on Clinton's proposed national health care plan. Have them write a paper addressing the following questions: What mistakes were made according to what you learned about the policy process? What tactics and strategies could have been used to promote this policy?

2) In the last 5 years, many of the responsibilities for social welfare policies have been delegated to the states. Have students choose three states and find out what they are doing regarding social welfare. Are the states different or similar in their approach? Why?

3) Assign the following: Interview your grandparents or older people in your neighborhood about the impact of the GI Bill on their lives and education. Find out whether their parents ever went to college and whether they think they would have been able to go without the GI Bill. You may also want to ask them about what they learned in high school and college including asking them if they still have their old textbooks. Use that information to evaluate the current state of
education in the country. Do they have different ideas than you do? Why do you think that might be?

4) Hold a class discussion about policies designed to increase income security.

5) Discussion Exercise:
"The United States is a mixed free enterprise system. How many other countries of the world have similar economies? Are they as successful as that of the United States? Do some research to determine the answers to these questions. What other types of systems exist? Are any of them 'successful'? Why or why not?"

6) A major concern of the 19th century was the business cycle. Monetary and fiscal policies have minimized these swings to some extent. Have students test the truth of these statements by looking at historical economic trends.

7) The Environmental Protection Agency is the largest regulatory agency in the U.S. government. It has also been attacked for a variety of reasons by Republicans and Democrats. Have students use the information in this chapter as a starting point and do some research about the EPA. How effective is the EPA? What does it do? Why is it impugned by both parties? What impact does it have on business?

### Possible Simulations

1) Have students research the national debate on health care. Hold a debate on the Patients' Bill of Rights or on the right of patients to sue managed care providers. Alternatively, California has passed a new series of constraints on managed care. Have students do research on that legislation and stage a debate on its merits.

2) Assign groups of students to represent the following points of view: U.S. Department of Education, Texas Department of Education, Florida Department of Education, Minnesota Department of Education, Save the Children, the NEA, and the PTA. Have them research the points of view and stage a debate about the role of the national government in education, the need for bilingual education, and/or the use of testing as a tool of assessment in the schools.

3) The huge national debt has led many people to suggest a number of reforms in economic policy. Have students discuss the problem of the debt and deficit as well as the reforms that have been proposed. You could stage a debate: have one side marshall the arguments that debts and deficits have powerful uses (Keynes, et al) and the other side argue that they are bad (Friedman, et al).

4) Give students an economic issue from the current news to discuss. Have one group of students look at the OMB website and another group look at the CBO
website. Ask them to analyze the different perspectives and explain why they differ.

5) Have the students simulate a Federal Reserve Board meeting. Have students do some preliminary research on the Fed website and other websites with economic policy orientations. Supply several copies of the *Wall Street Journal* (or other major newspaper with good economic coverage) and have the students determine whether they (as the Fed) should raise or lower interest rates and why.

### Additional Sources


Traditionally, foreign policy and international affairs were primarily about security issues defined in military terms and about countries. Globalization, the fall of the Soviet Union, and the end of the Cold War have made security and foreign policy much broader. And the attacks of September 11, 2001 brought home the vital importance of issues related to security and international relations.

Today, we have a blend of traditional and new visions of security and foreign policy. In particular, there is a new understanding of how diplomacy and economics affect security. Diplomacy can be proactive as well as reactive in the new system and economics is important not just for domestic purposes but a strong economy is an important underpinning for military power. Without a strong economy, we would not be able to maintain our military and we would not have a cutting-edge high tech military force, either. We are also slowly coming to an awareness of how important it is to understand how the world perceives the United States. The war on terrorism, following the terrorist attacks, has led to much soul searching among policymakers and opinion makers about why al-Qaeda, and others, hate the U.S. so vehemently. This renewed interest in the domestic politics of other countries will serve the country well if it can be sustained.

Before we discuss the history of foreign and military power and U.S. approaches to it, we should define a few terms and ideas. First, the international system is composed of states. A state is a geopolitical entity that has a well-defined territory that it controls and a legitimate government that controls the monopoly on the use of force. Many people—the text included—use the term nation-state. That is a misnomer. States are often driven by the mythology of the nation-state—it is a terribly powerful idea in international relations—that a single ethnic group or nation should govern itself. However, a true nation-state does not exist and so the mythology has been a major cause of tension and conflict in the international system. And it is better to use the term country or state to refer to an entity like the United States, Japan, Canada, and so on.

States are the most important actor in IR but not the only one. Today, international governmental organizations (IGOs) are very important. These are institutions like the United Nations whose members are states. Plus, international nongovernmental organizations (INGOs or NGOs) are also important, and they include groups like Amnesty International or Greenpeace. Their members are individuals, not governments. And, of course, al-Qaeda and other such groups have also become highly salient in today’s foreign and security policy decisionmaking.

Power is the single most important concept in international relations and a very complex one. For our purposes, power is the ability to get a state or entity to do something they might not want to do. And power is fungible or issue-dependent. In other words, a country may be powerful in one respect but not in others, like Japan, that is economically powerful but not militarily powerful.
Keeping these definitions in mind, let's talk about U.S. foreign and military policy.

The United States today is the single most powerful country in the world. The U.S. economy is twice as large as its nearest competitor (Japan – though the European Union taken as a whole is a serious rival). The U.S. military is the most powerful force in existence and American culture is sweeping the world despite criticism from numerous corners.

Historically, the United States has been graced with an enviable geographic position. Bordered by huge oceans and endowed with an abundance of resources, the U.S. could stand apart from the quarrels of the rest of the world and follow a policy of isolationism. Something the U.S. has done from time to time. But even when following such a policy, the United States traded with the world, so it was never totally isolated. The U.S., due to its size, location, and power, has often acted unilaterally – without looking for partners or consulting others. The United States has tended to believe it operated on higher moral grounds than other countries. And the U.S. has been proud of its pragmatism.

The Roots of U.S. Foreign and Military Policy

After the Cuban Missile Crisis in 1962, in which the USSR attempted to station nuclear missiles in Cuba, 90 miles from U.S. soil, both sides began to look for ways to limit the nuclear and military tension between the two countries. A ‘hotline’ was installed between the leaders for improved communication and we began to seek ways to control the growth of nuclear weapons through test ban and nonproliferation treaties. Both sides also began to negotiate limits on the growth of their own arsenals and eventually arms control became arms reduction in the 1980s.

There were a number of other world crises during the Cold War, many of which were really proxy battles between the superpowers in many ways. There were wars in the Middle East, Asia, Africa, and Latin America but the most important for our purposes was Vietnam. The U.S. got involved in Vietnam for several reasons: to bail out the French colonial power, to promote ‘democracy,’ and most of all to contain communism. However, our understanding of the conflict was highly flawed. The South Vietnamese were not ‘democrats,’ the North Vietnamese were not controlled from Moscow and Beijing, and the war was mostly about nationalism and independence. By the time the U.S. extracted itself from Vietnam in 1973, there were 57,000 dead and 300,000 casualties. Plus the lying and deceit of the military and the Johnson administration had eroded trust in government, the war—war in general—became hugely unpopular, and many began to see limits to the ability of the U.S. to project power in the world. The experience had a huge impact and continues to have an impact today. You often hear commentators say such-and-such a conflict has the potential to be another Vietnam. The fiasco also led many citizens and leaders to question the role and effectiveness of U.S. foreign intervention. This debate continues today.

Foreign aid policies are often controversial for these and other reasons. The U.S. gives low interest loans, technical assistance, food, weapons, and grants to foreign countries on a regular basis. Most U.S. assistance and grants come through the U.S. Agency for International Development (USAID). The aid is less than one half of one percent of the budget. Most Americans think it is much higher (when asked they often
cite figures like 15 - 20%). During the Cold War, most aid went to anti-communist forces in countries like El Salvador, Pakistan, the Philippines, and Turkey. Israel and Egypt have been the largest recipients of foreign aid since the 1970s due to efforts to bring about Middle East peace. In the 1990s, Ukraine became the third on the list for geopolitical reasons. We also give a substantial amount of humanitarian aid and economic development money.

Due in part to the Vietnam War, American economic power declined in the 1960s. Another part of the equation, though, was the rise of Europe and Japan following the destruction of these economies in WWII. Often called the Economic Miracle, in reality, the Marshall Plan investments, U.S. subsidies and trade preferences, and lots of hard work by the people and governments of those countries led to incredible economic growth, particularly in Germany and Japan. Since their economies had been destroyed, they had no aging machinery, recalcitrant workers, or problem infrastructure – all problems the U.S. faced. In addition, American savings and investment since WWII had plummeted and massive consumerism had taken hold. This limited the capital available for retooling and rebuilding infrastructure. And perhaps, the global superpower was also a little complacent?


President Nixon announced that the time for confrontation was over and a new era of negotiation was in order in 1969. This new era was called détente. During this period, U.S. and Soviet leaders held summit meetings and signed arms control agreements such as the Strategic Arms Limitation Treaty (SALT) and the Anti-Ballistic Missile Treaty (ABM).

The culmination of détente was the signing of the Helsinki Accords in 1975. The heads of government of virtually every European state, Canada, and the United States met in Finland. It is important to remember that there had not yet been any true European peace treaty...the Soviets hoped that Helsinki would recognize their control of Eastern Europe and other conquered territories and the western powers wanted the USSR to agree to human rights and other protections for all citizens. Both got what they wanted and to a degree, Helsinki changed international relations. The inviolability of borders was made an important point in international law, and human rights, previously a domestic level concern, were elevated to the international level and some argue that this meant a serious deterioration in the notion of sovereignty. Until the fall of the Berlin Wall and the reunification agreement in Germany, the Helsinki Accords were as close as we came to a European peace from WWII.

Détente required a substantial amount of presidential attention, and due to Watergate, the Nixon administration could no longer heartily pursue the policy. In the Soviet Union, Brezhnev was involved in other intrigues as well including some domestic unrest following the signing of the Helsinki Accords as well as rising nationalism in Poland and other Eastern European states. So it waned for a few years. There were civil wars in Africa (Angola and Mozambique) and other proxy wars, but U.S. – Soviet relations did not detioriate to pre-détente levels.

In 1977, Jimmy Carter expressed his desire to make human rights the cornerstone of his foreign policy. In 1979, the Iranian hostage crisis erupted and undermined Carter’s domestic support. A failed rescue attempt left the administration with little credibility
and open to Republican charges that Carter and the Democrats had made America weak. Détente finally died when the Soviets invaded Afghanistan in 1979. Carter cut off deliveries of wheat, pulled the U.S. out of the 1980 Moscow Olympics, and increased U.S. defense spending. Carter also promulgated the Carter Doctrine – that the Persian Gulf was an area of vital U.S. interest and the U.S. would fight to maintain its interests there.

**Containment Revisited and Renewed, 1981-1989**

When Ronald Reagan was elected, U.S.-Soviet relations deteriorated rapidly. He called the USSR an evil empire, stepped up defense spending, announced an activist foreign policy designed, once again, to contain Soviet expansion, and began funding the Afghan opposition.

By 1983, relations were at their worst since the Cuban Missile Crisis. The Soviets had shot down a Korean passenger airplane, the U.S. had invaded or intervened in numerous Latin American and Caribbean countries with pro-Soviet leanings, NATO deployed intermediate range nuclear missiles in Europe, and the U.S. and Soviets were in a very hot proxy war in Afghanistan.

However, the next year, things began to get better. The Soviets had a dying caretaker as leader, Konstantin Chernenko (the second Soviet leader since Brezhnev’s death in 1982 and he would last only about a year). It was an American election year and the American public seemed to be insisting on cooler rhetoric plus Reagan was more secure in his office and didn’t need an enemy to propel him into a second term. And in 1985, Mikhail Gorbachev became General Secretary of the USSR Communist Party.

Gorbachev announced a number of new reforms, ranging from more openness (glasnost) and economic reforms (perestroika) to new thinking in foreign policy that renounced class struggle and the idea of confrontation as the sole way of dealing with other countries. Gorbachev and Reagan met at several summits. Gorbachev, in desperate need of reallocating his country’s resources from military to domestic uses, kept up his spate of reforms and attempts at reducing tension. By the third summit meeting, the leaders seemed to have hit a recipe for dealing with each other and they signed an agreement to get rid of all intermediate range nuclear forces in Europe.

**Searching for a New International Order, 1989-2001**

George Bush came to power in 1989, promising to follow in Reagan’s footsteps but the world was changing fast. The Iron Curtain fell when Eastern Europe rebelled in 1989 and the USSR let them go. Communism was also rapidly collapsing in the Soviet Union itself. These events caught the administration unaware. That same year, Bush faced the conundrum of what to do over the crackdown on peaceful pro-democracy protesters in Beijing’s Tienanmin Square. And Bush also had to deal with a coup in the Philippines as well as an anti-American dictator in Panama, Manuel Noriega.

In 1990, Iraq invaded Kuwait and the U.S. led a U.N. approved operation to expel Iraqi troops from Kuwait. The operation was lauded as a great success and President Bush’s approval ratings skyrocketed. Shortly thereafter, the Soviet Union was wrecked by a coup in August 1991 and then the collapse of the USSR. The Cold War and Communism were gone. What would the new order be like?
The U.S. had to rethink its approach. Military force would still be useful, but how and when? In 1992 and 1993, the U.S. intervened on behalf of the United Nations in Somalia to deliver relief supplies and maintain order – it ended in disaster for U.S. troops. However, the U.S. intervened in the former Yugoslavia with NATO and succeeded. And what to do about Russia? Does the U.S. help Russia and how? What about the former republics like Ukraine and Estonia?

President Clinton inherited a much different world order than his predecessor. He followed policies of engagement, not isolation. And he pursued more multilateral approaches to world problems than previous administrations had. Clarity was seriously lacking, though. Without the Communist threat and the doctrine of containment, how does one know when and how to intervene and when to hang back? This is a question with which American policymakers still grapple.

A New Order for the 21st Century?

When George W. Bush became president, these issues had still not been solved. Bush placed a high priority, initially, on Mexico and Latin America. His first foreign visit was to Mexico in a highly symbolic gesture to that country. He decided to abandon the ABM treaty and pursue a missile defense shield for the United States and announced that the U.S. would not abide by the Kyoto environmental agreements.

But whatever plans he might have had, Bush’s foreign and military policy agenda were overcome by events. The al-Qaeda terrorist attacks of September 11, 2001 forced the government to respond to that threat and other potential threats. Almost 3,000 people died in the attacks on New York’s World Trade Center towers, the Pentagon, and in the crash of the plane in Pennsylvania that didn’t reach its target due to the heroism of its passengers. The civil aviation system was shut down for days and small planes/airfields for even longer. The New York Stock Exchange closed. U.S. leaders were sent to ‘undisclosed locations’ for safety. Thousands more had their lives disrupted by the attacks and the economy took a major hit that had worldwide repercussions.

Bush proposed a new Office of Homeland Security and took the country to war against the Taliban regime of Afghanistan that had harbored and protected al-Qaeda. By the end of 2001, the Taliban were defeated and 17 countries had troops in Afghanistan. Many more had pledged aid to rebuild the country shattered by the Soviet invasion, then civil war, then the Taliban rule, and finally the war on terrorism. But the war on terror was broader than one country. Internationally, security agencies were cooperating to find cells of al-Qaeda and other terrorist organizations.

This leaves us with two overarching goals of foreign and military policy in the current era: protecting the homeland and the global war on terrorism. There is substantial consensus on these goals, but there is dissension about what the tactics and limits ought to be. One of the key points of contention is about the trade off between security and civil liberties….

The Executive Branch and Foreign Policy Making

The Constitution divides the powers in foreign policy just as it divides powers throughout the government system (remember this from the chapters on Congress and the presidency?). However, the president has been preeminent in foreign affairs and has gotten even more powerful in recent years. This dates back to Alexander Hamilton, who
argued for presidential supremacy in foreign relations because foreign policy was
different than domestic policy in several ways. It requires:

• accurate and comprehensive knowledge of the world
• a steady and systematic adherence to the same view
• a nice and uniform sensibility to the national character
• decision, secrecy, and dispatch

The 535 members of Congress seem unable to do things quickly, decisively, and
secretly, the president and his small body of advisors usually do better. Often the
executive has information not available to others—secret information gathered by the
NSC, the CIA, and diplomatic cables, among other sources.

In the 1930s, Congress granted the president broad powers in international affairs
and specifically granted him the power to prohibit arms shipments to participants in
foreign wars. In *U.S. v. Curtiss-Wright Export Corporation* (1936), the Supreme Court
upheld the constitutionality of this congressional grant of power. In this ruling, the Court
explicitly recognized the primary importance of the president in foreign affairs and the
concept of inherent powers in those affairs.

WWII and the Cold War helped solidify presidential control of foreign policy.
Congress supported a larger role for the U.S. in international relations and the primacy of
the president through the National Security Acts of 1947 and 1949. These acts
consolidated the armed forces into the Department of Defense, set up the CIA, and the
National Security Council. The NSC was composed of the president, vice president,
secretaries of state and defense, chair of the Joint Chiefs of Staff, and the director of
Central Intelligence. This group would become the president’s major advising body on
foreign issues.

**The National Security Council, the National Economic Council, and the
Central Intelligence Agency**

In most critical military and foreign policy matters, the NSC takes the leading
role. It is a small body with a coterie of experts that includes close advisors to the
president (he appoints most of them!). The NSC lacks some of the bureaucratic problems
and slowness of DOS and DOD. The National Economic Council was created to parallel
the NSC on economic issues that are of rising importance as ‘security’ as well. The NEC
consists of the secretaries of Labor, Treasury, and Commerce; the director of the OMB;
the head of the Council of Economic Advisors; and is chaired by a presidential advisor.

**The Departments of State, Defense, and Homeland Security**

These two departments have primary responsibilities for the day-to-day affairs of
foreign relations and their implementation. The State Department runs embassies and
trade consulates abroad and at its headquarters in D.C., in an area called Foggy Bottom,
and most of the State Department employees are responsible for collecting and providing
information on specific issues or countries. In 1999, the U.S. had consulates or
embassies in 162 countries which shows how global U.S. interests really are. In 1999,
the State Department underwent significant changes. It has absorbed several formerly
independent agencies: USAID, the Arms Control and Disarmament Agency, and the U.S.
Information Agency.
The Defense Department has military units and bases worldwide. Since the Cold War, the U.S. has cut its military dramatically from 2.2 million personnel in 1987, to 1.4 million in 1998. At the same time, the military has become far more reliant on highly technical equipment, and the type of mission (or usage) of the military has changed. Missions like Bosnia and Kosovo—making and keeping peace—have become some of the more common missions today. Rapid deployment and minimum casualties are the watchwords of today’s military due to political considerations. Special forces and rapid deployment have definitely increased in their importance since the terrorist attacks and this importance will only increase.

In late 2002, Congress converted the Office of Homeland Security, established in response to the 9/11 terrorist attacks, into a cabinet-level department. It is tasked with detecting, preparing for, preventing, protecting against, responding to, and recovering from terrorist attacks.

The new department merged 22 agencies and has over 170,000 employees.

Other Shapers of Foreign and Military Policy

The president is powerful, but not omnipotent. He must still deal with domestic constraints and international pressures.

Congress

Congress has some constitutional powers in foreign relations and sometimes seeks to assert them. It particularly likes to exercise its oversight role to hold the administration accountable for foreign policy.

While the president usually takes the lead on foreign policy, the Congress can develop and implement policy too. Examples of this include the creation of NASA and the National Defense Education Act.

Since the 1960s, Congress has used oversight more often. Congress has challenged the administration on controversial weapons systems (sometimes in favor, sometimes against). It also investigates policies implementation as in Iran-Contra.

The Constitution gives the president power to negotiate treaties and the Senate power to approve them. They have only rejected 17 treaties in history—the most recent one, the Test Ban Treaty in 1999. But the president can avoid the Senate role altogether by concluding an executive agreement instead of a treaty. It has all the force of a treaty but is only valid during the administration that concluded it.

The president appoints ambassadors and others in foreign affairs. The Senate provides ‘advice and consent.’ In recent years, and particularly in periods of divided government, the Senate has withheld confirmation or even denied hearings on a nominee through the hold process.

Congress’s most influential power in foreign affairs is the power of the purse. They can fund or not fund programs, projects, or military forays.

The War Powers Act was passed near the end of the Vietnam War and was designed to reassert congressional war powers. The Constitution gives the president the power to make war and Congress the power to declare war but the last declared war we were involved in was WWII. And there have been many ‘wars’ since, but without formal congressional consideration. The WPS was an attempt by Congress to prevent future foreign interventions without its approval. The Act limits presidential deployment of
troops to 60 days without a congressional vote. The period could be extended 30 days to allow for withdrawal of troops. The president would be allowed to respond to an emergency but not wage a war without Congress. In reality, this Act has not hindered presidents very much at all.

The Bureaucracy
The bureaucracy also exercises a check on the president. Career bureaucrats have expertise and information that is necessary to good policymaking. They can also ignore or delay implementation of policy or leak information to Congress, the media, or the people to raise issues on the agenda or embarrass the president.

The News Media
The press can also check foreign policy powers. They investigate policies, expose scandals and inefficiencies, and affect public opinion. But most importantly, the media can place an issue on the public radar screen. Ethiopia’s famine in the 1980s was not new, but media coverage made it an agenda item in the U.S. Bosnian intervention as well as the Kosovo campaign was probably prompted by media coverage that made the average American pay attention therefore gaining the attention of elected officials.

The Public
Public concerns are always of importance to anyone dependent upon election by that public. Foreign affairs are not always of vital concern to most Americans but can have an electoral impact in a number of ways. Wilson was elected on a peace platform, FDR for his pursuit and success in war, LBJ did not run in 1968 because of Vietnam, and many more. Sometimes the public’s interest is galvanized by human interest, student protest, media coverage, personal tragedies (Iran hostage crisis for example) or other events can motivate the public to pay attention and then they demand action or inaction.

The Challenge of Balancing Foreign and Domestic Affairs
As the 21st century began, the United States was the world’s sole superpower. It was the largest economy, most powerful military, and most influential culture in the world. However, that does not mean that the U.S. had no challenges, actually the U.S. faces many difficult challenges in the new century. The terrorist attacks of September 11, 2001 have led to additional security measures at home, fighting a global war on terrorism overseas, cooperation with other countries in intelligence and military spheres, and a renewed – or perhaps a new – emphasis on coalition diplomacy.

In the 21st century, the distinction between foreign and domestic is even more artificial than it was in the 20th century. However, most Americans are of the impression that we should focus almost exclusively on domestic issues. They don’t want total isolationism, but minimal U.S. involvement. Striking the appropriate balance – especially with limited time and resources – is quite difficult.

We still do not have specific criteria on when we ought to intervene. Often policymakers are pushed into intervention by coverage of atrocities by international news organizations like CNN. Babies are seen starving in Africa and Americans demand that we help. CNN reports that rape is used as a weapon of war in Bosnia, and Americans are outraged, so they demand we step in. We are reacting instead of acting in our national
interest and this will continue until we determine what our post Cold War national interests are.

**Unilateralism or Multilateralism?**
Often, the U.S. could go it alone as the most powerful economic and military power in the world. But 9/11 reinforced the vulnerability of even the most powerful country. And since the attacks, the emphasis has been on more multilateral approaches. But this will remain a political issue and the emphasis will likely change from policy area to policy area as it always has.

**Building a New Grand Strategy**
Back to broader issues, the anti-communist consensus is gone and a new consensus on homeland defense and the war on terrorism is taking hold. However, a grand strategy requires answering three broad questions that are not adequately addressed by the newly forged consensus:

- **What should grand strategy be?** “Grand” implies a very broad set of principles that two critical issues cannot possibly subsume. Grand strategy can’t leave out large sectors of policy or portions of the globe. Two possibilities would be that the U.S. should pursue unilateral preeminence or that the U.S. should pursue a multilateral approach based on cooperation and the greatest good for the greatest number.
- **How can consensus be built around the grand strategy?** What techniques can be used?
- **Leadership?** Who will lead? Most likely the president. So the question becomes how will the president lead?

The greatest challenge currently facing the U.S. is how the country can combine the current interest in homeland security and fighting terrorism into a grand strategy that can offer a guiding vision to policymakers and confront all foreign and defense policy issues.

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**Websites for Instructors**

Official site of the **Air Force**.
www.af.mil

The **Arms Control and Disarmament Agency**.
www.acda.gov

Official Site of the **Army**.
www.army.mil

**Center for Defense Information** is a nonprofit public policy center with a somewhat 'liberal' perspective. "Founded in 1972 as an independent monitor of the military, the
Center for Defense Information is a private, nongovernmental, research organization. Its directors and staff believe that strong social, economic, political, and military components and a healthy environment contribute equally to the nation's security. CDI seeks realistic and cost effective military spending without excess expenditures for weapons and policies that increase the danger of war. CDI supports adequate defense by evaluating our defense needs and how best to meet them without wasteful spending or compromising our national security."

www.cdi.org

Center for Strategic and International Studies has several programs related to military and foreign policy. Its website includes policy papers, links, and more.

www.csis.org

Federal Web Locator links to many DoD and other defense related sites.

www.infoctr.edu/fwl/fedweb.exec.html#dod

Foreign Military Studies Office at Fort Leavenworth has analysis, papers, links, and more related to security and foreign policy issues.

call.army.mil/fmso/RESRCHLK.htm

Official Site of the Joint Chiefs of Staff.

www.dtic.mil:80/jcs/

Official Site of the Marine Corps.

www.hqmc.usmc.mil

National Center For Policy Analysis is a nonprofit public policy research institute from a 'conservative' perspective.

www.ncpa.org

Official Site of the Navy.

www.ncts.navy.mil

Official Site of the Pentagon and Department of Defense.

www.defenselink.mil/pubs/pentagon/

U.S. Army War College at Carlisle Barracks has student and faculty research links and more. Also see the Strategic Studies Institute housed there for working papers.

carlisle-www.army.mil/

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Web Activities for Classes

1) Have students do some research on businesses in your area that are involved in international trade. They should use the Internet or library to find out what kinds of businesses are doing business where and why. Have them address the following questions: Are there more international ties in your area than you
thought? What kinds of impacts does this trade have on you, your town/city, the country?

2) Assign the following: "Choose a foreign policy crisis (either contemporary or historical) and do some research on the Web to determine what issues were at hand, what actors were making the decisions, and what the outcome was. Did public opinion matter? Was the president the strongest actor in the crisis? How did the various interests play themselves out?"

3) Have students research the issue of homeland security and civil liberties. What are the trade offs? What are the goals? Are the two principles necessarily antithetical?

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**General Class Activities and Discussion Assignments**

1) American news, be it press or broadcast media, tends to skimp on international news. The argument is that Americans are not interested. Have students address the following:
   Is that true? Find public opinion polling data, ask friends and colleagues, etc. about their interest in international relations. Next test the hypothesis that the media ignores foreign affairs. Watch several different types of media (network TV, newspapers, cable TV, news magazines) and determine if that is true. Now that you know more about U.S. foreign policy are you more interested in such news? Discuss these issues or structure a debate about them.

3) Have students choose one week and get copies of the following weekly news magazines: *Newsweek, Time, The Economist*, and *McLean's*. The students should compare their coverage of a number of international issues and write a paper explaining the differences.

4) As a class, discuss what the grand strategy of the U.S. ought to be now that the Cold War is over and given the new obligations of the war on terrorism.

5) What are U.S. national interests? Should we have intervened in Bosnia, Somalia, Rwanda, etc and why or why not? What about Iraq? What is our national interest in that case? Trade and aid policy—-with whom should we trade and to whom should we give aid? Are there limits to U.S. generosity? What are they?

6. Have students discuss whether and how 9/11 changed U.S. foreign policy.

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**Possible Simulations**
1) Have students research and reenact the Congressional debate over establishing the Department of Homeland Security.

2) Hold a debate on a current topic in foreign affairs. Have students argue pro and con. They can choose to do it on a partisan basis (Republican-Democrat) or on a thematic basis (isolation vs. engagement and unilateral vs. multilateral action, and so on.)

### Additional Sources


