

## INSTRUCTOR'S MANUAL

to accompany

Edwards \* Wattenberg \* Lineberry

## GOVERNMENT IN AMERICA People, Politics, and Policy

Thirteenth Edition

*to accompany Comprehensive and Texas editions*

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*Instructor's Manual* to accompany *Government in America: People, Politics, and Policy, 13th Comprehensive and Texas Editions*

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# INTRODUCTION: TO THE INSTRUCTOR

## Organization of the Textbook

*Government in America* provides a solid foundation for a course in American government and politics. In the Eleventh Edition, the authors continue to adopt a policy approach to American government as a method of enabling students to understand the policies that governments produce. The themes of *democracy* and the *scope of government* provide a basic framework for analysis that students will find practical and worthwhile. To motivate an engaged reading of the text, issues particularly relevant to college youth are raised in each chapter.

*Government in America* presents information in a format that challenges students to make policy choices, to think about how policy choices affect them personally and to take action on policy choices. A variety of boxed features throughout the text provide background material and examples to supplement the contents of the chapter. The *You Are the Policymaker* sections present policy questions that have confronted policymakers. Students are invited to analyze each issue and reach their own conclusions. Chapter 4 includes a series of special features entitled *You Are the Judge*, which describes a real case brought before the courts and asks the student to evaluate the case and render a judgment about it. *A Generation of Change* features an element in American politics that is quickly evolving or being reexamined. “Practical politics” is emphasized in *How You Can Make a Difference* (which suggests ways in which students might engage in political activity), and *Young People and Politics*, emphasizes current political issues and conflicts from the perspective of youth. Finally, *America in Perspective* employs a comparative approach, contrasting issues and institutions of American government with those of other countries around the world.

While each of these features is included to sustain students’ interest in reading the chapter text, they should also be considered important pedagogical devices, particularly as opportunities to enhance class discussion and debate.

## Organization of the Instructor’s Manual

This *Instructor’s Manual* is intended as a comprehensive supplement to the textbook. For the most part, the words in the Manual are those of the authors of the textbook, and the outline parallels the organization of the text. Each chapter of the *Instructor’s Manual* includes the following features:

- **Pedagogical Features** pinpoint special features included in each chapter that provide learning tools for both students and instructors.
- **Learning Objectives** point to important concepts and skills that the student should obtain from each chapter, provided in a brief “list” format.
- The **Chapter Overview** provides a summary of the chapter, with key terms and concepts highlighted with bold print or italics.
- The **Chapter Outline** contains a detailed outline of the chapter that parallels the presentation in the textbook.
- **Key Terms and Concepts** list major terms, principles, and political events, most of which appear in bold print in the textbook, along with definitions for each of these terms.
- **Teaching Ideas: Class Discussion and Student Projects** recommends questions for class discussion and for student research. Many of the topics augment questions that were raised within the body of the textbook.

- **Media Suggestions** include films that might be used to illustrate important principles or processes discussed in each chapter. These films might be shown during class periods, or even assigned for student viewing prior to coming to class.

Most of the videos and films included in the **Media Suggestions** section can be obtained from three sources. Information on PBS videos is available at [www.pbs.org](http://www.pbs.org) while information on videos from Films for the Humanities can be obtained at [www.films.com](http://www.films.com). Insight Media can be reached at [www.insight-media.com/lmhome.htm](http://www.insight-media.com/lmhome.htm).

Finally, instructors might want to consider a variety of other text supplements offered by Longman Publishers, including a printed *Test Bank*, *TestGen-EQ CD-Rom* that contains all the test bank questions and can be used to generate instructor-selected questions, *Study Guide*, acetate transparencies of charts and graphs from the text or a *Politics in Action* video.

# CHAPTER ONE: INTRODUCING GOVERNMENT IN AMERICA

## PEDAGOGICAL FEATURES

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## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Distinguish among the fundamental concepts of *government, politics, and public policy*.
- Understand how *government, politics, and public policy* are interrelated.
- Ascertain how people can influence the government's *policy agenda*.
- Describe the basic concept of the *policymaking system*.
- Determine the essential principles of *traditional democratic theory*.
- Examine the three contemporary theories of American democracy: *pluralism, elite and class theory, and hyperpluralism*.
- Discuss and analyze the challenges to *democracy* presented in the text.
- Understand how the components of American political culture—*liberty, egalitarianism, individualism, laissez-faire, and populism*—contribute to democracy and shape government.
- Begin to assess the two questions that are central to governing and that serve as themes for this textbook: *How should we govern?* and *What should government do?*

## CHAPTER OVERVIEW

### INTRODUCTION

Politics and government matter—that is the single most important message of this book. Despite the fact that government substantially affects each of our lives, youth today are especially apathetic about politics and government. Whether because they feel they can't make a difference, the political system is corrupt, or they just don't care, young Americans are clearly apathetic about public affairs. And while political apathy isn't restricted to young people, a tremendous gap has opened up between the young (defined as under age 25) and the elderly (defined as over 65) on measures of political interest, knowledge, and participation.

## Chapter 1

The goal of *Government in America* is to assist students in becoming well-informed citizens by providing information and developing critical analytical skills.

### GOVERNMENT AND POLITICS

This chapter introduces the fundamental concepts of government, politics, and public policy, and defines the ways in which the three are interrelated. **Government** consists of those *institutions that make authoritative public policies for society* as a whole. Regardless of how their leaders assume office, all governments have certain functions in common: they maintain national defense, provide public goods, use police powers to maintain order, furnish public services, socialize the young into the political culture, and collect taxes to pay for the services they provide. Part of what government does is provide public goods—services that can be shared by everyone and cannot be denied to anyone.

Throughout *Government in America*, two fundamental questions about governing serve as themes: *How should we govern?* and *What should government do?* The chapters that follow acquaint students with the history of American democracy and ask important questions about the current state of democracy in the United States. One goal of the authors of *Government in America* is to familiarize students with the different ways to approach and answer these questions.

**Politics** determines whom we select as our governmental leaders and what policies they pursue. Political scientists still use the classic definition of politics offered by Harold D. Lasswell: “*Who gets what, when, and how.*” The media usually focus on the *who* of politics. *What* refers to the substance of politics and government—benefits, such as medical care for the elderly, and burdens, such as new taxes. *How* people participate in politics is important, too. People *engage in politics* for a variety of reasons, and all of their activities in politics are collectively called **political participation**. Voting is only one form of participation.

### THE POLICYMAKING SYSTEM

A **policymaking system** is a set of institutions and activities that link together government, politics, and public policy. In a democratic society, parties, elections, interest groups, and the media are key **linkage institutions** between the preferences of citizens and the government’s policy agenda. When people confront government officials with problems they expect them to solve, they are trying to influence the government’s **policy agenda**. A government’s policy agenda changes frequently: if public officials want to get elected, they must pay attention to the problems that concern the voters.

People, of course, do not always agree on what government should do. Indeed, one group’s concerns and interests are often at odds with those of another group. A political issue is the result of people disagreeing about a problem or about the public policy needed to fix it.

Three **policymaking institutions**—Congress, the presidency, and the courts—stand at the *core* of the political system. They make policies concerning some of the issues on the policy agenda. Translating people’s desires into public policy is crucial to the workings of democracy. **Public policy** is a choice that government makes in response to some issue on its agenda. Public policy includes all of the decisions *and nondecisions* of government:

policymakers can establish a policy by doing *something* or by doing *nothing*, as can be seen by the government's original response of "inaction" to the AIDS crisis.

Policy impacts are the effects that policy has on people and on society's problems. The analysis of policy impacts carries the policymaking system *back to its point of origin* (often called *feedback*). Even when government decides NOT to do anything, this decision has an impact on people.

## DEMOCRACY

Resounding demands for democracy have recently been heard in many corners of the world. In his famous Gettysburg Address, Abraham Lincoln referred to democracy as "*government of the people, by the people, and for the people.*" Although Lincoln's definition imparts great emotional impact, such a definition is subject to many different interpretations. For example, what do we mean by "*people*"? No democracy permits government by literally every person in society. Throughout this textbook, the authors define **democracy** as *a means of selecting policymakers and of organizing government so that policy represents and responds to the public's preferences.*

**Traditional democratic theory** rests upon several principles that specify how a democratic government makes its decisions. Democratic theorist Robert Dahl lists five criteria that are essential for "an ideal democratic process": equality in voting, effective participation, enlightened understanding, citizen control of the agenda, and inclusion, which means that government must include (and extend rights to) all those subject to its laws.

Democracies must also practice **majority rule** and preserve **minority rights**. The relationship between the few leaders and the many followers is one of **representation**. *The closer the correspondence between representatives and their electoral majority, the closer the approximation to democracy.*

Theories of American democracy are essentially theories about who has power and influence. This chapter focuses on three contemporary theories of American democracy. **Pluralist theory** contends that many centers of influence compete for power and control over public policy, with no one group or set of groups dominating. Pluralists view bargaining and compromise as essential ingredients to democracy. In sharp contrast to pluralist theory, **elite and class theory** contends that society is divided along class lines and that an upper-class elite rules. Wealth is seen as the basis of power, and a few powerful Americans are the policymakers. Some scholars believe elitism is on the rise in the United States, especially due to the administrations of Ronald Reagan and George W. Bush. **Hyperpluralism** is "pluralism gone sour." Hyperpluralists contend that the existence of too many influential groups actually makes it impossible for government to act. When politicians try to placate every group, the result is confusing, contradictory, and muddled policy (or no policy at all). Both hyperpluralist theory and elite and class theory suggest that the public interest is rarely translated into public policy.

Regardless of which theory is most convincing, there are a number of continuing challenges to democracy: increased technical expertise, limited participation in government, escalating campaign costs, and diverse political interests. Traditional democratic theory holds that ordinary citizens have the good sense to reach political judgments and that government has

## Chapter 1

the capacity to act upon those judgments. However, it has become increasingly difficult to make knowledgeable decisions as human knowledge has expanded. There is evidence that Americans actually know very little about policy decisions or about who their leaders are. Today, the elite are likely to be those who command knowledge—the experts.

Many observers also worry about the close connection between money and politics. Candidates have become increasingly dependent on Political Action Committees (PACs) to fund their campaigns. Critics charge that PACs have undue influence on members of Congress when it comes to the issues that the PACs care about.

The rapid rate of change of politics over the last three decades makes it more difficult for government to respond to demands. Some feel that this can lead to inefficient government that cannot adequately respond to challenges.

The large number and diversity of interest groups coupled with the decentralized nature of government makes it easy to prevent policy formulation and implementation, a condition known as **policy gridlock**.

Five elements of American political culture support, shape, and define its democracy. These components are quite important to the immigrant nation of the United States—which has fewer unifying nationalistic characteristics and a shorter historical memory than is the case of most other countries.

The first element is **liberty**—one of Jefferson’s inalienable rights. Americans are supportive of civil liberties and personal freedom. The second is **egalitarianism**, which is more of an evolutionary process than an absolute. Americans tend to support equality of opportunity, and the struggle for equality continues. American social equality has promoted increasing political equality. The third is **individualism**, which developed in part from the desires of immigrants to escape government oppression and from the existence of a western frontier with little government. The fourth is **laissez-faire** economics. The American government taxes and regulates less than most countries at its equivalent level of development. The fifth is **populism**—the “of the people” in Lincoln’s famous description of democracy. The common, ordinary citizens are idealized in American politics, and both liberals and conservatives claim to be their protectors.

Scholars debate whether there is a “cultural war” afoot in America. Some argue that different interpretations of our core political culture have polarized Americans into opposing camps. Others argue that American citizens are fundamentally centrist and tolerant.

Throughout *Government in America* students will be asked to evaluate American democracy.

- Are people knowledgeable about matters of public policy?
- Do they apply what knowledge they have to their voting choices?
- Are American elections designed to facilitate public participation?
- Does the interest group system allow for all points of view to be heard, or do significant biases give advantages to particular groups?
- Do political parties provide voters with clear choices, or do they intentionally obscure their stands on issues in order to get as many votes as possible?
- If there are choices, do the media help citizens understand them?

- Is the Congress representative of American society, and is it capable of reacting to changing times?
- Does the president look after the general welfare of the public, or has the office become too focused on the interests of the elite?

## THE SCOPE OF GOVERNMENT IN AMERICA

One goal of *Government in America* is to familiarize the student with different ways to approach and answer the crucial questions that the authors raise. In particular, the text focuses on one of the most important questions facing modern American democracy: *Is the scope of government too broad, too narrow, or just about right?*

Our governments (national, state, and local) spend about 29 percent of the **gross domestic product**. Our national government spends more than \$2.8 trillion annually, employs nearly two million people, and owns one-third of the land in the United States. National defense takes about one-sixth of the federal budget. Social Security consumes more than one-fifth of the budget. Medicare requires a little over one-tenth of the budget. The federal government helps fund highway and airport construction, police departments, school districts, and other state and local functions. The American government has been more willing to spend than tax, creating a national debt of \$8 trillion.

## CHAPTER OUTLINE

### I. POLITICS AND GOVERNMENT MATTER

- A. Many Americans—especially young people—are apathetic about politics and government.
  - 1. A tremendous gap has opened up between the young (defined as under age 25) and the elderly (defined as over 65) on measures of political interest, knowledge, and participation.
- B. It is the authors' hope that after reading this book, you will be convinced that paying attention to politics and government is important.
  - 1. Government has a substantial impact on the lives of all of us.
  - 2. We have the opportunity to have a substantial impact on government.

### II. GOVERNMENT

- A. Government.
  - 1. **Government** consists of those institutions that *make authoritative public policies* for society as a whole.
  - 2. Four key institutions make policy at the national level: Congress, president, the courts, and the federal administrative agencies (bureaucracy).
- B. This chapter raises *two fundamental questions about governing that will serve as themes for the text*.
  - 1. *How* should we govern?
  - 2. *What* should government do?
- C. What governments do.
  - 1. Regardless of how they assumed power, *all governments have certain functions in common*.
    - a. Governments maintain national defense.

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- b. Governments provide **public goods**—things that everyone can share, such as clean air.
- c. Governments have police powers to provide order—as when Chinese security forces crushed the student protest in Tiananmen Square in 1989 and when the National Guard was called in to restore order in Los Angeles after the 1992 Rodney King verdict.
- d. Governments socialize the young into the political culture—typically through practices such as reciting the Pledge of Allegiance in daily exercises at public schools.
- e. Governments collect taxes to pay for the services they provide.

### III. POLITICS

- A. **Politics** determines whom we select as governmental leaders and what policies they pursue.
  - 1. Harold D. Lasswell defined politics as “*who gets what, when, and how.*”
- B. **Political participation** refers to the ways in which people get involved in politics.
- C. **Single-issue groups** are interest groups whose members will vote on a single issue, such as pro-life and pro-choice groups that ignore a politician’s stand on everything except abortion.

### IV. THE POLICYMAKING SYSTEM

- A. A  **policymaking system** is the process by which policy comes into being and evolves over time.
  - 1. In a democratic society, parties, elections, interest groups, and the media are key **linkage institutions** between the preferences of citizens and the government’s policy agenda.
  - 2. When people confront government officials with problems they expect them to solve, they are trying to influence the government’s **policy agenda**.
  - 3. A **political issue** arises when people disagree about a problem or about a public policy choice.
  - 4. The end product of government and politics is **public policy**.
  - 5. Policymakers stand at the core of the political system, working within the three **policymaking institutions** established by the U.S. Constitution: the Congress, the presidency, and the courts.
- B. **Policy impacts** are the *effects* policy has on people and on society’s problems.
  - 1. There are many types of public policies, including congressional statutes, presidential actions, court decisions, budgetary choices and regulation.
  - 2. Having a policy implies a goal: people who raise a policy issue usually want a policy that *works*.
  - 3. *Translating people’s desires into public policy is crucial to the workings of democracy.*
- C. Policies can be established through inaction as well as action.

### V. DEMOCRACY

- A. Democracy is spreading throughout the world, in areas that were formerly undemocratic. However, people around the world define democracy differently, and few Americans really understand it fully.
- B. Defining **democracy**.
  - 1. The writers of the U.S. Constitution were suspicious of democracy.

2. In his Gettysburg Address, Abraham Lincoln defined democracy as “*government of the people, by the people, and for the people.*”
  3. The basic definition used throughout the *Government in America* textbook is: *democracy is a means of selecting policymakers and of organizing government so that policy represents and responds to the public's preferences.*
- C. **Traditional democratic theory** rests upon several principles that specify how a democratic government makes its decisions.
1. Democratic theorist Robert Dahl refers to *five criteria that are essential for “an ideal democratic process”:*
    - a. Equality in voting—the principle of “*one person, one vote*” is basic to democracy.
    - b. Effective participation—political participation must be *representative*.
    - c. Enlightened understanding—*free press and free speech are essential to civic understanding.*
    - d. Citizen control of the agenda—citizens should have the *collective right to control* the government’s policy agenda.
    - e. Inclusion—*citizenship* must be open to all within a nation.
  2. In addition, democracies must practice **majority rule** and preserve **minority rights**.
    - a. The relationship between the *few leaders* and the *many followers* is one of **representation**: the closer the correspondence between representatives and their electoral majority, the closer the approximation to democracy.
    - b. Most Americans also feel that it is vital to protect minority rights, such as freedom of speech.
- D. Three **contemporary theories** of American democracy.
1. **Pluralist theory** contends that many centers of influence compete for power and control.
    - a. Groups compete with one another for control over public policy, with no one group or set of groups dominating.
    - b. There are *multiple access points* to our government, with power dispersed among the various branches and levels of government.
    - c. *Bargaining and compromise* are essential ingredients of our democracy.
    - d. *Electoral majorities rarely rule*; rather, as Dahl puts it, “all active and legitimate groups in the population can make themselves heard at some crucial stage in the [policymaking] process.”
    - e. The *recent increase in interest group activity* is cited by pluralists as evidence of pluralism.
  2. **Elite and class theory** contends that our society (like all societies) is *divided along class lines*.
    - a. *An upper-class elite rules*, regardless of governmental organization.
    - b. *Wealth is the basis of class power*: a few powerful Americans are the policymakers.
    - c. *Big business* and its power is at the center of most elite and class theories.
    - d. Some observers argue that elitism is *increasing* in recent times.
  3. **Hyperpluralism** is *pluralism gone sour*.
    - a. Many groups are so strong that *government is unable to act*.
    - b. There are *too many groups* with access to the different levels and branches of government: these groups have multiple ways to both prevent policies they disagree with and promote those they support.

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- c. When politicians try to placate every group, the result is confusing, contradictory, and muddled policy (or no policy at all).
- E. Challenges to democracy.
  - 1. How can average citizens make decisions about complex issues?
  - 2. What if citizens know little about their leaders and policy decisions?
  - 3. Is American democracy too dependent on money?
  - 4. Does American diversity produce governmental gridlock?
- F. Political culture is key to understanding American government.
  - 1. America is unified by ideology and political culture—which is unusual compared to most countries with strong nationalistic characteristics and a longer history.
  - 2. Five elements of political culture shape American democracy.
    - a. *Liberty*: Liberty is one of Jefferson's inalienable rights and a cornerstone of the Bill of Rights.
    - b. *Egalitarianism*: Equality of opportunity, especially social equality, has promoted increasing political equality.
    - c. *Individualism*: American individualism developed in part from the western frontier and the immigrants' flight from government oppression.
    - d. *Laissez-faire economics*: The American government taxes and regulates less than most countries at its equivalent level of development.
    - e. *Populism*: The common, ordinary citizens are idealized in American politics, and both liberals and conservatives claim to be their protectors.
  - 3. Scholars debate whether there is a “cultural war” afoot in America.
- G. Some key questions about democracy.
  - 1. Are people knowledgeable about matters of public policy?
  - 2. Do they apply what knowledge they have to their voting choices?
  - 3. Are American elections designed to facilitate public participation?
  - 4. Does the interest group system allow for all points of view to be heard, or do significant biases give advantages to particular groups?
  - 5. Do political parties provide voters with clear choices, or do they intentionally obscure their stands on issues in order to get as many votes as possible?
  - 6. If there are choices, do the media help citizens understand them?
  - 7. Is the Congress representative of American society, and is it capable of reacting to changing times?
  - 8. Does the president look after the general welfare of the public, or has the office become too focused on the interests of the elite?

## VI. THE SCOPE OF GOVERNMENT IN AMERICA

- A. President Clinton's attempt to create national health insurance illustrates the divide among Americans regarding how powerful government should be. Some want an active, responsible government that solves problems. Others believe government intervention is more likely to harm than good.
- B. How active is American government?
  - 1. National, state, and local governments in America collectively spend 29 percent of our **gross domestic product** (the value of all goods and services produced annually by the United States).

2. The national government alone spends more than \$2.8 trillion annually, employs nearly two million people, and owns one-third of the land in the United States.
- C. The American government has been more willing to spend than tax, creating a national debt of \$8 trillion.

## **KEY TERMS AND CONCEPTS**

**Democracy:** a means of selecting policymakers and of organizing government so that policy represents and responds to the public's preferences.

**Elite and class theory:** argues that society is divided along class lines and that an upper-class elite rules on the basis of its wealth.

**Government:** institutions that make public policy for a society.

**Gross domestic product:** the total value of all goods and services produced annually by the United States.

**Hyperpluralism:** argues that too many strong influential groups cripple the government's ability to make coherent policy by dividing government and its authority.

**Linkage institutions:** institutions such as parties, elections, interest groups, and the media, which provide a linkage between the preferences of citizens and the government's policy agenda.

**Majority rule:** weighing the desires of the majority in choosing among policy alternatives.

**Minority rights:** protecting the rights and freedoms of the minority in choosing among policy alternatives.

**Pluralist theory:** argues that there are many centers of influence in which groups compete with one another for control over public policy through bargaining and compromise.

**Policy agenda:** the list of subjects or problems to which people inside and outside government are paying serious attention at any given time.

**Policy gridlock:** where each interest uses its influence to thwart policies it opposes so that no coalition forms a majority to establish policy.

**Policymaking institutions:** institutions such as Congress, the presidency, and the courts established by the Constitution to make policy.

**Policymaking system:** institutions of government designed to respond to each other and to the priorities of the people by governmental action.

**Political issue:** this arises when people disagree about a problem or about public policy choices made to combat a problem.

**Political participation:** the ways in which people get involved in politics.

**Politics:** determines whom we select as our government leaders and what policies they pursue; in other words, who gets what, when, and how.

**Public goods:** things that everyone can share.

**Public policy:** a choice that government makes in response to some issue on its agenda.

**Representation:** the relationship between the leaders and the followers.

**Single-issue groups:** groups so concerned with one matter that their members cast their votes on the basis of that issue only.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Today, large proportions of Americans believe that most or all politicians are corrupt, that government serves the interest of the few, and that government is dominated by the wealthy and powerful. Ask your students to evaluate these statements.
- Debate over the role and size of government is central to contemporary American politics, and it is a theme that is examined in each chapter of *Government in America*. The authors ask: is the scope of government too broad, too narrow, or just about right? Ask students to discuss, using contemporary examples, what is meant by government being “too big.” Do students disagree as to what “too big” is? Why? Ask students to develop a set of criteria, or values, with which they could evaluate what is “too big” about government today.
- Discuss the importance of interest groups in politics today. Do students identify with any groups? Are they members of any groups? Are they represented by any groups, whether they are members or not? *Ask the students if they think interest groups are good or bad for democracy.*
- Have students use the Internet to visit some Web sites of civic groups devoted to encouraging political participation or providing election information. Discuss in class what students learned from these sites. Ask students if they think that the Internet can improve the quality of democracy in the United States. Why?
- Split the students into two sections. Assign one section the task of defending the importance of high citizen political participation. The other section will have the task of defending the argument that only politically knowledgeable citizens should participate in politics. Give each section time to discuss its positions and then have them select one or two students to present their arguments to the class.
- This chapter discusses four challenges to democracy: increased technical expertise, limited participation in government, escalating campaign costs, and diverse political interests. Ask students to identify which one of these challenges is most critical, and to discuss what might be done about it. This assignment could be a writing assignment or a debate format in class.
- Are Americans really divided over political culture? Ask students what the five elements of American political culture—liberty, egalitarianism, individualism, laissez-faire, and populism—suggest about current American politics. (How much liberty? How much equality? etc.) Ask them to listen carefully to each others’ descriptions and make an assessment whether there is consensus in the classroom about these fundamental values.
- Use the beginning of the twenty-first century to stimulate a discussion on the text’s theme of how we should be governed. What are the strengths of our democracy in the new millennium? Our weaknesses? Why? And what should we do about them? This topic could also be used for a reading and writing connection, asking students to keep a journal that focuses on these questions throughout the semester.

## **BACKGROUND READING**

Bok, Derek. The State of the Nation: Government and the Quest for a Better Society. Cambridge, MA: Harvard University Press, 1996.

Dahl, Robert. Democracy and Its Critics. New Haven: Yale University Press, 1989.

Domhoff, G. William. The Power Elite and the State: How Policy Is Made in America. New York: Aldine de Gruyter, 1990.

Hartz, Louis. The Liberal Tradition in America. New York: Harcourt Brace, and World, 1955.

Hibbing, John R. Stealth Democracy. New York: Cambridge University Press, 2002.

Huntington, Samuel P. American Politics: The Promise of Disharmony. Cambridge, MA: Harvard University Press, 1981.

Kingdon, John. Agendas, Alternatives, and Public Policies. 2nd ed. New York: Addison-Wesley, 1995.

## **MEDIA SUGGESTIONS**

1984. A movie dramatization of George Orwell's classic novel depicting a grim perspective on a society where individualism is suppressed and information is distorted by government to achieve ultimate control over its population. The 1956 version is less haunting and grim than the 1984 remake, but not nearly as good.

Tocqueville's Europe: The Paradoxes of Tocqueville's Democracy in America. 1995. An analysis of Tocqueville's observations and criticisms of American democracy. Insight Media.

This Divided State, by Steven Greenstreet. A good documentary film that addresses many of the subjects of this introductory chapter, including student apathy vs. activism, majority rule vs. minority rights, civil liberties and individualism, and the "cultural war." The film tells the story surrounding the Utah Valley State College student association's speaking invitation to Michael Moore. In a conservative state, this provoked a great controversy and tested the students' (and the community's) understanding of democracy.

## CHAPTER TWO: THE CONSTITUTION

### PEDAGOGICAL FEATURES

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- p. 67 ***For Further Reading***

### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Outline the events that led early Americans to declare independence from Britain.
- Review the basic philosophy that underlies the Declaration of Independence.
- Summarize the parallels between Locke's writings and Jefferson's language in the Declaration of Independence.
- Explain how the weaknesses of the Articles of Confederation laid the groundwork for the Constitution.
- Describe what Madison meant by "factions" and how he proposed to solve the problems presented by factions.
- Evaluate how the Constitutional Convention dealt with issues of equality.
- Summarize the major compromises of the Constitutional Convention.
- Explain why economic issues were high on the agenda at the Constitutional Convention and how the framers tried to strengthen the economic powers of the new national government.
- Demonstrate what we mean by the "Madisonian model" and how it is incorporated within the Constitution.

- Understand why many critics claim that the Madisonian model actually reduces efficiency in the operations of government.
- Describe the major issues between the Federalists and the Anti-Federalists in the debates over ratification of the Constitution.
- Ascertain how constitutional changes—both formal and informal—continue to shape and alter the Madisonian system.
- Evaluate the Constitution in terms of the theme of democracy that runs throughout this chapter.
- Identify factors that have led to a gradual democratization of the Constitution.
- Understand how the Constitution affects the scope of government in America.

## CHAPTER OVERVIEW

### INTRODUCTION

A **constitution** is a nation's basic law. It creates political institutions, allocates power within government, and often provides guarantees to citizens. Constitutions thus establish who has power in society, and how that power is exercised. This chapter examines the background of the Constitution, and shows that the main principle guiding the writing of the Constitution was a concern for limited government and self-determination.

### THE ORIGINS OF THE CONSTITUTION

The British king and Parliament originally left almost everything except foreign policy and trade to the discretion of individual colonial governments. However, Britain acquired a vast new territory in North America after the French and Indian War (1763). Parliament passed a series of taxes to raise revenue for colonial administration and defense of the new territory, and imposed the taxes on the colonists without their having direct representation in Parliament. The colonists protested, boycotted the taxed goods, and threw 342 chests of tea into Boston Harbor as a symbolic act of disobedience. Britain reacted by applying economic pressure through a naval blockade of the harbor, and the colonists responded by forming the First Continental Congress in September, 1774.

In May and June of 1776, the Continental Congress began debating resolutions about independence. Richard Henry Lee moved “that these United States are and of right ought to be free and independent states.” On July 2, Lee’s motion was formally approved. The **Declaration of Independence**—written primarily by Thomas Jefferson—was adopted two days later. The Declaration was a political polemic, announcing and justifying a revolution. Today, it is studied more as a statement of philosophy.

American political leaders were profoundly influenced by the writings of John Locke, especially *The Second Treatise of Civil Government* (1689). The foundation of Locke’s philosophy was a belief in **natural rights**: before governments arise, people exist in a *state of nature* where they are governed only by the *laws of nature*. **Natural law** brings **natural rights**, including life, liberty, and property. According to Locke, the sole purpose of government was to protect natural rights. Government must be built on the **consent of the governed**, and it should be a **limited government**. In particular, governments must provide

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laws so that people know in advance whether or not their acts will be acceptable; government cannot take any person's property without his or her consent.

There are some remarkable parallels between Locke's thoughts and Jefferson's language in the Declaration of Independence. The sanctity of property was one of the few ideas absent in Jefferson's draft of the Declaration: he altered Locke's phrase "*life, liberty, and property*" to read "*life, liberty, and the pursuit of happiness.*" Nevertheless, Locke's views on the importance of property figured prominently at the **Constitutional Convention**.

The **American Revolution** itself was essentially a conservative movement that did not drastically alter the colonists' way of life. Its primary goal was to restore rights that the colonists felt were already theirs as British subjects. They did not feel a need for great social, economic, or political changes. As a result, the Revolution did not create class conflicts that would cause cleavages in society.

### THE GOVERNMENT THAT FAILED: 1776-1787

In 1776, the Congress appointed a committee to draw up a plan for a permanent union of the states. That plan was the **Articles of Confederation**, which became the new nation's first governing document. The Articles established a government dominated by the states because the new nation's leaders feared that a strong central government would become as tyrannical as British rule. In general, the weak and ineffective national government could take little independent action. The Continental Congress had few powers outside of maintaining an army and navy, and had no power to tax or even to raise revenue to carry out that function. The weakness of the national government prevented it from dealing with the problems that faced the new nation.

Significant changes were occurring in the states—most significantly, a dramatic increase in democracy and liberty, at least for White males. Expanded political participation brought a new middle class to power. With expanded voting privileges, farmers and craftworkers became a decisive majority, and the old colonial elite saw its power shrink.

A postwar depression had left many small farmers unable to pay their debts and threatened with mortgage foreclosures. With some state legislatures now under the control of people more sympathetic to debtors, a few states adopted policies to help debtors (favoring them over creditors). In western Massachusetts, a small band of farmers led by Captain Daniel Shays undertook a series of armed attacks on courthouses to prevent judges from foreclosing on farms. **Shays' Rebellion** spurred the birth of the Constitution and reaffirmed the belief of the Philadelphia delegates that the new federal government needed to be a strong one.

### MAKING A CONSTITUTION: THE PHILADELPHIA CONVENTION

The delegates who were sent to Philadelphia were instructed to meet "*for the sole and express purpose of revising the Articles of Confederation.*" However, amendment of the Articles required unanimous consent of the states; so the delegates ignored their instructions and began writing a new constitution. Although the men held very different views, they agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government. James Madison of Virginia (who is often called "*the father of the*

*Constitution*") was perhaps the most influential member of the convention in translating political philosophy into governmental architecture.

Pennsylvania delegate Gouverneur Morris was responsible for the style and wording of the **U.S. Constitution**. Written in 1787 and ratified in 1788, the Constitution sets forth the institutional structure of the U.S. government and the tasks these institutions perform. It replaced the Articles of Confederation.

The 55 delegates at the Constitutional Convention were the *postcolonial economic elite*. They were mostly wealthy planters, successful lawyers and merchants, and men of independent wealth. Many were creditors whose loans were being wiped out by cheap paper money. Many were college graduates. As a result, it is not surprising that they would seek to strengthen the economic powers of the new national government. As property holders, these leaders could not imagine a government that did not make its principal objective the preservation of individual rights to acquire and hold wealth. A few (like Gouverneur Morris) were even intent on shutting out the propertyless altogether.

James Madison claimed that **factions** arise from the unequal distribution of wealth. One faction is the majority, composed of the many who have little or no property. The other is the minority, composed of the few who hold much wealth. The delegates thought that, if left unchecked, either a majority or minority faction would become tyrannical. The founders believed that the secret of good government is "*balanced government*". A limited government would have to contain checks on its own power. As long as no faction could seize the whole of government at once, tyranny could be avoided. In Madison's words, "*ambition must be made to counteract ambition*."

## THE AGENDA IN PHILADELPHIA

Although the Constitution is silent on the issue of **equality**, some of the most important issues on the policy agenda at Philadelphia concerned the issue of equality. Three issues occupied more attention than almost any others: whether or not the states were to be equally represented, what to do about slavery, and whether or not to ensure political equality.

The delegates resolved the conflict over *representation for the states* with the **Connecticut Compromise**, under which a bicameral legislature would have equal representation for the states in the Senate and representation based on population in the House of Representatives. Although the Connecticut Compromise was intended to maximize equality among the states, it actually gives more power to states with small populations since it is the Senate that ratifies treaties, confirms presidential nominations, and hears trials of impeachment.

The delegates were bitterly divided over the issue of *slavery*. In the end, they agreed that Congress could limit future importing of slaves but did not forbid slavery itself in the Constitution. In fact, the Constitution stated that persons legally "held to service or labour" who escaped to free states must be returned to their owners. Northern and southern delegates also divided over the issue of how to *count* slaves. Under the **three-fifths compromise**, both representation and taxation were to be based upon the "number of free persons" plus three-fifths of the number of "all other persons."

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The delegates dodged the issue of **political equality**. A few delegates favored universal manhood suffrage, while others wanted to place property qualifications on the right to vote. Ultimately, they left the issue to the states.

Economic issues were high on the policy agenda. The writers of the Constitution charged that the economy was in disarray. Virtually all of them thought a strong national government was needed to bring economic stability to the chaotic union of states that existed under the Articles of Confederation. The delegates made sure that the Constitution clearly spelled out the economic powers of the legislature. Consistent with the general allocation of power in the Constitution, Congress was to be the primary economic policymaker.

The delegates felt that they were constructing a limited government that could not threaten personal freedoms, and most believed that the various states were already doing an adequate job of protecting individual rights. As a result, the Constitution says little about personal freedoms. (It does prohibit suspension of the **writ of habeas corpus**, prohibits bills of attainder and *ex post facto* laws, prohibits the imposition of religious qualifications for holding office in the national government, narrowly defines treason and outlines strict rules of evidence for conviction of treason, and upholds the right to trial by jury in criminal cases.) The absence of specific protections for individual rights led to widespread criticism during the debates over ratification.

### THE MADISONIAN MODEL

The founders believed that human nature was self-interested and that inequalities of wealth were the principal source of political conflict. They also believed that protecting private property was a key purpose of government. Their experience with state governments under the Articles of Confederation reinforced their view that democracy was a threat to property. Thus, the delegates were faced with *the dilemma of reconciling economic inequality with political freedom*.

Madison and his colleagues feared both **majority** and **minority factions**. To thwart **tyranny by the majority**, Madison believed it was essential to keep most of the government beyond their power. Under Madison's plan, voters' electoral influence was limited and mostly indirect. Only the House of Representatives was to be directly elected. Senators were to be elected by state legislatures (modified by the Seventeenth Amendment in 1913), presidents were to be indirectly elected by an electoral college, and judges were to be nominated by the president.

The Madisonian plan also provided for a system of **separation of powers**, in which each of the three branches of government would be relatively independent so that no single branch could control the others. However, the powers were not completely separate: a system of **checks and balances** was established that reflected Madison's goal of setting *power against power* to constrain government actions.

The framers of the Constitution did not favor a direct democracy. They chose a **republic**, a system based on the consent of the governed in which power is exercised by *representatives* of the public.

## RATIFYING THE CONSTITUTION

In the battle over ratification, the **Federalists** supported the Constitution and the **Anti-Federalists** opposed it. John Marshall (later chief justice) suggested, “It is scarcely to be doubted that in some of the adopting states, a majority of the people were in opposition.”

The position of the Federalists was strengthened by the *Federalist Papers*, written by James Madison, Alexander Hamilton, and John Jay as an explication and defense of the Constitution. Today, the *Federalist Papers* remains second only to the Constitution itself in symbolizing the ideas of the framers. The Anti-Federalists considered the Constitution to be a class-based document intended to ensure that a particular economic elite controlled the new government, and they believed that the Constitution would weaken the power of the states. They also feared that the new government would erode fundamental liberties. To allay fears that the Constitution would restrict personal freedoms, the Federalists promised to add amendments to the document specifically protecting individual liberties. James Madison did, indeed, introduce 12 constitutional amendments during the First Congress (1789); ten were ratified and have come to be known as the **Bill of Rights**.

The Constitution itself provided for ratification by special state conventions and required that nine states approve the document before it could be implemented. Delaware, the first, approved the Constitution on December 7, 1787. The ninth state (New Hampshire) approved only six months later.

## CONSTITUTIONAL CHANGE

The Constitution may be modified either by formal amendment or by a number of informal processes. **Formal amendments** change the language of the Constitution in accordance with the procedures outlined in Article V. The Constitution may be **informally amended** in a variety of ways, such as through judicial interpretation or through custom and political practice. Political scientists often refer to the **unwritten constitution**—an unwritten body of tradition, practice, and procedure that, when altered, may change the *spirit of the Constitution*. For example, political parties and national conventions are not mentioned in the written document, but they are important parts of the unwritten constitution.

The Constitution was not intended to be static and unchanging. The founders created a *flexible system* of government, one that could *adapt to the needs of the times without sacrificing personal freedom*. The *brevity* of the Constitution also contributes to its flexibility: it is a very short document that does not attempt to prescribe the structure and functions of the national government in great detail. This flexibility has enabled the Constitution to survive for more than 200 years. Although the United States is young compared to other Western nations, it has the oldest functioning Constitution.

Unquestionably, formal amendments have made the Constitution more egalitarian and democratic. Some amendments have been proposed but not ratified. The best known of these in recent years is the **Equal Rights Amendment**, or **ERA**.

Due to the recent “War on Terror” power has informally shifted marginally to the executive, as is often the case when the country focuses on national security concerns. This represents

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informal constitutional change, and may be eventually reversed by Congress, as is usually the case.

### **UNDERSTANDING THE CONSTITUTION**

The theme of the *role of government* runs throughout this chapter. This section examines the Constitution in terms of the theme of *democracy*, and looks at the impact of the Constitution on policymaking. The Constitution created a *republic*, a *representative form of democracy* modeled after the Lockean tradition of *limited government*.

One of the central themes of American history is the *gradual democratization of the Constitution*. While eighteenth-century upper-class society feared and despised democratic government, today few people would share the founders' fear of democracy.

The systems of separation of powers and checks and balances established by the Constitution allow almost all groups some place in the political system where their demands for public policy can be heard. Because many institutions share power, a group can usually find at least one sympathetic ear. These systems also promote the politics of bargaining, compromise, and playing one institution against another—to such an extent that some scholars even suggest there is so much “checking” that effective government is almost impossible.

## **CHAPTER OUTLINE**

### **I. THE ORIGINS OF THE CONSTITUTION**

- A. A **constitution** is a nation's basic law that:
  - 1. Creates political institutions.
  - 2. Assigns or divides powers in government.
  - 3. Often provides certain guarantees to citizens.
  - 4. Includes an unwritten accumulation of traditions and precedents.
  - 5. Sets the broad rules of the game of politics.
- B. The road to Revolution.
  - 1. The King and Parliament originally left almost everything except foreign policy and trade to the discretion of individual colonial governments.
  - 2. Britain obtained a vast expanse of new territory in North America after the **French and Indian War** ended in 1763.
  - 3. The British Parliament passed a series of taxes to pay for the cost of defending the territory, and also began to tighten enforcement of its trade regulations.
  - 4. Americans resented the taxes, especially since they had no direct representation in Parliament.
  - 5. The colonists responded by forming the First Continental Congress (September, 1774) and sent delegates from each colony to Philadelphia to discuss the future of relations with Britain.
- C. Declaring independence.
  - 1. The Continental Congress met in almost continuous session during 1775 and 1776.
  - 2. In May and June of 1776, the Continental Congress began debating resolutions about independence; after two days of debate on the wording, the **Declaration**

- of Independence** (written primarily by Thomas Jefferson) was adopted on July 4.
- D. The English heritage: the power of ideas.
1. John Locke's writings, especially *The Second Treatise of Civil Government*, profoundly influenced American political leaders.
  2. Locke's philosophy was based on a belief in **natural rights**, the belief that people exist in a state of nature before governments arise, where they are governed only by the *laws of nature*.
    - a. **Natural law** brings natural rights, which include life, liberty, and property.
    - b. Because natural law is superior to human law, natural law can justify even a challenge to the rule of a tyrannical king.
    - c. Locke argued that government must be built on the **consent of the governed**—the people must agree on who their rulers will be.
    - d. Government should also be a **limited government**, with clear restrictions on what rulers can do.
    - e. According to Locke, the *sole purpose of government was to protect natural rights*.
    - f. In an extreme case, people have a right to revolt against a government that no longer has their consent; but Locke stressed that people should not revolt *until injustices become deeply felt*.
- E. Jefferson's handiwork: the American creed.
1. There are a number of close parallels between Locke's thoughts and Jefferson's language in the Declaration of Independence.
  2. The sanctity of property was one of the few ideas absent in Jefferson's draft of the Declaration of Independence (but the Lockean concept of property figured prominently at the Constitutional Convention).
  3. Jefferson altered Locke's phrase, "*life, liberty, and property*" to "*life, liberty, and the pursuit of happiness*."
- F. The "conservative" Revolution.
1. The **Revolution** was essentially a conservative movement that did not drastically alter the colonists' way of life.
  2. The primary goal of the Revolution was *to restore rights the colonists felt were already theirs* as British subjects.

## II. THE GOVERNMENT THAT FAILED: 1776-1787

- A. The **Articles of Confederation** established a government dominated by the states.
1. The Articles established a national legislature (the **Continental Congress**) with one house.
    - a. States could send up to seven delegates, but each state had only one vote.
    - b. The Continental Congress had few powers outside of maintaining an army and navy (and little money to do even that); it had no power to tax; and could not regulate commerce (which inhibited foreign trade and the development of a strong national economy).
  2. There was no president and no national court.
  3. The weakness of the national government prevented it from dealing with the problems that faced the new nation.
- B. Changes in the states.
1. Important changes were occurring in the states, including a dramatic increase in democracy and liberty (for White males).

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2. Expanded political participation brought a new middle class to power, which included artisans and farmers who owned small homesteads.
  3. With expanded voting privileges, farmers and craftworkers became a decisive majority; members of the old colonial elite saw their power shrink, and they didn't like it.
- C. Economic turmoil.
1. A postwar depression had left many small farmers unable to pay their debts; many were threatened with mortgage foreclosures.
  2. State legislatures were now under the control of people more sympathetic to **debtors**.
  3. A few states (notably Rhode Island) adopted policies to help debtors, favoring them over **creditors**—some printed paper money and passed “**force acts**,” requiring creditors to accept the almost worthless money.
- D. Shays' Rebellion.
1. In 1786, a small group of farmers in western Massachusetts led by Captain Daniel Shays rebelled at losing their land to creditors.
  2. **Shays' Rebellion** was a series of armed attacks on courthouses to prevent judges from foreclosing on farms.
  3. Shays' Rebellion spurred the birth of the Constitution.
- E. The Aborted Annapolis Meeting.
1. In September, 1786, a small group of continental leaders assembled at Annapolis, Maryland, to consider the problem of commercial conflicts that had arisen among the states.
  2. Only five states sent delegates, and they issued a call for a full-scale meeting of the states in Philadelphia the following May.

### III. MAKING A CONSTITUTION: THE PHILADELPHIA CONVENTION

- A. Delegates were given specific instructions to meet “*for the sole and express purpose of revising the Articles of Confederation.*”
1. Amendment was not feasible since amending the Articles required the unanimous consent of the states.
  2. Twelve states sent representatives; Rhode Island refused to participate.
  3. The 55 delegates ignored their instructions and began writing a new constitution.
- B. Gentlemen in Philadelphia.
1. A select group of economic and political notables.
  2. Men of wealth; many were college graduates.
  3. Most were coastal residents; a significant number were urbanites.
- C. Philosophy into action.
1. Although very different philosophical views were represented, the group *agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government.*
  2. The delegates were united in their belief that people were self-interested and that government should play a key role in *checking and containing the natural self-interest* of the people.
  3. James Madison, who is often called “*the father of the Constitution,*” was perhaps the most influential member of the Convention in translating political philosophy into governmental architecture.
    - a. Madison believed that *the distribution of wealth (property) is the source of political conflict.*

- b. He claimed that **factions** arise from the unequal distribution of wealth: one faction is the majority (composed of the many who have little or no property); the other faction is the minority (composed of the few who hold wealth).
- 4. The delegates believed that *either a majority or a minority faction will be tyrannical* if it goes unchecked and has too much power.
  - a. Property must be protected against the tyrannical tendencies of faction.
  - b. The secret of good government is “*balanced government*”: as long as no faction could seize complete control of government, tyranny could be avoided.

#### **IV. THE AGENDA IN PHILADELPHIA**

- A. Although the *Constitution is silent on equality*, some of the most important issues on the policy agenda at Philadelphia concerned equality: representation of the states; what to do about slavery; and whether or not to ensure political equality.
- B. Representation of the states.
  - 1. The **New Jersey Plan**, proposed by William Paterson of New Jersey, called for each state to be equally represented in the new Congress.
  - 2. The **Virginia Plan**, suggested by Edmund Randolph of Virginia, called for representation in Congress based on the state’s share of the American population.
  - 3. The **Connecticut Compromise**, devised by Roger Sherman and William Johnson of Connecticut, was the solution adopted by the delegates that created a **bicameral legislature** in which the Senate would have two members from each state and the House of Representatives would have representation based on population.
- C. Slavery.
  - 1. The delegates agreed that Congress could limit future *importing of slaves* (they prohibited it after 1808), but they *did not forbid slavery itself*.
  - 2. The Constitution stated that persons legally “held to service or labour” who escaped to free states had to be returned to their owners.
  - 3. Under the famous **three-fifths compromise**, both representation and taxation were to be based upon the “number of free persons” plus three-fifths of the number of “all other persons.”
- D. Political equality.
  - 1. Some delegates favored suffrage for all free, adult males; some wanted to put property qualifications on the right to vote.
  - 2. Ultimately, they decided to leave the issue to the states.
- E. Economic issues.
  - 1. Economic issues played an important role at the Convention.
    - a. Advocates of the Constitution (Federalists) stressed the economy’s weaknesses.
    - b. Opponents of the Constitution (Anti-Federalists, who opposed a strong national government) claimed that charges of economic weakness were exaggerated.
  - 2. It is not surprising that the framers of the Constitution would seek to strengthen the economic powers of the new national government since delegates to the Constitutional Convention were the nation’s postcolonial economic elite. Historian Charles Beard argued that the delegates primarily wanted these strong

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economic powers so that their own wealth would be protected; the best evidence does not support Beard's thesis.

3. The Constitution clearly spelled out the economic powers of Congress.
  - a. Congress was to be the chief economic policymaker.
  - b. Congress was granted power to tax and borrow, and to appropriate funds.
  - c. Congress was also granted powers to protect property rights—powers to punish counterfeiters and pirates, ensure patents and copyrights, to legislate rules for bankruptcy, and to *regulate interstate and foreign commerce*.
4. The framers also prohibited practices in the states that they viewed as inhibiting economic development.
  - a. State monetary systems.
  - b. Placing duties on imports from other states.
  - c. Interfering with lawfully contracted debts.
5. States were required to respect civil judgments and contracts made in other states, and to return runaway slaves to their owners (overturned by the Thirteenth Amendment).
6. The national government guaranteed the states "*a republican form of government*" to prevent a recurrence of Shays' Rebellion, and the new government was obligated to repay all the public debts incurred under the Continental Congress and the Articles of Confederation (\$54 million).

### F. Individual rights.

1. The delegates felt that preserving individual rights would be relatively easy.
  - a. They were constructing a limited government that, by design, could not threaten personal freedoms.
  - b. Powers were dispersed so that each branch or level of government could restrain the others.
  - c. Most delegates believed that the various states were already protecting individual rights.
2. Although the Constitution says little about personal freedoms, it does include the following:
  - a. The **writ of habeas corpus** may not be suspended except during invasion or rebellion.
  - b. Congress and the states are prohibited from passing bills of attainder (which punish people without a judicial trial) and *ex post facto* laws (which punish people or increase the penalties for acts that were not illegal or were not as severely punished when the act was committed).
  - c. Religious qualifications may not be imposed for holding office in the national government.
  - d. Treason is narrowly defined, and strict rules of evidence for conviction of treason are specified.
  - e. The right to trial by jury in criminal cases is guaranteed.
3. The absence of specific protections for individual rights led to widespread criticism during the debates over ratification.

## V. THE MADISONIAN MODEL

- A. The delegates were faced with the dilemma of reconciling *economic inequality* with *political freedom*.
- B. James Madison and his colleagues feared both majority and minority factions.

- C. To prevent **tyranny by the majority**, Madison believed that it was essential to keep most of the government beyond the control of the masses.
  - 1. Under Madison's plan that was incorporated in the Constitution, voters' electoral influence was limited and mostly indirect.
  - 2. Only the House of Representatives was directly elected; senators and presidents were indirectly elected, and judges were nominated by the president (modified by the Seventeenth Amendment, which provides for direct popular election of senators).
- D. Separation of powers and checks and balances.
  - 1. The Madisonian scheme provided for a system of **separation of powers** in which each of the three branches of government would be relatively independent of the others so that no single branch could control the others.
  - 2. Power was not separated absolutely, but was shared among the three institutions.
  - 3. Since power was not completely separate, each branch required the consent of the others for many of its actions—thereby creating a system of **checks and balances** that reflected Madison's goal of setting *power against power* to constrain government actions.
    - a. The president checks Congress by holding the veto power.
    - b. Congress holds the “purse strings” of government, and the Senate has the power to approve presidential appointments.
    - c. **Judicial review** (the power of courts to hold executive and congressional policies unconstitutional) was not explicit in the Constitution, but was asserted by the Supreme Court under John Marshall in *Marbury v. Madison* (1803).
    - d. Since the framers thought much government activity would take place in the states, federalism was considered an additional check on the power of the national government.
- E. The constitutional republic.
  - 1. The framers of the Constitution established a **republic** (a system based on the consent of the governed in which power is exercised by representatives of the public).
  - 2. This *deliberative democracy* established an elaborate decision-making process.
  - 3. The system of checks and balances and separation of powers has a conservative bias because it favors the *status quo*; that is, people desiring change must usually have a *sizable majority* rather than a simple majority.
  - 4. The Madisonian system encourages moderation and compromise, and retards change.

## VI. RATIFYING THE CONSTITUTION

- A. Federalists and Anti-Federalists.
  - 1. A fierce battle erupted between the **Federalists** (who supported the Constitution) and the **Anti-Federalists** (who opposed it).
  - 2. Federalists:
    - a. James Madison, Alexander Hamilton, and John Jay—writing under the name Publius—wrote a series of 85 articles (known as the ***Federalist Papers***) in defense of the Constitution.
    - b. The *Federalist Papers* defended the Constitution detail by detail, but also represented *an important statement of political philosophy*.
  - 3. Anti-Federalists.

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- a. The Anti-Federalists questioned the motives of the writers of the Constitution; they believed that the new government was an enemy of freedom.
  - b. Anti-Federalists believed that the new Constitution was a *class-based document*, intended to ensure that a particular economic elite controlled the public policies of the national government.
  - c. They feared that the new government would *erode fundamental liberties* and would *weaken the power of the states*.
4. In a compromise to assure ratification, the Federalists promised to add amendments to the document, specifically protecting individual liberties.
    - a. James Madison introduced 12 constitutional amendments during the First Congress in 1789.
    - b. Ten of the amendments—known as the **Bill of Rights**—were ratified by the states and took effect in 1791.
- B. Ratification.
1. The Federalists specified that the Constitution be ratified by *special conventions* in each of the states, not by state legislatures (a shrewd move since state legislatures were populated with political leaders who would lose power under the Constitution).
  2. The Constitution itself specified that nine states approve the document before it could be implemented.
  3. Delaware was the first state to ratify the Constitution (December 7, 1787); New Hampshire became the ninth state six months later.
  4. George Washington was the electoral college's unanimous choice for president and he took office on April 30, 1789.

## VII. CONSTITUTIONAL CHANGE

- A. Constitutional changes may occur either by formal amendments or by a number of informal processes.
- B. **Formal amendments** change the written language of the Constitution.
1. Article V of the Constitution outlines procedures for formal amendment.
  2. There are two stages to the amendment process (proposal and ratification), each with two alternative routes.
    - a. **Proposal** - an amendment may be proposed either by a two-thirds vote in each house or chamber of Congress, or by a national convention called by Congress at the request of two-thirds of the state legislatures.
    - b. **Ratification** - an amendment may be ratified either by the legislatures of three-fourths of the states, or by special state conventions called in three-fourths of the states.
  3. All of the amendments to the Constitution have been proposed by Congress (no constitutional convention has been convened since the original Constitutional Convention); all except one of the successful amendments have been ratified by the state legislatures.
  4. The president has no formal role in amending the Constitution.
- C. Effects of formal amendment.
1. Formal amendments have made the Constitution more egalitarian and democratic.

2. The emphasis on economic issues in the original document is now balanced by amendments that stress equality and increase the ability of a popular majority to affect government.
  3. The most important effect has been to *expand liberty and equality* in America.
- D. **Informal amendment** - the Constitution changes *informally* as well as *formally*.
1. The **unwritten constitution** refers to an *unwritten body of tradition, practice, and procedure* that—when altered—may change the *spirit of the Constitution*.
  2. The Constitution may change informally through judicial interpretation, through political practice, through demands on policymakers, or as a result of changes in technology.
    - a. **Judicial interpretation** can profoundly affect how the Constitution is understood.
    - b. *Changing political practice* can also change the meaning of the Constitution.
      - (1) The development of political parties dramatically changed the form of American government.
      - (2) Changing political practice has altered the role of the **electoral college**, which today is often seen as a “rubber stamp” in selecting the president.
    - c. The Constitution has also been greatly changed by *technology*.
      - (1) The *mass media* plays a role unimaginable in the eighteenth century.
      - (2) The *bureaucracy* has grown in importance with the advent of technological developments such as computers.
      - (3) *Electronic communications* and the development of *atomic weapons* have enhanced the president’s role as commander in chief.
    - d. The power of the presidency has grown as a result of *increased demands for new policies*.
      - (1) The United States’ growth to the status of a *superpower* in international affairs has located additional power in the hands of the chief executive. National security concerns tend to result in more power to the president, although Congress tends to reassert itself eventually.
      - (2) Increased demands of domestic policy have placed the president in a more prominent role in preparing the federal budget and proposing a legislative program.
- E. The importance of flexibility.
1. The United States has the *oldest functioning constitution* in existence today.
  2. The framers of the Constitution created a *flexible system of government* that could adapt to the needs of the times without sacrificing personal freedom.
  3. Even with 27 amendments, the Constitution is a very short document: it does not prescribe the structure and functioning of the national government in detail.

## VIII. UNDERSTANDING THE CONSTITUTION

- A. The Constitution and democracy.
1. Democratic government was despised and feared among eighteenth-century upper-class society.

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2. The Constitution created a republic, a representative form of democracy modeled after the Lockean tradition of limited government.
  3. One of the *central themes of American history* is the *gradual democratization of the Constitution*, away from the elitist model of democracy and toward the pluralist one.
  4. Today, few people share the founders' fear of democracy.
- B. The Constitution and the scope of government.
1. Separation of powers and checks and balances allow almost all groups some place in the political system where their demands for public policy can be heard.
  2. Separation of powers and checks and balances also promote the politics of bargaining, compromise, playing one institution against another, and an increase of hyperpluralism.
    - a. Some scholars suggest that so much "checking" was built into the American political system that effective government is almost impossible due to gridlock.
    - b. The outcome may be nondecisions when hard decisions are needed.

## KEY TERMS AND CONCEPTS

**Anti-Federalists:** opposed the new Constitution, feared the new Constitution would erode fundamental liberties, and argued that the new Constitution was a class-based document serving the economic elite.

**Articles of Confederation:** the document that outlines the voluntary agreement between states and was adopted as the first plan for a permanent union of the United States.

**Bill of Rights:** the first ten Amendments to the Constitution passed after ratification specifically protecting individual liberties to fulfill promises made by the Federalists to the Anti-Federalists in return for their support.

**Checks and balances:** each branch required the consent of the others for many of its decisions.

**Connecticut Compromise:** the plan adopted at the Constitutional Convention to provide for two chambers in Congress, one representing states equally and the other representing states on the basis of their share of the population.

**Consent of the governed:** people must agree on who their rulers will be.

**Constitution:** a nation's basic law creating institutions, dividing power, and providing guarantees to citizens.

**Declaration of Independence:** the document used by the signers to announce and justify the Revolutionary War and which was specifically designed to enlist the aid of foreign nations in the revolt.

**Equal Rights Amendment:** was first proposed in 1923, passed by Congress in 1972, but was not ratified by three-fourths of the states; this amendment mandated equality of rights under the law regardless of gender.

**Factions:** groups of people, currently known as political parties or interest groups, who arise as a result of unequal distribution of wealth to seize the reins of government in their own interest.

**Federalist Papers:** articles written to convince others to support the new constitution.

**Federalists:** argued for ratification of the Constitution by writing the *Federalist Papers*; included Madison, Hamilton, and Jay.

**Judicial review:** the courts have the power to decide whether the actions of the legislative and executive branches of state and national governments are in accordance with the Constitution.

**Limited government:** clear restrictions on what rulers could do and which safeguard natural rights.

**Marbury v. Madison:** Judicial review was established in this 1803 Supreme Court case.

**Natural rights:** these are rights to which people are entitled by natural law, including life, liberty, and property.

**New Jersey Plan:** a plan by some of the delegates to the Constitutional Convention to provide each state with equal representation in Congress.

**Republic:** a system based on the consent of the governed where power is exercised by representatives of the public.

**Separation of powers:** each branch of government would be independent of the other.

**Shays' Rebellion:** a series of armed attacks on courthouses to prevent judges from foreclosing on farms.

**U.S. Constitution:** the document where the foundations of U.S. government are written, providing for national institutions to each have separate but not absolute powers.

**Virginia Plan:** a plan by some of the delegates to the Constitutional Convention to provide each state with a share of congressional seats based on its share of the population.

**Writ of *habeas corpus*:** this enables people who are detained by authorities to secure an immediate inquiry and reasons why they have been detained.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- The Constitution establishes the rules of the political game. These rules decentralize power rather than consolidating power in the hands of the executive or the legislature. Ask your students to debate the following questions: *Would American government be more efficient if power were concentrated within a single branch of government? Would it be more effective?*
- The delegates to the Constitutional Convention constituted an educational and economic elite, not the “common man.” Ask your students to consider whether an elite can be representative of people from other strata in society. Expand the question to consider contemporary problems, such as racism and poverty.
- It often surprises students to learn that Great Britain has no written constitution. Call for class discussion of how democracy can exist in a nation with no written constitution. Broaden the question to include *unwritten* aspects of the U.S. Constitution.
- Ask students to identify which features of the Constitution reflect a distrust of democracy. Who didn’t the framers trust? Do we have similar beliefs today?
- *Government in America* points out that “one of the central themes of American history is the gradual democratization of the Constitution.” Ask your class to evaluate this statement and to either substantiate or refute it.
- For a discussion question, ask students to interpret the modern meaning of the phrase “life, liberty, and pursuit of happiness.” Using an overhead projector or the blackboard,

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- list the various interpretations and how many times there is agreement as well as disagreement.
- For an extended discussion, ask students to compare the goals of the Declaration of Independence, especially the phrases “all men are created equal” and “life, liberty, and pursuit of happiness” to the goals of the failed Equal Rights Amendment. Ask students to debate whether the goals expressed in each are incompatible or similar.
- For an alternative discussion, ask students why minority rights are important. What type of minorities was Madison concerned about? Are minority rights still important in U.S. politics? Ask students to provide specific historical and contemporary examples of “minorities” seeking to protect their rights. How is the political system structured to “balance” minority and majority rights? What values are served by this balance: efficiency, equality, representation?
- As a short essay assignment, have the students discuss how they might change the Constitution. What amendments would they change or take out? Are there any amendments they feel need to be added to the Constitution?
- For an alternative essay assignment, have the student defend the importance of the Bill of Rights. In particular, they should explain why, if the Bill of Rights was so important, it was not contained in the original Constitution. Finally, ask them if the Bill of Rights would have been more or less powerful had it been included in the original document.
- Have the students discuss the importance of presidential candidates being born in the United States. Is such a rule needed in modern society? Why did the founders include such a rule in Article II?

## **BACKGROUND READING**

Beard, Charles. An Economic Interpretation of the Constitution. New York: Macmillan, 1941.

Ellis, Joseph J. Founding Brothers: The Revolutionary Generation. New York: Alfred A. Knopf, 2000.

Jillson, Calvin C. Constitution Making: Conflict and Consensus in the Federal Convention of 1787. New York: Agathon, 1988.

Lipset, Seymour Martin. The First New Nation. New York: Basic Books, 1963.

Manley, J. F. and K. M. Dolbeare, eds. The Case Against the Constitution. Armonk, NY: M.E. Sharpe, 1987.

Simmons, A. John. The Lockean Theory of Rights. Princeton, NJ: Princeton University Press, 1994.

Wood, Gordon S. The Creation of the American Republic. Chapel Hill, NC: University of North Carolina Press, 1969.

## **MEDIA SUGGESTIONS**

Bill of Rights. This program provides an overview of the importance of the Bill of Rights in contemporary politics, with special focus given to the First, Second, and Fourth amendments. Edudex.com.

The Constitution of the United States. An Encyclopedia Britannica Educational Corporation film examining the various elements of the Constitution.

The Constitution: That Delicate Balance. A thirteen-part series by Films Incorporated where panelists examine a variety of issues and constitutional interpretations.

The Government and You. 1989. Part of the Government by Consent Series distributed by Insight Media. Discusses and defines the philosophical basis of the Constitution.

In the Beginning. This film examines the intellectual origins of the U.S. Constitution and includes a discussion about those interests ignored by the framers. Available through Films for the Humanities and Sciences.

John Locke. This film provides a recreation of John Locke's conversations for an in-depth view of his principles. Available through Films for the Humanities and Sciences.

The Living Constitution. 1989. Part of the Government by Consent Series distributed by Insight Media. Examines how changes are made in the Constitution to adapt to changes in technology and the population.

Marbury v. Madison. Part of an Equal Justice Under Law Series presentation by National Audio Visual Center depicting a dramatic reenactment of this historic case.

The Magna Carta. This film examines the origins of the Magna Carta and its contributions to the development of American democracy. Available through Films for the Humanities and Sciences.

Thomas Jefferson: The Pursuit of Liberty. An award-winning examination of the philosophy and life of Thomas Jefferson. Available through Films for the Humanities and Sciences.

## CHAPTER THREE: FEDERALISM

### PEDAGOGICAL FEATURES

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### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Describe the three basic forms of governmental structures: federalism, unitary, and confederacy.
- Identify the ways in which the Constitution determines the powers of state and national governments.
- Evaluate how contrasting interpretations of the supremacy clause and the Tenth Amendment lead to divergent views of the scope of state and national powers.
- Describe how the Supreme Court set forth the principle of implied powers in the *McCulloch v. Maryland* case.
- Understand the relationship of implied powers to enumerated powers.
- Describe how the Civil War and the civil rights movement contributed to the development of national supremacy over the states.
- List and analyze the clauses in the Constitution that define the obligations that each state has to every other state.
- Trace the ways in which American federalism has changed over the past two centuries.
- Compare the contrasting forms of dual federalism and cooperative federalism.
- Describe what is meant by fiscal federalism and assess the role that federal money plays in state policies.
- Identify the positive and negative effects American federalism has on democracy.

# CHAPTER OVERVIEW

## INTRODUCTION

The relationships among the federal, state, and local governments often confuse people, yet federalism is at the heart of critical battles over the nature and scope of public policy in the United States. Neighborhood schools are run by locally elected school boards but also receive state and national funds, and with those funds come state and national rules and regulations. Understanding the scope and nature of local, state, *and* national governments is thus critical to learning about the development of public policy in the United States.

## DEFINING FEDERALISM

We generally speak of three forms of governmental structures—federalism, unitary, and confederate. **Federalism** is a way of organizing a nation so that two or more levels of government have formal authority *over the same area and people*. Chapter 3 explores the complex relationships between *different levels* of government in the United States. It describes the ways that the federal system has changed over two centuries of American government and why American federalism is at the center of important battles over policy.

Federalism is not the typical way by which nations organize their governments; there are only 11 countries with federal systems. Most governments in the world today are **unitary governments**, in which *all power resides in the central government*. Although American government operates under a federal system at the national level, the *states are unitary governments* with respect to their local governments. In the United States, local governments are legally “*creatures of the states*”: they are created by the states and can be changed (or even abolished) by the states.

In a **confederation**, the national government is weak and most or all of the power is in the hands of its components (such as states). The United States was organized as a confederacy after the American Revolution, with the **Articles of Confederation** as the governing document. Confederations are rare today except in international organizations.

The concept of **intergovernmental relations** refers to the *entire set of interactions among national, state, and local governments* in a federal system. The American federal system *decentralizes our politics*. For example, senators are elected as representatives of individual states and not of the nation. Moreover, with more layers of government, more opportunities exist for political participation; there are more points of access in government and more opportunities for interests to be heard and to have their demands for public policies satisfied.

The federal system not only decentralizes our politics; it also decentralizes our *policies*. The history of the federal system demonstrates the tensions that exist between the states and the national government about who controls policy and what it should be. Because of the overlapping powers of the two levels of government, most of our public policy debates are also debates about federalism.

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The American states have always been policy innovators. Most policies that the national government has adopted had their beginnings in the states. In many ways, the states constitute a “national laboratory” to develop and test public policies.

### THE CONSTITUTIONAL BASIS OF FEDERALISM

The Constitution does not refer directly to federalism, and little was said about it at the Constitutional Convention. However, the framers carefully defined the powers of state and national governments. The framers also dealt with a question that still evokes debate: Which level of government should prevail in a dispute between the states and the national government? Advocates of strong national powers generally emphasize the **supremacy clause**. In *Article VI* (the “supremacy clause”), three items are listed as *the supreme law of the land*: the Constitution; laws of the national government (when consistent with the Constitution); and treaties. However, the national government can only operate *within its appropriate sphere* and cannot usurp powers of the states. By contrast, advocates of states’ rights believe that the **Tenth Amendment** means that the national government has only those powers *specifically assigned* by the Constitution.

In *United States v. Darby* (1941), the Supreme Court called the Tenth Amendment a “*constitutional truism*” (an assertion only that the states have independent powers of their own and not a statement that their powers are supreme over those of the national government). In 1976, the Court appeared to backtrack on this ruling in favor of national government supremacy (*National League of Cities v. Usery*), and then still later overturned the 1976 decision (*Garcia v. San Antonio Metro*, 1985).

Federal courts can order states to obey the Constitution or federal laws and treaties. However, in deference to the states, the *Eleventh Amendment* prohibits individual damage suits against state officials (such as a suit against a police officer for violating one’s rights) and protects state governments from being sued against their consent by private parties in federal courts or in state courts or before federal administrative agencies.

Four key events have played a major role leading to the growth of federal powers relative to the states: the elaboration of the doctrine of implied powers, the definition of the commerce clause, the Civil War, and the long struggle for racial equality. In *McCulloch v. Maryland* (1819), the Supreme Court ruled that Congress has certain **implied powers** and that *national policies take precedence* over state policies. These two principles have been used to expand the national government’s sphere of influence. Chief Justice John Marshall wrote that “...the government of the United States, though limited in its power, is supreme within its sphere of action.” The “**necessary and proper**” clause (sometimes called the **elastic clause**) was interpreted to give Congress certain implied powers that go beyond its **enumerated powers**.

National powers expanded after the Supreme Court defined commerce very broadly, encompassing virtually every form of commercial activity (*Gibbons v. Ogden*, 1824). The Supreme Court prohibited much federal regulation of business and the economy in the late nineteenth and early twentieth centuries, but had swung back to allowing broader federal powers by 1937.

The **Civil War** was a struggle over slavery, but it was also (and perhaps more importantly) a struggle between states and the national government. A century later, conflict erupted once

again over states' rights and national power. In *Brown v. Board of Education* (1954), the Supreme Court held that school segregation was unconstitutional. Southern politicians responded with “**massive resistance**” to the decision. Throughout the 1960s the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs.

Federalism also involves *relationships among the states*. The Constitution outlines certain obligations that each state has to every other state. The Constitution requires states to give **full faith and credit** to the public acts, records, and civil judicial proceedings of every other state; states are required to return a person charged with a crime in another state for trial or imprisonment (**extradition**); and citizens of each state are entitled to all the **privileges and immunities** of any state in which they are located. The goal of the privileges and immunities clause is to prohibit states from discriminating against citizens of other states, but numerous exceptions have been made to this clause (such as higher tuition for out-of-state residents at state universities).

## INTERGOVERNMENTAL RELATIONS TODAY

This section focuses on three important features: first, the gradual change from dual federalism to cooperative federalism; second, federal grants-in-aid as the cornerstone of the relationship between the national government and state governments; and third, the relative growth of the national government and state governments.

One way to understand the changes in American federalism is to contrast dual federalism with cooperative federalism. Before the national government began to assume a position of dominance, the American system leaned toward **dual federalism**, a system under which states and the national government each remain *supreme within their own spheres*. The analogy of **layer cake federalism** is often used to describe dual federalism because the powers and policy assignments of the layers of government are distinct (as in a layer cake), and proponents of dual federalism believe that the powers of the national government should be interpreted narrowly.

The national government took a direct interest in economic affairs from the very founding of the republic (see Chapter 2). As the United States changed from an agricultural to an industrial nation, new problems arose and with them new demands for governmental action. The United States moved from a system of dual federalism to one of **cooperative federalism**, in which the national and state governments share responsibility for public policies. Using the analogy of **marble cake federalism**, American federalism is portrayed as a system with *mingled responsibilities* and blurred distinctions between the levels of government. Cooperative federalism—which may be seen as a partnership between the national and state governments—began in earnest with the transformation of public attitudes toward the role of the national government during the Great Depression of the 1930s. For hundreds of programs, cooperative federalism involves shared costs, federal guidelines, and shared administration.

**Fiscal federalism** involves the pattern of spending, taxing, and providing grants in the federal system. **Grants-in-aid** are the main instrument the national government uses to both aid and influence states and localities. State and local aid from the national government amounts to more than \$240 billion per year. **Categorical grants** can be used only for *specific purposes*

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(or *categories*) of state and local spending. State and local agencies can obtain categorical grants only by meeting certain qualifications and by applying for the grants. Much federal regulation is accomplished by “strings” that are attached to categorical grants, such as nondiscrimination provisions. The most common type of categorical grant is a **project grant**, awarded on the basis of *competitive applications*. **Formula grants** are distributed according to a formula based on factors such as population, per capita income, and percentage of rural population.

Complaints about the cumbersome paperwork and numerous federal requirements attached to categorical grants led to the adoption of **block grants**. Congress implemented block grants to support broad programs in areas such as community development and social services. Block grants provide more flexibility since states and communities have discretion in deciding how to spend the money. The percentage of federal aid to state and local governments in the form of block grants began increasing in 1995 as the new Republican majority in Congress passed more federal aid in the form of block grants, including grants for welfare programs.

In recent years states have been burdened by **underfunded mandates** and **unfunded mandates**. These require states to spend money to comply with a law of Congress (or, in some cases, a federal court order).

## UNDERSTANDING FEDERALISM

Federalism was instituted largely to enhance democracy in America, and it strengthens democratic government in many ways. Different levels of government provide more opportunities for participation in politics and increase access to government. Since different citizens and interest groups will have access to the different levels, federalism also increases the opportunities for government to be responsive to demands for policies. Moreover, it is possible for the diversity of opinion within the country to be reflected in different public policies among the states. Different economic interests are concentrated in different states, and the federal system ensures that each state can establish a power base to promote its interests. By handling most disputes over policy at the state and local level, federalism also reduces decision making and conflict at the national level.

Conversely, diverse state policies and the large number of local governments also create some impediments to democracy. Since the states differ in the resources they devote to services like public education, the quality of such services varies greatly from one state to another. Diversity in policy can also discourage states from providing services that would otherwise be available—states are deterred from providing generous benefits to those in need when benefits attract poor people from states with lower benefits. Federalism may have a negative effect on democracy when local interests are able to thwart national majority support of certain policies, and having so many governments makes it difficult for many Americans to know which government is responsible for certain functions.

While the national government has grown in scope relative to state governments, it has not done so at the expense of state governments. The latter continue to carry out all the functions they have typically done. The national government has instead grown as it has taken on new responsibilities viewed as important by the public.

# CHAPTER OUTLINE

## I. DEFINING FEDERALISM

- A. A system of *organizing governments*.
  - 1. **Federalism** is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people.
  - 2. Only 11 (out of approximately 190 nations of the world) have federal systems.
  - 3. Most governments in the world today have **unitary governments**, in which all power resides in the central government.
  - 4. In a **confederation**, the national government is weak and most or all of the power is in the hands of its components.
  - 5. The workings of the American system are sometimes called **intergovernmental relations**, which refers to interactions among national, state, and local governments.
- B. Why federalism is important.
  - 1. The federal system *decentralizes our politics*.
  - 2. Federalism *decentralizes our policies*.

## II. THE CONSTITUTIONAL BASIS OF FEDERALISM

- A. The word *federalism is not mentioned in the Constitution*.
- B. Eighteenth-century Americans had little experience in thinking of themselves as Americans first and state citizens second.
- C. The **division of power**.
  - 1. The writers of the Constitution carefully *defined the powers of state and national governments* [see Table 3.2].
  - 2. Although favoring a stronger national government, states were retained as vital components of government.
  - 3. The **supremacy clause** deals with the question of which government should prevail in disputes between the states and the national government; Article VI states that three items are the *supreme law of the land*:
    - a. The Constitution
    - b. Laws of the national government (when consistent with the Constitution)
    - c. Treaties (which can only be made by the national government)
  - 4. Judges in every state were specifically bound by the Constitution.
  - 5. Questions remain concerning the boundaries of the national government's powers.
    - a. The national government can only operate *within its appropriate sphere* and cannot usurp the states' powers.
    - b. The **Tenth Amendment** states that "*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.*"
    - c. There have been variations in the Court's interpretation of the Tenth Amendment.
- D. Establishing **national supremacy**.
  - 1. Four key events have largely settled the issue of how national and state powers are related: the *McCulloch v. Maryland* case, the Supreme Court's interpretation of the Commerce Clause, the Civil War, and the civil rights movement.
  - 2. **McCulloch v. Maryland** (1819) - the case that first brought the issue of *state versus national power* before the Supreme Court.

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- a. In this case, the Supreme Court ruled that *national policies take precedence* over state policies: Chief Justice John Marshall wrote that “the government of the United States, though limited in its power, is supreme within its sphere of action.”
- b. The Court also ruled that the Constitution gives Congress certain **implied powers** (based on the provision granting Congress the power to “make all laws necessary and proper for carrying into execution the foregoing powers”) that go beyond the **enumerated powers** that are specifically listed in Article I, Section 8.
3. The **Civil War** (1861–65) - settled militarily the issue that *McCulloch* had enunciated constitutionally.
4. The **civil rights movement** - a century after the Civil War, the policy issue was *equality*.
  - a. In 1954, the Supreme Court held that school segregation was unconstitutional (*Brown v. Board of Education*).
  - b. The conflict between states and the national government over equality issues was *decided in favor of the national government*: throughout the 1960s, the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs.
5. Federalism involves more than the relationships between the national government and state and local governments: Article IV of the Constitution outlines certain *obligations that each state has to every other state*.
  - a. **Full faith and credit** - States are required to give full faith and credit to the public acts, records, and civil judicial proceedings of every other state.
  - b. **Extradition** - States are required to return a person charged with a crime in another state to that state for trial or imprisonment.
  - c. **Privileges and immunities of citizens** - Citizens of each state receive all the privileges and immunities of any other state in which they happen to be.

### III. INTERGOVERNMENTAL RELATIONS TODAY

- A. From dual to cooperative federalism.
  1. **Dual federalism** (“*layer cake federalism*”) - a form of federalism in which states and the national government each remain supreme within their own spheres.
  2. **Cooperative federalism** (“*marble cake federalism*”) - a form of federalism with mingled responsibilities and blurred distinctions between the levels of government.
  3. The American federal system leaned toward dual federalism before the national government began to assert its dominance.
- B. **Fiscal federalism** - the pattern of spending, taxing, and providing grants in the federal system.
  1. Fiscal federalism is the cornerstone of the national government’s relations with state and local governments.
  2. **Grants-in-aid** are the main instrument the national government uses for *both aiding and influencing* states and localities.
  3. Federal aid to states and localities amounted to approximately \$306 billion in 2001, despite cutbacks during the Reagan administration.
- C. There are two major types of federal aid for states and localities: categorical grants and block grants.
  1. **Categorical grants** (the main source of federal aid) - grants that can be used only for *specific purposes, or categories*.

- a. State and local agencies can obtain categorical grants only by applying for them and by meeting certain qualifications.
  - b. Categorical grants come with numerous “strings” (rules and requirements) attached, such as nondiscrimination provisions and punitive **cross-over sanctions** and **cross-cutting requirements** that reduce or deny federal funds if certain local or state laws are not passed or if federal guidelines are not met.
  - c. There are two types of categorical grants:
    - (1) **Project grants** - the most common type of categorical grant; awarded on the basis of *competitive applications* (such as grants to university professors from the National Science Foundation).
    - (2) **Formula grants** - distributed according to a formula; states and local governments automatically receive funds based on a formula developed from factors such as population, per capita income, or percentage of rural population (such as Medicare, Aid for Families with Dependent Children, and public housing).
2. **Block grants** - used to support broad programs in areas like community development and social services.
- a. In response to complaints about the cumbersome paperwork and restrictive federal requirements attached to categorical grants, Congress established block grants to support broad programs.
  - b. States have discretion in deciding how to spend the money.
- D. On the whole, federal grant distribution follows the principle of *universalism*—that is, something for everybody, even though some money goes where it is not really needed.
- E. There are some occasions when states would prefer *not* to receive some federal aid—such as when Congress extends a program that is administered by the states and only partly funded by the national government—an **underfunded mandate**. This means that the states have to budget more funds for the project in order to receive federal grant money.
- F. Of even greater concern to states are **unfunded mandates**. These require state and local governments to spend money to comply with laws such as the Clean Air Act of 1970 and the Americans with Disabilities Act of 1990 with no financial help from the federal government that enacted the laws. In addition, federal courts create unfunded mandates for states regarding school desegregation, prison construction, and other policies. In 1995, Congress passed a law that will make it more difficult for Congress to impose new unfunded mandates.

#### IV. UNDERSTANDING FEDERALISM

- A. By decentralizing the political system, federalism was *designed to contribute to the limited form of democracy* supported by the founders.
- B. Advantages for democracy.
  - 1. Different levels of government provide more opportunities for participation in politics.
  - 2. Additional levels of government contribute to democracy by increasing access to government.
  - 3. Two levels of government increase the opportunities for government to be responsive to the demands for policies.
  - 4. A party that loses strength at the national level can rebuild and groom leaders at the state and local levels.
  - 5. It is possible for the diversity of opinion within the country to be reflected in different public policies among the different states.

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6. By handling most disputes over policy at the state and local level, federalism reduces decision making and conflict at the national level.
- C. Disadvantages for democracy.
  1. The quality of services like education is heavily dependent on the state in which the service is provided; states differ greatly in the resources they can devote to public services.
  2. Diversity in policy can discourage states from providing services that would otherwise be available because poor people may be attracted from states with lower benefits.
  3. Federalism may have a negative effect on democracy when local interests are able to impede national majority support of certain policies.
  4. The vast number of local governments makes it difficult for many Americans to know which government is responsible for certain functions.
- D. Federalism and the growth of the national government.
  1. The national government took a direct interest in economic affairs from the very founding of the republic (see Chapter 2).
  2. As the United States changed from an agricultural to an industrial nation, new problems arose and with them new demands for governmental action.
  3. The United States moved from a system of dual federalism to one of cooperative federalism, in which the national and state governments share responsibility for public policies (as seen above).
- E. Federalism and the scope of the national government.
  1. The national government's share of expenditures has grown rapidly since 1929; today it spends about 20 percent of the GDP, while state and local governments spend about 11 percent today.
  2. The growth of the national government has not supplanted the states.

## KEY TERMS AND CONCEPTS

**Block grants:** broad program grants given more or less automatically to states and communities, which exercise discretion in how the money is spent.

**Categorical grants:** grants that can be used only for specific purposes or categories of state and local spending.

**Cooperative federalism:** where state and the national government responsibilities are mingled and blurred like a marble cake; powers and policies are shared.

**Dual federalism:** where states and the national government each remain supreme within their own spheres of power, much like a layer cake.

**Elastic clause:** the statement in the Constitution which says that Congress has the power to make all laws necessary and proper for carrying out its duties.

**Enumerated powers:** powers of Congress found in Article I, Section 8 of the Constitution.

**Extradition:** the Constitution requires each state to return a person charged with a crime in another state to that state for trial or imprisonment.

**Federalism:** a system of shared power between two or more levels of government.

**Fiscal federalism:** the pattern of spending, taxing, and providing grants in the federal system.

**Formula grants:** a type of categorical grant where states and local governments do not apply for a grant but are given funds on the basis of a formula.

**Full faith and credit:** Article IV of the Constitution requires states to provide reciprocity toward other states' public acts, records, and civil judicial proceedings.

**Gibbons v. Ogden:** the 1824 Supreme Court case which further expanded Congress' power to regulate interstate and international commerce by defining commerce very broadly to incorporate every form of commercial activity.

**Implied powers:** powers beyond Congress' enumerated powers which ensure that it can carry out its duties.

**Intergovernmental relations:** the term used to describe the entire set of interactions among national, state, and local governments.

**McCulloch v. Maryland:** the 1819 Supreme Court case, which established the supremacy of the national government over the states, included both enumerated and implied powers of Congress.

**Privileges and immunities:** the Constitution prohibits states from discriminating against citizens of other states.

**Project grant:** categorical grants awarded on the basis of competitive applications.

**Supremacy clause:** Article VI of the Constitution states that the supreme law of the land is the Constitution, the laws of the national government, and treaties.

**Tenth Amendment:** specifies that powers not delegated to the national government are reserved for the state government or the people.

**Unitary government:** a system where all power resides in the central government.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Ask your students to evaluate the federal response to Hurricane Katrina. (You may wish to assign additional articles to supplement this chapter's introductory comments.) The response was largely viewed as a massive failure; is this a fair assessment? If so, who or what institutions are to blame? How much responsibility should the states and local governments assume, and how much should the national government assume? What should be their respective roles? Should the different levels of government react differently than they would in response to the loss of homes or businesses during a financial crisis?
- Assign two groups of students to serve as panels to debate the following question: Does the American form of federalism increase democracy, or does it have a negative effect on democracy?
- Hold an in-class discussion on the following: How would politics and policies be different in America if there were a unitary system instead of a federal system? Or a confederation instead of a federal system?
- Ask students to study the budgets of the local school system, university, or city to determine the various proportions of revenue that the federal, state, and local governments contribute. Would the school district, university, or city benefit from a change in how it is funded?
- For class discussion, ask students whether democracy in the U.S. would continue to exist without federalism. If it would, in what ways would it change? Be sure to remind them that unitary democratic systems exist in most European nations.

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- Assign students either individually or in groups to investigate the funding sources of a “local” project, encouraging them to use sources such as government documents, interviews with elected and appointed officials, and newspaper archives. Who was responsible for the project being funded? Were there any “strings” attached to federal or state monies?
- Assign the students an essay. In this assignment have students discuss if they think the federalist system influenced the civil rights movement. Would this change have occurred faster in the South if America had a unitary democratic system? Can the students think of any negative effect such a system might have had on the outcome of the civil rights movement?
- Assign students to work in groups on different policy areas (e.g., transportation, agriculture, environment, welfare) by researching President George W. Bush’s most recent budget proposals. What types of grant programs are proposed for distributing funds to state and localities? Is the nature and funding levels of these programs different from Clinton’s budget in 1997?
- Discuss the role of the federal, state, and local governments in responding to the 9/11 attacks on the World Trade Center in New York City. Should the federal government have done more? Why or why not? Is the funding going where it should? What does this experience illustrate about federal aid?

## **BACKGROUND READING**

Anton, Thomas. American Federalism and Public Policy. Philadelphia: Temple University Press, 1989.

Beer, Samuel H. To Make a Nation: The Rediscovery of American Federalism. Cambridge, MA: Belknap Press of Harvard University Press, 1993.

Elazar, Daniel J. American Federalism: A View from the States. 3rd. ed. New York: Harper and Row, 1984.

Peterson, Paul A. The Price of Federalism. Washington, D.C.: Brookings Institution, 1995.

Walker, David B. The Rebirth of Federalism. New York: Chatham House Publishers, 2000.

Zimmerman, Joseph F. Contemporary American Federalism: The Growth of National Power. New York: Praeger, 1992.

## **MEDIA SUGGESTIONS**

Federalism. Part of Government by Consent: A National Perspective. A 1989 Insight Media production examining the distribution of power between state and national governments.

Federalism: The National Government Versus the States. Number thirteen in the series “The Constitution: That Delicate Balance,” produced by the Corporation for Public Broadcasting. This program examines how much power the federal government can exert over state affairs.

# CHAPTER FOUR: CIVIL LIBERTIES AND PUBLIC POLICY

## PEDAGOGICAL FEATURES

- p. 101 *Table 4.1: The Bill of Rights*
- p. 103 *Table 4.2: The Nationalization of the Bill of Rights*
- p. 108 *You Are the Judge: The Case of Animal Sacrifices*
- p. 111 *You Are the Judge: The Case of the Purloined Pentagon Papers*
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- p. 117 *You Are the Judge: The Case of the Drive-in Theater*
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- p. 123 *Table 4.3: The Constitution and the Stages of the Criminal Justice System*
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- p. 131 *A Generation of Change: Contesting the Death Penalty*
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- p. 139 *For Further Reading*

## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Examine how decisions of the Supreme Court have extended specific provisions of the Bill of Rights to the states as part of the incorporation doctrine.
- Describe how the two constitutional statements about religion and government—the *establishment clause* and the *free exercise clause*—may sometimes conflict.
- Examine what the First Congress may have intended by the terms *establishment* and *free exercise* of religion.
- Establish why the Supreme Court will usually not permit prior restraint on speech and press.
- Explain why it has been so difficult for the courts to clearly define which types of materials are considered to be obscene.
- Differentiate between *freedom of speech* and related concepts like *symbolic speech* and *freedom of expression*.
- Understand the conflict that can occur between free speech and public order.
- Determine how essential rights such as the right to a fair trial can conflict with other rights such as the right to a free press.

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- Identify the two facets of freedom of assembly and explain how they may conflict with other societal values.
- Explain how specific provisions of the Bill of Rights have been used to extend basic rights to defendants in criminal trials.
- Ascertain how concepts such as a *right to privacy* can be inferred or implied from the Bill of Rights.
- Explain why civil liberties are seen as an individual's protection against the *government*.

# CHAPTER OVERVIEW

## INTRODUCTION

**Civil liberties** are individual legal and constitutional *protections against the government*. Although Americans' civil liberties are established in the Bill of Rights, the courts determine what the Constitution actually means through the cases they decide. Disputes about civil liberties are frequent because the issues involved are complex and divisive. Throughout this chapter, students are introduced to the nuances of judicial decision making through special features called *You Are the Judge*. Students can play the role of judge after reading a short summary of the case and a prompt for their decision. They can also read how the case was actually decided and consider the constitutional, statutory, political, and/or practical basis of that decision.

## THE BILL OF RIGHTS—THEN AND NOW

Political scientists have discovered that people are advocates of rights *in theory*, but their support wavers when it comes time to put those rights into practice. Cases become particularly difficult when *liberties are in conflict*—such as free press versus a fair trial or free speech versus public order—or where the facts and interpretations are subtle and ambiguous.

The **Bill of Rights** is fundamental to Americans' freedom. All of the state constitutions had bills of rights by the time of the 1787 convention, and the issue of adding a bill of rights to the proposed national constitution had become a condition of ratification. The Bill of Rights was passed as a group by the First Congress in 1789; the first ten amendments were ratified and became part of the Constitution in 1791.

The Bill of Rights was written to *restrict the powers of the new central government*. The First Amendment establishes the four great liberties: freedom of the press, of speech, of religion, and of assembly. What happens, however, if a state passes a law violating one of the rights protected by the federal Bill of Rights and the state's constitution does not prohibit this abridgement of freedom? In *Barron v. Baltimore* (1833), the Supreme Court ruled that the Bill of Rights restrained *only* the national government and not states and cities. It was not until 1925 that the Court relied on the **Fourteenth Amendment** to find that a state government must respect some First Amendment rights (*Gitlow v. New York*). In *Gitlow*, the Court announced that freedoms of speech and press “*were fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states.*”

The Supreme Court gradually applied most of the Bill of Rights to the states, particularly during the era of Chief Justice Earl Warren in the 1960s, developing the concept of the incorporation doctrine. At the present time, only the Second, Third, and Seventh Amendments and the grand jury requirement of the Fifth Amendment have not been applied specifically to the states. Not everyone agrees that the Fourteenth Amendment incorporated parts of the Bill of Rights into state laws; in 1985, Edwin Meese (then attorney general) strongly criticized *Gitlow* and called for “disincorporation” of the Bill of Rights.

## FREEDOM OF RELIGION

The **First Amendment** makes two basic statements about religion and government, commonly referred to as the **establishment clause** and the **free exercise clause**. Sometimes these freedoms conflict, but cases involving these clauses usually raise different kinds of conflicts.

Some nations, like Great Britain, have an *established church* that is officially supported by the government. A few American colonies had official churches, but the religious persecutions that incited many colonists to move to America discouraged any desire for the First Congress to establish a national church in the United States. Debate still continues over what else the First Congress may have intended for the establishment clause. Some people believe that the establishment clause meant only that the government could not favor one religion over another. Thomas Jefferson argued that the First Amendment created a “**wall of separation**” between church and state that forbade any support for religion at all.

Debate has been especially intense over questions of aid to church-related schools and prayers or Bible reading in the public schools. School prayer is possibly the most controversial religious issue. In 1962 and 1963, the Court ruled that voluntary recitations of prayers or Bible passages, when done as part of classroom exercises in public schools, violated the establishment clause (*Engel v. Vitale* and *School District of Abington Township, Pennsylvania v. Schempp*). A majority of the public has never favored the Court’s decisions on school prayer. Some religious groups pushed for a constitutional amendment permitting school prayer, and many school districts simply ignored the decision. In *Employment Division v. Smith* (1990), the Supreme Court ruled that states can prohibit certain religious practices, but not religion itself.

There has always been a fine line between aid to church-related schools that is permissible and aid that is not. In 1971, the Supreme Court declared that aid to church-related schools must have a secular legislative purpose, cannot be used to advance or inhibit religion, and should avoid excessive government “entanglement” with religion (*Lemon v. Kurtzman*). In a landmark decision in 2002, the Court in *Zelman v. Simmons-Harris* upheld a program that provided some families in Cleveland, Ohio, with vouchers that could be used to pay tuition at religious schools.

Conservative religious groups have had an impact on the political agenda. They devoted much of their time and energies in recent years to the issues of *school prayer and creation science*; and while they lost some battles (such as the battle over teaching *creation science* in the public schools), they have won others (for example, the Court decision that religious scenes could be set up on public property). Thus, in 1992, the Court ruled that a school-sponsored prayer at a public school graduation violated the constitutional separation of church

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and state. In 2000, the Court held that student-led prayer at football games was also unconstitutional.

The guarantee of *free exercise* of religion is also more complicated than it appears at first glance. The free exercise of religious beliefs sometimes clashes with society's other values and laws, as occurred when the Amish refused to send their children to public schools. The Supreme Court has consistently maintained that people have an absolute right to *believe* what they want, but the courts have been more cautious about the right to *practice* a belief (but in *Wisconsin v. Yoder*, 1972, the Court did allow Amish parents to take their children out of school after the eighth grade).

## FREEDOM OF EXPRESSION

The courts have frequently wrestled with the question of whether **freedom of expression** (like **freedom of conscience**) is an **absolute**. The courts have often ruled that there are instances when speech needs to be controlled, especially when the First Amendment conflicts with other rights. In their attempts to draw the line separating *permissible* from *impermissible speech*, judges have had to *balance* freedom of expression against competing values like public order, national security, and the right to a fair trial.

The courts have also had to decide what kinds of activities constitute *speech* (or press) within the meaning of the First Amendment. Certain forms of *nonverbal communication* (like picketing) are considered **symbolic speech** and are protected under the First Amendment. Other forms of expression are considered to be *action* and are not protected. The Court has generally struck down **prior restraint** of speech and press (censorship that prevents publication), although the writer or speaker could be punished for violating a law or someone's rights *after* publication (*Near v. Minnesota*, 1931).

Crises such as war often bring government efforts to enforce censorship. In *Schenck v. United States* (1919), Justice Oliver Wendell Holmes declared that government can limit speech if it provokes a **clear and present danger** of "substantive evils." Free speech advocates did little to stem the relentless persecution of *McCarthyism* during the "cold war" of the 1950s, when Senator Joseph McCarthy's unproven accusations that many public officials were Communists created an atmosphere in which the courts placed broad restrictions on freedom of expression. By the 1960s, the political climate had changed, and courts today are very supportive of the right to protest, pass out leaflets, or gather signatures on petitions (as long as it is done in public places).

The Bill of Rights is also a source of potential *conflicts between different types of freedoms*. The Constitution clearly meant to guarantee the right to a **fair trial** as well as the right to a **free press**, but a trial may not be fair if pretrial press coverage makes it impossible to select an impartial jury. Likewise, journalists seek full freedom to cover all trials (they argue that the public has a right to know), but they sometimes defend their right to keep some of their own files secret in order to protect a confidential source. In *Zurcher v. Stanford Daily* (1978), the Supreme Court disagreed with this claim.

Efforts to define **obscenity** have perplexed the courts for years. Although the Supreme Court has held that "*obscenity is not within the area of constitutionally protected speech or press*" (*Roth v. United States*, 1957), it has proven difficult to determine what is legally obscene.

The Court tried to clarify its doctrine by spelling out what could be classified as obscene and thus outside First Amendment protection in the 1973 case of *Miller v. California*. Then, Chief Justice Warren Burger wrote that materials were obscene if, taken as a whole, they appealed “to a prurient interest in sex”; showed “patently offensive” sexual conduct that was specifically defined by an obscenity law; and taken as a whole, lacked “serious literary, artistic, political, or scientific value.”

Advances in technology have created a new wrinkle in the obscenity issue. The Internet and the World Wide Web make it easier to distribute obscene material rapidly, and a number of online information services have taken advantage of this opportunity.

In 1996, Congress passed the Communications Decency Act, banning obscene material and criminalizing the transmission of indecent speech or images to anyone under 18 years of age. The new law made no exception for material that has serious literary, artistic, political, or scientific merit as outlined in *Miller v. California*. In 1997, the Supreme Court overturned this law as being overly broad and vague and a violation of free speech. In 2002, the Court overturned a law banning virtual child pornography on similar grounds. Apparently the Supreme Court views the Internet similarly to print media, with similar protections against government regulation.

**Libel** and **slander** also raise *freedom of expression* issues that involve *competing values*. If public debate is not free, there can be no *democracy*. Conversely, some reputations will be unfairly damaged in the process if there are not limitations. Libel (the publication of statements known to be false that tend to damage a person’s reputation) and slander (spoken defamation) are not protected by the First Amendment, but the Court has held that statements about **public figures** are libelous only if made with *malice and reckless disregard* for the truth (*New York Times v. Sullivan*, 1964). The right to criticize the government (which the Supreme Court termed “the central meaning of the First Amendment”) is not libel or slander.

Wearing an armband, burning a flag, and marching in a parade are examples of **symbolic speech**: actions that do not consist of speaking or writing but that express an opinion. When Gregory Johnson set a flag on fire at the 1984 Republican National Convention in Dallas to protest nuclear arms buildup, the Supreme Court decided that the state law prohibiting flag desecration violated the First Amendment (*Texas v. Johnson*, 1989).

## COMMERCIAL SPEECH

**Commercial speech** (such as advertising) is more restricted than are expressions of opinion on religious, political, or other matters. Similarly, radio and television stations are subject to more restrictions than the print media (justified by the fact that only a limited number of broadcast frequencies are available). The Federal Trade Commission (FTC) decides what kinds of goods may be advertised on radio and television and regulates the content of such advertising. The FTC attempts to ensure that advertisers do not make false claims for their products, but “truth” in advertising does not prevent misleading promises. Nevertheless, commercial speech on the airwaves is regulated in ways that would clearly be impossible in the political or religious realm.

The Federal Communications Commission (FCC) regulates the content, nature, and very existence of radio and television broadcasting. Although newspapers do not need licenses,

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radio and television stations do. The state of Florida passed a law requiring newspapers in the state to provide space for political candidates to reply to newspaper criticisms. The Supreme Court, without hesitation, voided this law (*Miami Herald Publishing Company v. Tornillo*, 1974). Earlier, in *Red Lion Broadcasting Company v. Federal Communications Commission* (1969), the Court upheld similar restrictions on radio and television stations, reasoning that such laws were justified because only a limited number of broadcast frequencies were available.

### FREEDOM OF ASSEMBLY

There are two facets to **freedom of assembly**. The *right to assemble* involves the right to gather together in order to make a statement, while the *right to associate* is the freedom to associate with people who share a common interest. The Supreme Court has generally upheld the right of any group—no matter how controversial or offensive—to *peaceably* assemble on public property. The *balance between freedom and order* is tested when protest verges on harassment.

### DEFENDANTS' RIGHTS

The First Amendment guarantees the freedoms of religion, speech, press, and assembly. Most of the remaining rights in the Bill of Rights concern the rights of people accused of crimes. These rights were originally intended to protect the accused in *political* arrests and trials. Today, the protections in the Fourth, Fifth, Sixth, and Eighth Amendments are primarily applied in criminal justice cases. Moreover, the Supreme Court's decisions have *extended most provisions of the Bill of Rights to the states* as part of the *general process of incorporation*.

The Bill of Rights covers every stage of the criminal justice system. The **Fourth Amendment** is quite specific in forbidding **unreasonable searches and seizures**. No court may issue a **search warrant** unless **probable cause** exists to believe that a crime has occurred or is about to occur, and warrants must describe the area to be searched and the material sought in the search. Since 1914, the courts have used the **exclusionary rule** to prevent illegally seized evidence from being introduced in federal courts. In 1961, the Supreme Court incorporated the exclusionary rule within the rights that restrict the states as well as the federal government (*Mapp v. Ohio*).

The Burger Court made a number of exceptions to the exclusionary rule, including the **good-faith exception** (*United States v. Leon*, 1984). The USA Patriot Act, passed just six weeks after the September 11, 2001, terrorist attacks, gave the government broad new powers for the wiretapping, surveillance, and investigation of terrorism suspects. The Patriot Act gave the federal government the power to examine a terrorist suspect's records held by third parties such as doctors, libraries, bookstores, universities, and Internet service providers. It also allowed searches of private property without probable cause and without notice to the owner until after the search has been executed.

Under the **Fifth Amendment** prohibition against forced **self-incrimination**, suspects cannot be compelled to provide evidence that can be used against them. The burden of proof rests on the police and the prosecutors, not the defendant. *Miranda v. Arizona* (1966) set guidelines for police questioning of suspects, whereby suspects must be informed of their constitutional

rights. The more conservative Rehnquist Court made some *exceptions* to the *Miranda* rulings, but the Court in **Dickerson v. U.S.** (2000) made clear its continued support for the *Miranda* ruling.

Although the **Sixth Amendment** has always ensured the **right to counsel** in *federal courts*, this right was not *incorporated* to state courts until recently. In 1932, the Supreme Court ordered states to provide an attorney for indigent defendants accused of a *capital crime* (**Powell v. Alabama**), and in 1963, the Court extended the same right to everyone accused of a *felony* (**Gideon v. Wainwright**). The Court later ruled that a lawyer must be provided for the accused whenever *imprisonment could be imposed* (**Argersinger v. Hamlin**, 1972). The Sixth Amendment also ensures the right to a **speedy trial** and an **impartial jury**, but most cases are settled through **plea bargaining** rather than through trial by jury. In recent times the Supreme Court has against judicial procedures enacted by the Bush administration used against “detainees” and others accused of terrorism.

The **Eighth Amendment** forbids **cruel and unusual punishment**, but it *does not define* the phrase. Most of the constitutional debate over cruel and unusual punishment has centered on the *death penalty*. In **Furman v. Georgia** (1972), the Court first confronted the question of whether the death penalty is inherently cruel and unusual punishment. A divided Court overturned Georgia’s death penalty law because its imposition was “freakish” and “random” in the way it was arbitrarily applied (particularly with regard to factors such as race and income). Thirty-five states passed new laws that were intended to be less arbitrary. In recent years, the Court has come down more clearly on the side of the death penalty. A divided Court rebuffed the last major challenge to the death penalty in **McCleskey v. Kemp** (1987), when it refused to rule that the penalty violated the equal protection of the law guaranteed by the Fourteenth Amendment. However, the number of death sentences issued has been sharply declining in the last decade due to DNA testing and public concerns about wrongful sentences.

## THE RIGHT TO PRIVACY

Today’s technologies raise key questions about *ethics* and the Constitution. Although the Constitution does not specifically mention a **right to privacy**, the Supreme Court has said that it is implied by several guarantees in the Bill of Rights. Questions involving a right to privacy have centered on such diverse issues as abortion rights, the drafting of state laws to define death, technological developments like in-vitro fertilization, and the right to die. Supporters of privacy rights argue that the Fourth Amendment was intended to protect privacy. Opponents claim that the Supreme Court was inventing protections not specified by the Constitution when it ruled on constitutionally protected “rights of privacy.”

The Supreme Court first referred to the idea that the Constitution guarantees a right to privacy in a 1965 case involving a Connecticut law that forbade contraceptives (**Griswold v. Connecticut**), but the *most important application of privacy rights* came in the area of *abortion*. Americans are deeply divided on abortion: the positions of “pro-choice” and “pro-life” are irreconcilable.

Justice Harry Blackmun’s majority opinion in **Roe v. Wade** (1973) followed the practice of medical authorities in dividing pregnancy into three equal *trimesters*. *Roe* forbade any state control of abortions during the first trimester; permitted states to allow regulated abortions to

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protect the mother's health in the second trimester; and allowed the states to ban abortion during the third trimester except when the mother's life was in danger. In 1989, a clinic in St. Louis challenged the constitutionality of a Missouri law that forbade the use of state funds or state employees to perform abortions, but the Court upheld the law in ***Webster v. Reproductive Health Services*** (1989). In 1992, the Court changed its *standard for evaluating restrictions on abortion* from one of "strict scrutiny" of any restraints on a "fundamental right" to one of "undue burden" that permits considerably more regulation (***Planned Parenthood v. Casey***). In 2000, the Court held in ***Sternberg v. Carhart*** that Nebraska's prohibition of "partial birth" abortions was unconstitutional because it placed an undue burden on women seeking an abortion by limiting their options to less safe procedures and because the law provided no exception for cases where the health of the mother was at risk. Beginning in 1994, the Supreme Court strengthened women's access to health clinics, while Congress passed the Freedom of Access to Clinic Entrances Act, which made it a federal crime to intimidate abortion providers or women seeking abortions.

## UNDERSTANDING CIVIL LIBERTIES

American government is both *democratic* (because it is governed by officials elected by the people and answerable to them) and *constitutional* (because it has a fundamental organic law, the Constitution, that limits the things government can do). The democratic and constitutional components of government can produce conflicts, but they also reinforce one another. One task that government must perform is to resolve conflicts between rights.

The rights guaranteed by the First Amendment are essential to a democracy. Likewise, the rights guaranteed by the Fourth, Fifth, Sixth, and Eighth Amendments protect all Americans; but they also make it harder to punish criminals. Ultimately, it is the courts that decide what constitutional guarantees mean in practice: although the federal courts are the *branch of government least subject to majority rule*, the courts *enhance democracy by protecting liberty and equality from the excesses of majority rule*.

## CHAPTER OUTLINE

### I. THE BILL OF RIGHTS—THEN AND NOW

- A. **Civil liberties** are individual legal and constitutional protections against the government. They are essential for democracy.
  1. Americans' civil liberties are set down in the **Bill of Rights**, but the courts are the arbiters of these liberties because they determine what the Constitution means in the cases that they decide.
    - a. Although the original Constitution had no bill of rights, the states made it clear that adding one was a condition of ratification.
    - b. The first ten amendments (ratified in 1791) comprise the Bill of Rights.
    - c. The Bill of Rights was passed in a period of history when British abuses of the colonists' civil liberties were still a recent and bitter memory.
  2. Political scientists have found that people are supporters of rights in theory, but their support often falters when it comes time to put those rights into practice.
  3. Cases become particularly difficult *when liberties are in conflict* (such as free press versus a fair trial or free speech versus public order) or where the facts and interpretations are subtle and ambiguous.

- B. The Bill of Rights was written to *restrict the powers* of the new central government (every state constitution had its own bill of rights).
1. In **Barron v. Baltimore** (1833), the Court ruled that the Bill of Rights restrained only the national government, not states and cities.
  2. The First Amendment prohibits Congress from passing any laws that violate freedom of the press, of speech, of religion, and of assembly.
  3. **Incorporation doctrine** provides the rationale for the process by which fundamental freedoms have been applied against state action through interpretation of the Fourteenth Amendment.
    - a. The **Fourteenth Amendment** (ratified in 1868) included guarantees of *privileges and immunities of citizens, due process of law, and equal protection of the law*, and explicitly applied these guarantees against the states.
    - b. It was not until 1925 that the Court relied on the Fourteenth Amendment to find that a state government must respect some First Amendment rights (**Gitlow v. New York**); in *Gitlow*, the Court announced that freedoms of speech and press “*were fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states.*”
    - c. The Supreme Court gradually applied most of the Bill of Rights to the states, particularly during the era of Chief Justice Earl Warren in the 1960s.
    - d. At the present time, only the Second, Third, and Seventh Amendments and the grand jury requirement of the Fifth Amendment have not been applied specifically to the states.
  4. Not everyone agrees that the Fourteenth Amendment incorporated parts of the Bill of Rights into state laws; in 1985, Edwin Meese (then U.S. Attorney General) strongly criticized *Gitlow* and called for “disincorporation” of the Bill of Rights.

## II. FREEDOM OF RELIGION

- A. The **First Amendment** includes *two* statements about religion and government, commonly referred to as the *establishment clause* and the *free exercise clause*.
- B. These freedoms sometimes conflict, but establishment and free exercise cases usually raise different kinds of conflict.
- C. The **establishment clause** states that “Congress shall make no law respecting an establishment of religion.”
1. This clause clearly prohibits an establishment of a national church in the United States (a reaction to the religious persecutions that had convinced many colonists to move to America).
  2. Debate still continues over what else the First Congress may have intended for the establishment clause.
    - a. Thomas Jefferson argued that the First Amendment created a “**wall of separation**” between church and state, which would prohibit not only favoritism but any support for religion at all.
    - b. Proponents of aid to parochial schools (known as **parochiaid**) argue that it does not favor any particular religion; opponents claim that the Roman Catholic church gets most of the aid.
    - c. In **Lemon v. Kurtzman** (1971), the Supreme Court declared that aid to church-related schools must have a secular purpose, cannot be used to

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- advance or inhibit religion, and should avoid excessive government “entanglement” with religion.
- d. In a landmark decision in 2002, the Court in *Zelman v. Simmons-Harris* upheld a program that provided some families in Cleveland, Ohio, with vouchers that could be used to pay tuition at religious schools.
  - e. School prayer is possibly the most controversial religious issue.
    - (1) In 1962 and 1963, the Court ruled that voluntary recitations of prayers or Bible passages, when done as part of classroom exercises in public schools, violated the establishment clause (*Engel v. Vitale* and *School District of Abington Township, Pennsylvania v. Schempp*).
    - (2) In *Engel* and *Abington*, the Court observed that “the place of religion in our society is an exalted one, but in the relationship between man and religion, the State is firmly committed to a position of neutrality.”
    - (3) A majority of the public has never favored the Court’s decisions on school prayer.
- D. Fundamentalist Christians.
- 1. Conservative religious groups devote much of their time and energies to the issues of *school prayer and creation science*.
  - 2. They lost some court battles to create a more conservative agenda, but won others.
    - a. The Supreme Court rejected attempts to legalize school prayer by making it voluntary (*Wallace v. Jaffree*, 1985) and to mandate the teaching of **creation science** as an alternative to Darwinian theories of evolution (*Edwards v. Aguillard*, 1987).
    - b. Recent Supreme Court rulings brought some lowering of the “wall of separation,” as when the Court held that religious scenes could be set up on public property (*Lynch v. Donnelly*, 1984 and *County of Allegheny v. American Civil Liberties Union*, 1992).
- E. The First Amendment also guarantees the **free exercise** of religion.
- 1. The free exercise of religious beliefs sometimes clashes with society’s other values or laws, as occurred when the Amish refused to send their children to public schools.
  - 2. The Supreme Court has consistently maintained that people have an absolute right to *believe* what they want, but the courts have been more cautious about the right to *practice* a belief (but in *Wisconsin v. Yoder*, 1972, the Court did allow Amish parents to take their children out of school after the eighth grade).
  - 3. In the Religious Freedom Restoration Act of 1993, Congress attempted to overcome this ruling, but the law was found unconstitutional by the Supreme Court in 1997 (*Boerne v. Flores*).

### III. FREEDOM OF EXPRESSION

- A. Does “no law” in the First Amendment really mean “*no law*”? The courts have frequently wrestled with the question of whether **freedom of expression** (like **freedom of conscience**) is an **absolute**.
- 1. Supreme Court Justice Hugo Black believed that the words *no law* literally meant that Congress shall make *no laws* abridging the fundamental rights of the First Amendment.
    - a. The courts have often ruled that there are instances when speech needs to be controlled, especially when the First Amendment conflicts with other rights

- (as when Justice Oliver Wendell Holmes wrote in 1919 that “*the most stringent protection of free speech would not protect a man in falsely shouting ‘fire’ in a theater and causing a panic*”).
- b. In their attempts to draw the line separating *permissible from impermissible speech*, judges have had to *balance* freedom of expression against competing values like public order, national security, and the right to a fair trial.
  - 2. The courts have also had to decide what kinds of activities constitute *speech* (or *press*) within the meaning of the First Amendment.
    - a. Certain forms of *nonverbal communication* (like picketing) are considered **symbolic speech**, and are protected under the First Amendment.
    - b. Other forms of expression are considered to be *action*, and are not protected.
  - B. **Prior restraint** - a government’s actions that *prevent* material from being published.
    - 1. The Supreme Court has generally struck down prior restraint of speech and press (*Near v. Minnesota*, 1931), although the writer or speaker could be punished for violating a law or someone’s rights *after* publication.
    - 2. There are exceptions to the general doctrine that prohibits prior restraint. Also, many argue that government should sometimes limit individual behavior on the grounds of *national security*.
  - C. Free speech and public order.
    - 1. War often brings government efforts to enforce censorship.
      - a. In *Schenck v. United States* (1919), Justice Oliver Wendell Holmes declared that government can limit speech if it provokes a **clear and present danger** of “substantive evils that Congress has a right to prevent.”
      - b. The **Smith Act** of 1940 forbade the *advocacy* of violent overthrow of the American government.
      - c. Free speech advocates did little to stem the relentless persecution known as *McCarthyism* during the “cold war” of the 1950s, when Senator Joseph McCarthy’s unproven accusations that many public officials were Communists created an atmosphere in which broad restrictions were placed on freedom of expression.
      - d. By the 1960s, the political climate had changed and the Court narrowed the interpretation of the Smith Act so that the government could no longer use it to prosecute dissenters.
    - 2. Today, courts are very supportive of the right to protest, pass out leaflets, or gather signatures on petitions (as long as it is done in public places) but not supportive of inciting others to imminent lawless action.
  - D. Free press versus free trial.
    - 1. The Bill of Rights is a source of potential *conflicts between different types of freedoms*: the Constitution clearly meant to guarantee the right to a **fair trial** as well as the right to a **free press**, but a trial may not be fair if pretrial press coverage makes it impossible to select an impartial jury.
    - 2. Journalists seek full freedom to cover all trials: they argue that the public has a *right to know*.
      - a. Although reporters want *trials to be open to them*, they sometimes defend their right to keep some of their own files secret in order to protect a *confidential source*.
      - b. A few states have passed **shield laws** to protect reporters in situations where they need to protect a confidential source; but in most states, reporters have no more rights than other citizens once a case has come to trial.

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- c. The Supreme Court has ruled that (in the absence of shield laws) *the right to a fair trial preempts* the reporter's right to protect sources (**Branzburg v. Hayes**, 1972) and has sustained the right of police to obtain a search warrant to search the files of a student newspaper (**Zurcher v. Stanford Daily**, 1976).
- E. Efforts to define **obscenity** have perplexed the courts for years.
  - 1. Public standards vary from time to time, place to place, and person to person.
  - 2. Work that some call "obscene" may be "art" to others.
  - 3. No nationwide consensus exists that offensive material should be banned.
  - 4. The newest issue in the obscenity controversy involves the claim of some women's groups that pornography degrades and dehumanizes women.
  - 5. The courts have consistently ruled that states may protect *children* from obscenity (**Osborne v. Ohio**, 1991); *adults* often have legal access to the same material.
  - 6. Although the Supreme Court has held that "*obscenity is not within the area of constitutionally protected speech or press*" (**Roth v. United States**, 1957), it has proven difficult to determine just what is obscene.
  - 7. In **Miller v. California** (1973), the Court tried to clarify what could be classified as obscene, and therefore outside First Amendment protection.
    - a. Chief Justice Warren Burger wrote that materials were obscene if the work, *taken as a whole*, appealed to a "*prurient interest*" in sex; *and* if it showed "*patently offensive sexual contact*"; *and* if it "*lacked serious artistic, literary, political, or scientific merit*."
    - b. In *Miller*, the Court also ruled that decisions should be made to reflect the standards of *local* (not national) communities.
    - c. In 2002, the Supreme Court overturned a law banning virtual child pornography, suggesting that the Court views the Internet similarly to print media, with similar protections against government regulation.
- F. **Libel** (the publication of statements known to be false that tend to damage a person's reputation) and **slander** (spoken defamation) are *not protected* by the First Amendment.
  - 1. Libel and slander involve *freedom of expression* issues that involve *competing values*.
    - a. If public debate is not free, there can be no *democracy*.
    - b. Conversely, some reputations will be unfairly damaged in the process.
  - 2. The Court has held that statements about **public figures** are libelous only if made with *malice* and *reckless disregard* for the truth (**New York Times v. Sullivan**, 1964).
    - a. The right to criticize the government (which the Supreme Court termed "the central meaning of the First Amendment") is not libel or slander.
    - b. In 1984, General William Westmoreland dropped his suit against CBS in return for a mild apology; he realized that it would be impossible to prove that the network had been *intentionally malicious*, even though he was able to show that CBS had knowingly made factual errors.
  - 3. **Private persons** only need to show that statements about them were *defamatory falsehoods* and that the author was *negligent*.
- G. **Symbolic speech** refers to *actions that do not consist of speaking or writing but that express an opinion*.
  - 1. Broadly interpreted, *freedom of speech* is a guarantee of *freedom of expression*.

2. The doctrine of symbolic speech *is not precise*: burning a flag is protected speech, but burning a draft card is not (**Texas v. Johnson**, 1989, and **U.S. v. O'Brien**, 1968).

#### IV. COMMERCIAL SPEECH

- A. **Commercial speech** (such as advertising) is more restricted than are expressions of opinion on religious, political, or other matters.
- B. The **Federal Trade Commission (FTC)** decides what kinds of materials may be advertised on radio and television, and regulates the content of advertising.
  1. Although commercial speech is regulated more rigidly than the other types of speech, the courts have been broadening its protection under the Constitution; in recent years, the courts have struck down many restrictions (including restraints against advertising for professional services and for certain products such as condoms) as violations of freedom of speech.
- C. *Radio and television stations* are subject to more restrictions than the print media (justified by the fact that only a limited number of broadcast frequencies are available).
  1. The **Federal Communications Commission (FCC)** regulates the content and nature (and the very existence) of radio and television broadcasting.
  2. A licensed station must comply with regulations that include provisions for a certain percentage of broadcast time for public service, news, children's programming, political candidates, or views other than those its owners support.
  3. In 2000 in **United States v. Playboy Entertainment Group**, the Supreme Court agreed that although government had a legitimate right to regulate sexually oriented programming, any such regulation must be narrowly tailored to promote a compelling government interest.

#### IV. FREEDOM OF ASSEMBLY

- A. Freedom of assembly provides the constitutional basis for forming interest groups and political parties, for picketing and protesting in groups.
- B. *Two facets* of the freedom of assembly.
  1. **Right to assemble** - the right to gather together in order to make a statement.
    - a. Within reasonable limits (called *time, place, and manner restrictions*), freedom of assembly includes the rights to parade, picket, and protest.
    - b. The Supreme Court has generally upheld the right of any group—no matter how controversial or offensive—to peaceably assemble *on public property*.
    - c. The *balance between freedom and order* is tested when protest verges on harassment (as illustrated by the dispute over protesters lined up outside abortion clinics).
  2. **Right to associate** - freedom to associate with people who share a common interest.
    - a. The right to associate includes the right to meet with people who want to create political change.
    - b. In 1958, the Court found Alabama's attempt to require the NAACP to turn over its membership list to be an unconstitutional restriction of freedom of association (**NAACP v. Alabama**).

## V. DEFENDANTS' RIGHTS

- A. Interpreting defendants' rights.
  - 1. The **First Amendment** guarantees the *freedoms of religion, speech, press, and assembly*.
  - 2. Most of the remaining rights in the Bill of Rights concern the rights of people accused of crimes.
    - a. These rights were originally intended to protect the accused in *political arrests and trials*.
    - b. Today, the protections in the *Fourth, Fifth, Sixth, and Eighth Amendments* are primarily applied in *criminal justice cases*.
  - 3. The language of the Bill of Rights is vague, and defendants' rights are not well defined.
  - 4. The Supreme Court's decisions have *extended most provisions of the Bill of Rights to the states* as part of the *general process of incorporation*.
- B. The **Fourth Amendment** is quite specific in forbidding **unreasonable searches and seizures**.
  - 1. No court may issue a **search warrant** unless **probable cause** exists to believe that a crime has occurred or is about to occur.
  - 2. Warrants must specify the area to be searched and the material sought in the search.
  - 3. Since 1914, the courts have used the **exclusionary rule** to prevent illegally seized evidence from being introduced in the courtroom.
    - a. In *Mapp v. Ohio* (1961), the Supreme Court incorporated the exclusionary rule within the rights that restrict the states as well as the federal government.
    - b. *Critics of the exclusionary rule* argue that its strict application may permit guilty persons to go free because of police carelessness or innocent errors (or "technicalities").
    - c. *Supporters of the exclusionary rule* respond that the Constitution is not a technicality; defendants' rights protect the accused in a system whereby everyone is presumed to be innocent until proven guilty.
    - d. The Burger Court made some *exceptions to the exclusionary rule*.
    - e. Warrantless searches are valid if probable cause exists, if the search is necessary to protect an officer's safety, or if the search is limited to material relevant to the suspected crime or within the suspect's immediate control.
- C. The **Fifth Amendment** prohibits forced **self-incrimination**.
  - 1. Suspects cannot be compelled to provide evidence that can be used against them.
    - a. The burden of proof rests on the police and the prosecutors, not the defendant.
    - b. This right applies to congressional hearings and police stations, as well as to courtrooms.
    - c. Suspects *must testify* if the government guarantees **immunity** from prosecution.
  - 2. *Miranda v. Arizona* (1966) set guidelines for police questioning of suspects.
    - a. Suspects must be *informed* of their constitutional right to remain silent.
    - b. Suspects must be warned that what they say can be used against them in a court of law.

- c. Suspects must be told that they have a right to have a lawyer present during questioning, and that a lawyer will be provided if the accused cannot afford one.
  - 3. The more conservative Supreme Court under Chief Justice Burger did not weaken the *Miranda* rulings, but the Rehnquist Court did begin to make exceptions: in 1991, the Court held that a *coerced confession* is “*harmless error*” if other evidence is sufficient for conviction (*Arizona v. Fulminante*).
  - 4. If law enforcement officials encourage persons to commit crimes (such as accepting bribes or purchasing illicit drugs) that they otherwise would not commit, convictions for these crimes will be overturned by the courts.
- D. Although the **Sixth Amendment** has always ensured the **right to counsel** in *federal courts*, this right was not extended (*incorporated*) to state courts until recently.
- 1. In 1932, the Supreme Court ordered states to provide an attorney for indigent defendants accused of a *capital crime* (*Powell v. Alabama*).
  - 2. In 1963, the Court extended the same right to everyone accused of a *felony* (*Gideon v. Wainwright*, which was heard by the Court only after Clarence Gideon wrote a *pauper's petition* with the help of the prison's law books).
  - 3. The Court later ruled that a lawyer must be provided for the accused *whenever imprisonment could be imposed* (*Argersinger v. Hamlin*, 1972).
- E. The Sixth Amendment also ensures the right to a **speedy trial** and an **impartial jury**.
- 1. Most cases (90 percent) are settled through **plea bargaining** rather than through trial by jury.
    - a. In plea bargaining, an agreement is made between a defendant's lawyer and a prosecutor to the effect that a defendant will plead guilty to a lesser crime or to fewer crimes and often results in greatly reduced punishment.
    - b. Critics believe that plea bargaining permits many criminals to avoid deserved punishment; however, it also saves the state time and money.
  - 2. The Constitution does not specify the size of a jury; tradition has set jury size at 12, but six jurors are sometimes used in petty cases.
  - 3. Juries traditionally had to be unanimous in order to convict, but the Burger Court *permitted states to use fewer than 12 jurors and to convict with less than a unanimous vote*. Federal courts still employ juries of 12 persons and require unanimous votes for a criminal conviction.
- F. The **Eighth Amendment** forbids **cruel and unusual punishment**, but it *does not define* the phrase.
- 1. Most of the constitutional debate over cruel and unusual punishment has centered on the *death penalty*.
    - a. *Witherspoon v. Illinois* (1968) - overturned a death sentence because opponents of the death penalty had been excluded from the jury at sentencing.
    - b. *Furman v. Georgia* (1972) - overturned Georgia's death penalty law because its imposition was “freakish” and “random” in the way it was arbitrarily applied (particularly with regard to factors such as race and income).
    - c. *Woodson v. North Carolina* (1976) - ruled against mandatory death penalties.
    - d. *Gregg v. Georgia* (1976) - found that the death penalty is “an extreme sanction, suitable to the most extreme of crimes.”

- e. *McCleskey v. Kemp* (1987) – upheld the constitutionality of the death penalty against charges that it violated the **Fourteenth Amendment** because minority defendants were more likely to receive the death penalty than were White defendants.
2. The Supreme Court has recently held that it was constitutionally acceptable to execute 16- or 17-year-olds or mentally retarded persons; has made it more difficult for death row inmates to force legal delays through *habeas corpus* petitions; and has allowed “*victim impact*” statements detailing the character of murder victims and their families’ suffering to be used against a defendant.
3. In 2002, however, the Court prohibited executing mentally retarded persons and required that a jury, not just a judge, find an aggravating circumstance necessary for imposition of the death penalty.
4. Death sentences are in steep decline today due to DNA testing and public concerns over wrongful sentences.

## VI. THE RIGHT TO PRIVACY

- A. Today’s technologies raise key questions about *ethics* and the Constitution.
  1. Although the Constitution does not specifically mention a **right to privacy**, the Supreme Court has said that it is implied by several guarantees in the Bill of Rights.
  2. In 1928, Justice Brandeis called privacy “the right to be left alone.”
  3. Questions involving a right to privacy have centered on such diverse issues as abortion rights; the drafting of state laws to define death; technological developments like in-vitro fertilization, frozen embryos, and artificial insemination; and even the right to die (a patient’s right to refuse treatment, or the right of families of a guardian to exercise the patient’s right when a patient is no longer able to communicate).
- B. The Supreme Court first referred to the idea that the constitution guarantees a right to privacy in a 1965 case involving a Connecticut law that forbade contraceptives.
  1. In *Griswold v. Connecticut*, the Court found that various portions of the Bill of Rights cast “*penumbras*”—unstated liberties implied by the explicitly stated rights—that protected a right to privacy.
  2. Supporters of privacy rights argued that the Fourth Amendment was intended to protect privacy.
  3. Critics of the ruling claimed that the Supreme Court was inventing protections not specified by the Constitution.
- C. The *most important application of privacy rights* came in the area of *abortion*.
  1. Americans are deeply divided on abortion: the positions of “pro-choice” and “pro-life” are irreconcilable (making abortion a politician’s nightmare).
  2. Supreme Court Justice Harry Blackmun’s opinion in *Roe v. Wade* (1973) followed that of medical authorities in dividing pregnancy into three equal *trimesters*.
  3. *Roe* forbade any state control of abortions during the first trimester, permitted states to allow regulated abortions to protect the mother’s health in the second trimester, and allowed the states to ban abortion during the third trimester except when the mother’s life was in danger.
  4. *Roe* caused a furor that has never subsided, and numerous state and federal regulations were passed, which prohibited the use of funds for abortions.

- a. A clinic in St. Louis challenged the constitutionality of a Missouri law that forbade the use of state funds or state employees to perform abortions, but the Court upheld the law in *Webster v. Reproductive Health Services* (1989).
  - b. The Court has also upheld laws requiring minors to obtain the permission of one or both parents or a judge before obtaining an abortion; and in *Rust v. Sullivan* (1991), the Court upheld a Department of Health and Human Services ruling that provided that family planning services that received federal funds could not provide women with *any* counseling regarding abortions. (President Clinton lifted the ban on abortion counseling on his third day in office.)
5. In 1992, the Court changed its *standard for evaluating restrictions on abortion* from one of “*strict scrutiny*” of any restraints on a “*fundamental right*” to one of “*undue burden*” that permits considerably more regulation (*Planned Parenthood v. Casey*).
  6. In 1997, the Court also upheld a 15-foot buffer zone. In another case, the Court decided that abortion clinics can invoke the federal racketeering law to sue violent anti-abortion protest groups for damages.
  7. In 2000, the Court held in *Sternberg v. Carhart* that Nebraska’s prohibition of “partial birth” abortions was unconstitutional because it placed an undue burden on women seeking an abortion by limiting their options to less safe procedures and because the law provided no exception for cases where the health of the mother was at risk.

## VII. UNDERSTANDING CIVIL LIBERTIES

- A. American government is both *democratic* (because it is governed by officials elected by the people and answerable to them) and *constitutional* (because it has a fundamental organic law, the Constitution, that limits the things government can do).
- B. The democratic and constitutional components of government can produce conflicts, but they also reinforce one another.
- C. Civil liberties and democracy.
  1. Individual rights may conflict with other values.
    - a. The rights guaranteed by the First Amendment are essential to a democracy.
    - b. Individual participation and the expression of ideas are crucial components of democracy, but so is majority rule, which can conflict with individual rights.
    - c. The rights guaranteed by the Fourth, Fifth, Sixth, and Eighth Amendments protect all Americans, but they also make it harder to punish criminals.
  2. Ultimately, the courts decide what constitutional guarantees mean in practice: although the federal courts are the *branch of government least subject to majority rule*, the courts *enhance democracy by protecting liberty and equality from the excesses of majority rule*.
- D. Civil liberties and the scope of government.
  1. Today’s government is huge and commands vast, powerful technologies.
  2. Since Americans can no longer avoid the attention of government, strict limitations on governmental power are essential—limitations that are provided by the Bill of Rights.

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3. In general, civil liberties limit the scope of government. However, in some instances, such as protecting the right to abortion, an expansion of freedom may require simultaneous expansion of government to protect those freedoms.

## **KEY TERMS AND CONCEPTS**

**Bill of Rights:** the first ten amendments to the Constitution.

**Civil Liberties:** legal and constitutional protections against government infringement of political liberties and criminal rights.

**Commercial Speech:** communication in the form of advertising.

**Cruel and unusual punishment:** Eighth Amendment prohibits such punishment.

**Eighth Amendment:** forbids cruel and unusual punishment, although it does not define this phrase.

**Establishment clause:** First Amendment prohibits government from establishing a religion; is the basis for separation of church and state.

**Exclusionary rule:** prohibits government from including illegally obtained evidence in a trial.

**Fifth Amendment:** prohibits government from forcing individuals to testify against themselves.

**First Amendment:** establishes freedom of religion, press, speech, and assembly.

**Fourteenth Amendment:** prohibits states from denying equal protection of the laws.

**Free exercise clause:** government is prohibited in the First Amendment from interfering in the practice of religion.

**Incorporation Doctrine:** legal concept under which the Supreme Court has nationalized the Bill of Rights by making most of its provisions applicable to the states through the Fourteenth Amendment.

**Libel:** publication of false or malicious statements that damage someone's reputation.

**Plea bargaining:** an actual bargain struck between the defendant's lawyer and the prosecutor to the effect that the defendant will plead guilty to a lesser crime (or fewer crimes) in exchange for the state's promise not to prosecute the defendant for a more serious (or additional) crime.

**Prior restraint:** government instrument to prevent material from being published.

**Probable cause:** police must have a good reason to arrest someone.

**Right to privacy:** a contrived right from unstated liberties in the Bill of Rights.

**Search warrant:** written authorization from a court specifying the area to be searched and what the police are searching for.

**Self-incrimination:** testifying against oneself.

**Sixth Amendment:** designed to protect individuals accused of crimes; includes the right to counsel, the right to confront witnesses, and the right to a speedy and public trial.

**Symbolic Speech:** political actions instead of words.

**Unreasonable searches and seizures:** obtaining evidence without a good reason.

## KEY CASES

*Barron v. Baltimore* (1833)  
*Engel v. Vitale* (1962)  
*Gideon v. Wainwright* (1963)  
*Gitlow v. New York* (1925)  
*Gregg v. Georgia* (1976)  
*Lemon v. Kurtzman* (1971)  
*Mapp v. Ohio* (1961)  
*McCleskey v. Kemp* (1987)  
*Miami Herald Publishing Co. v. Tornillo* (1974)  
*Miller v. California* (1973)  
*Miranda v. Arizona* (1966)  
*NAACP v. Alabama* (1954)  
*Near v. Minnesota* (1931)  
*New York Times v. Sullivan* (1964)  
*Planned Parenthood v. Casey* (1992)  
*Red Lion Broadcasting Co. v. Federal Communications Commission* (1969)  
*Roe v. Wade* (1973)  
*Roth v. United States* (1957)  
*Schenck v. United States* (1919)  
*School District of Abington Township, Pennsylvania v. Schempp* (1963)  
*Texas v. Johnson* (1989)  
*Zelman v. Simmons-Harris* (2002)  
*Zurcher v. Stanford* (1976)

## TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS

- Special features entitled *You Are the Judge* are dispersed throughout this chapter. Each feature describes a real case brought before the courts and asks students to evaluate it and render a judgment. They can also read how the case was actually decided and consider the constitutional, statutory, political, and/or practical basis of that decision.
- We know that people often support rights in theory, but their support may disappear when it comes time to put those rights into practice. Set aside part of one class period for students to list both supports and objections to extending rights to controversial and unpopular groups. You could “set the stage” by first introducing your class to one or two famous incidents, such as the demands of the American Nazi Party in 1977 to march through a Jewish neighborhood in Skokie, Illinois.
- Although the Supreme Court has ruled that obscenity is not protected by the First Amendment, it has been difficult to determine precisely what is obscene. Ask your students to “try their hands” at writing a definition that could be used by a court or a censorship panel to distinguish *obscenity* from legally protected *art*.
- The textbook points out that libel is a freedom of expression that involves competing values. If public debate is not free, there can be no democracy; but with free public debate, some reputations will be unfairly damaged. Ask your class to consider the way in which the courts distinguish between *public persons* and *private persons*, and ask them to evaluate whether it is fair (or appropriate) to use this distinction. How would they change the process to make it

more equitable? Would the public lose its ability to evaluate candidates for public office if candidates could sue for libel or slander as readily as persons who are not in the public eye? What rights of privacy should public figures retain?

- Ask your class to consider the problem of crime control, both from the position of protecting individual liberties for “unsavory” people in order to protect rights for everyone, and from the perspective of protecting the rights of “society” and of victims.
- One task that government must perform is to resolve conflicts between rights. Class participation can be animated if you will encourage your students to think about potential conflicts within the Bill of Rights, such as possible conflicts between public order and free speech. Ask your class to consider the nature of individual rights from the perspective of a victim’s family and from the outlook of a defendant’s family.
- Ask students to find the facts of a current conflict over civil liberties, either using the Internet or the daily newspaper and to lead a class discussion over these facts. What rights or values are in conflict? Ask students to explain how, and why, they would decide the case. Also encourage the students to follow the case over the course of the semester or quarter, and to write a brief essay describing the issues involved and their final position in the conflict.
- Each of the following exercises may be modified to be either class participation/debate assignments or writing assignments. In either case, they may also be modified to ask students to locate a particular case that serves as an example of the conflicting rights. Ask students to use Lexis/Nexis, the Internet, or other records to brief the class on the particular case (rather than discussing these rights in the abstract).
- There is a fine line between aid to parochial schools that is permissible and aid that is not. Divide the class into panels, and ask them to debate the merits and problems of government aid to church-related schools. Ask members of the panels to prepare for the debate by reading summaries of cases that are used in the textbook to illustrate the establishment clause of the Constitution. Also encourage panelists to research how recent decisions of the Supreme Court have modified these policies.
- A majority of the public has never favored the Court’s decisions on school prayer. Assign short essays, in which each student would take one of the following positions: (1) The school prayer decisions demonstrate the Court’s important role in protecting minority rights in the face of majority opinion; *or* (2) The school prayer decisions demonstrate how the Court has lost sight of the traditional values that were favored by the framers of the Constitution.
- Reporters argue that freedom of the press guarantees them certain rights that other potential witnesses cannot claim, such as the right to protect confidential sources, even in criminal trials. Divide the class in sections, with one section assigned the task of defending the right of journalists to shield confidential sources and the other section assigned the task of showing that reporters have no more rights than other citizens. Each section should select a spokesperson to present the group’s analysis.
- Ask students to debate the validity of the Second Amendment in today’s society. What restrictions should the government be allowed to place on the ownership of firearms?
- The Internet has changed the way we communicate and the way we conduct business in American society. One recent example is the debate over sharing music and movies online. Engage the students in a discussion about future constitutional and legal challenges the Internet might create.
- Assign the students two articles about the Patriot Act to read—one supportive and one opposing. Ask students how they would balance the two goals of safeguarding our security and protecting our civil liberties.

## **BACKGROUND READING**

Amar, Akhil Reed. The Bill of Rights: Construction and Reconstruction. New Haven: Yale University Press, 1998.

Amar, Akhil Reed, and Alan Hirsch. For the People: What the Constitution Really Says About Your Rights. New York: Free Press, 1998.

Carpenter, Ted Galen. The Captive Press: Foreign Policy Crises and the First Amendment. Washington, D.C.: Cato Institute, 1995.

Devins, Neal. Shaping Constitutional Values: Elected Government, the Supreme Court and the Abortion Debate. Baltimore: Johns Hopkins University Press, 1996.

Domino, John C. Civil Rights and Liberties: Toward the Twenty-first Century. New York: Addison-Wesley, 1994.

Lee, Taeku. Mobilizing Public Opinion. Chicago: University of Chicago Press, 2002.

Leo, Richard A., and George C. Thomas III, eds. The Miranda Debate: Law, Justice and Policing. Boston: Northeastern University Press, 1998.

Levy, Leonard W. Origins of the Bill of Rights. New Haven and London: Yale University Press, 1999.

Lewis, Anthony. Gideon's Trumpet. New York: Vintage Books, 1989.

## **MEDIA SUGGESTIONS**

The American Civil Liberties Union: A History. Provides an overview of the development of the ACLU, highlighting the major civil rights and liberties cases and issues in which it has been involved since its inception. Films for the Humanities and Sciences.

Bill of Rights: Bill of Responsibilities. 1995. This film provides a practical example of the impact of the Bill of Rights on the daily lives of individuals, using current events and pop culture. Insight Media.

Bill of Rights: Bill of Responsibility. This program, hosted by Bill Maher of television's "Politically Incorrect," considers the meaning of the Constitution and the Bill of Rights in the context of current political issues and controversies. Films for the Humanities and Sciences.

First Amendment Freedoms. Part of the "Government by Consent" series produced by Insight Media. This 1989 video examines the current status of the First Amendment in American political culture.

For Which It Stands: Flag Burning and the First Amendment. 1992. Features a debate between supporters and opponents of flag burning as a First Amendment right. Close Up Publishing.

Gideon's Trumpet. A 1979 production on Goodtimes Home Video. A dramatic recreation of the events leading up to the case ***Gideon v. Wainwright*** (1963).

Keeping the Faith: Religion and Democracy. 1996. This film examines the role of religion in the U.S. and examines the issue of separation between church and state. Films for the Humanities and Sciences.

Politics in Action. Chapter 7: Political Debate, Civil Rights and the Judicial Process. Includes sections on a variety of issues relating to abortion, such as ***Roe v. Wade***, regulating abortion, counseling about abortion, and protesting abortion.

Rights of the Accused. 1989. An examination of the rights at the bar of justice, using landmark cases.

# **CHAPTER FIVE: CIVIL RIGHTS AND PUBLIC POLICY**

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## **LEARNING OBJECTIVES**

*After studying this chapter, students should be able to:*

- Understand how civil rights have been used to extend more equality to groups that historically have been subject to discrimination.
- Analyze different interpretations of *equality*, such as equality of opportunity contrasted with equality of results.
- Identify provisions of the Bill of Rights that have implications for equality.
- Explain how the Fourteenth Amendment guarantee of “equal protection of the laws” has been applied to the idea of equality.
- Summarize the reasoning of the Court in the 1954 case of **Brown v. Board of Education** and use this case to show how the Court set aside its earlier precedent in **Plessy v. Ferguson**.
- Show the significance of the Civil Rights Act of 1964 and explain why efforts for civil rights legislation were finally successful in the mid-1960s.
- Trace the attempts of southern states to deny African Americans the right to vote even after the passage of the Fifteenth Amendment.
- Identify the major public policy milestones in the movement toward gender equality.
- Determine the ways in which Americans with disabilities have become the successors to the civil rights movement.

- Explain why gay and lesbian activists may face the toughest battle for equality of any of America's minority groups.
- Describe the opposing positions of those who favor affirmative action and those who claim that these policies simply create reverse discrimination.
- Analyze how the important democratic principles of *equality* and *individual liberty* may actually conflict with each other.
- Determine how civil rights laws increase the scope and power of government.

## **CHAPTER OVERVIEW**

### **INTRODUCTION**

When the value of equality conflicts with the value of liberty—when individuals in privileged positions are challenged to give them up—citizens often look to the government to resolve the issue. This chapter examines what the Constitution says about equality and how constitutional rights to equality have been interpreted. It also reviews the development of civil rights in the United States, highlighting the important role of the court system in expanding equality over the past three decades.

### **RACIAL EQUALITY: TWO CENTURIES OF STRUGGLE**

The real meaning of equality is both elusive and divisive. Most Americans favor **equality** in the abstract, but the concrete struggle for equal rights has been our nation's most bitter battle. The rallying call for groups demanding more equality has been **civil rights**, which are policies that extend basic rights to groups historically subject to discrimination. Philosophically, the struggle for equality involves defining the term; constitutionally, it involves interpreting laws; politically, it often involves power.

American society does not emphasize equal results or equal rewards. A belief in equal rights has often led to a belief in equality of opportunity. Today's debates over inequality in America center on racial discrimination, gender discrimination, and discrimination based on factors such as age, disability, and sexual preference.

The delegates to the Constitutional Convention came up with a plan for government rather than guarantees of individual rights, and the word *equality* does not even appear in the original Constitution. The only place in which the idea of equality clearly appears in the Constitution is in the **Fourteenth Amendment**, which prohibits the states from denying “*equal protection of the laws*” to any person. It was not until the mid-twentieth century that the Fourteenth Amendment was used to assure rights for disadvantaged groups, but the equal protection clause gradually became the vehicle for more expansive constitutional interpretations.

The Court has developed three levels of *judicial scrutiny* (or *classifications*). Most classifications that are **reasonable** (that bear a rational relationship to some legitimate governmental purpose) are constitutional. Racial and ethnic classifications are **inherently suspect**—they are presumed to be invalid and are upheld only if they serve a “*compelling public interest*” that cannot be accomplished in some other way. Classifications based on gender fall somewhere between *reasonable* and *inherently suspect*—gender classifications must bear a **substantial** relationship to an *important legislative purpose*.

### **RACE, THE CONSTITUTION, AND PUBLIC POLICY**

African Americans have been the most visible minority group in the United States, and the civil rights laws that African-American groups pushed for have also benefited members of

other minority groups. Three eras define African Americans' struggle for equality in America: the era of slavery, from the beginnings of colonization until the end of the Civil War; the era of reconstruction and resegregation, from the end of the Civil War until 1954; and the era of civil rights, from 1954 to the present.

The delegates to the Constitutional Convention did their best to avoid facing the divergence between slavery and the principles of the Declaration of Independence. During the slavery era, any public policy of the slave states or the federal government had to accommodate the property interests of slave owners. The Union victory in the Civil War and the ratification of the **Thirteenth Amendment** ended slavery. After the Civil War ended, Congress imposed strict conditions on the former Confederate states before they could be readmitted to the Union. Many African-American men held state and federal offices during the ten years following the war. As soon as they regained control following Reconstruction, White Southerners imposed a code of "*Jim Crow laws*" that required African Americans to use separate public facilities and school systems.

Although some limited progress was made in the first half of the twentieth century, during this period segregation was legally required in the South (*de jure*) and sanctioned in the North (*de facto*). The Supreme Court provided constitutional justification for segregation in **Plessy v. Ferguson** (1896) when it held that segregation in public facilities was not unconstitutional as long as the facilities were *substantially equal* (a principle that was commonly referred to as the "**separate but equal**" doctrine, though subsequent decisions paid more attention to the "separate" than to the "equal" part).

The Supreme Court decision in **Brown v. Board of Education** (1954) really marks the beginning of the era of civil rights. In a landmark decision, the Court held that school segregation was *inherently unconstitutional* because it violated the Fourteenth Amendment's guarantee of *equal protection*. The modern **civil rights movement** began in 1955 when Rosa Parks refused to give up her seat in the front of a Montgomery, Alabama, bus (where only Whites were permitted to sit). The boycott that followed her arrest is often seen as the beginning of the African-American civil rights movement. Sit-ins, marches, and civil disobedience were key strategies of the civil rights movement.

Desegregation proceeded slowly in the South, and some federal judges ordered the *busing* of students to achieve *racially balanced schools*. The **Civil Rights Act of 1964** made racial discrimination illegal in hotels, motels, restaurants, and other places of public accommodation. The Act also forbade many forms of job discrimination, and Congress cut off federal aid to schools that remained segregated.

The early Republic limited **suffrage** primarily to property-holding White males. The **Fifteenth Amendment** (1870) guaranteed African Americans the right to vote, but full *implementation* did not occur for another century. States used various methods to circumvent the Fifteenth Amendment, including literacy tests with grandfather clauses, **White primaries**, and **poll taxes**.

The **Voting Rights Act of 1965** prohibited any government from using voting procedures that denied a person the vote on the basis of race or color. Poll taxes in federal elections were prohibited by the **Twenty-fourth Amendment** (1964), and poll taxes in state elections were invalidated by the Supreme Court two years later (**Harper v. Virginia State Board of Elections**).

The civil rights laws that African-American groups pushed for have benefited members of other minority groups such as American Indians, Asians, and Hispanics. The United States is

heading toward a *minority majority* status, when minority groups will outnumber Caucasians of European descent. Hispanic Americans will soon displace African Americans as the largest minority group.

Like Native Americans, Hispanic Americans benefit from the nondiscrimination policies originally passed to protect African Americans. Asian Americans are the fastest growing minority group; their representation in the American population rose from 0.5 percent to four percent from 1960 to 2000. There are more than 1.2 million persons of Arab ancestry in the United States. Since the terrorist attacks of September 11, 2001, Arab, Muslim, Sikh, and South Asian Americans, and those perceived to be members of these groups, have been the victims of increased numbers of bias-related assaults, threats, vandalism, and arson.

## **WOMEN, THE CONSTITUTION, AND PUBLIC POLICY**

The first women's rights activists were products of the abolitionist movement. The legal doctrine of *coverture* deprived married women of any identity separate from that of their husbands. Lucretia Mott and Elizabeth Cady Stanton organized a meeting at Seneca Falls, New York, to discuss women's rights. The *Seneca Falls Declaration of Sentiments and Resolutions* (signed on July 19, 1848) was the beginning of the movement that would culminate in the ratification of the **Nineteenth Amendment** (1920), which gave women the right to vote.

The feminist movement seemed to lose momentum after winning the vote, possibly because the vote was about the only goal on which all feminists agreed. Public policy toward women continued to be dominated by *protectionism* (which also protected male workers from female competition), and state laws tended to reflect and reinforce the traditional family roles. Alice Paul, the author of the original Equal Rights Amendment (ERA), was one activist who claimed that the real result of protectionist law was to perpetuate gender inequality.

Before the advent of the contemporary feminist movement, the Supreme Court upheld virtually all cases of sex-based discrimination. In *Reed v. Reed* (1971), the Court ruled that any "arbitrary" sex-based classification violated the equal protection clause of the Fourteenth Amendment (marking the first time the Court applied the Fourteenth Amendment to a case involving classification by sex). Five years later, *Craig v. Boren* established a "medium scrutiny" standard: Gender discrimination would be presumed to be neither valid nor invalid. The courts were to show less deference to gender classifications than to more routine classifications, but more deference than to racial classifications. The Supreme Court has now ruled on many occasions against gender discrimination in employment and business activity. Some of the litigants have been *men seeking equality with women* in their treatment under the law.

Some important progress was made through congressional legislation. The *Civil Rights Act of 1964* banned sex discrimination in employment; in 1972, the *Equal Employment Opportunity Commission (EEOC)* was given the power to sue employers suspected of illegal discrimination; and *Title IX of the Education Act of 1972* forbade sex discrimination in federally subsidized education programs, including athletics. The Court has remained silent so far on the issue of "**comparable worth**" (which refers to the fact that traditional women's jobs often pay much less than men's jobs that demand comparable skill).

Women now comprise 15 percent of the armed forces and compete directly with men for promotion. Statutes and regulations prohibit women from serving in combat, but the Persian

Gulf War demonstrates that policy and practice are not always the same, since women piloted helicopters at the front and some were taken as prisoners of war.

Many women are now making claims for their civil rights. In the 1990s, national attention has focused on issues of **sexual harassment**. For example, the Supreme Court again spoke expansively about sexual harassment in the workplace in *Faragher v. City of Boca Raton*. The Court made it clear that employers are responsible for preventing and eliminating harassment at work. They can be held liable for even those harassing acts of supervisory employees that violate clear policies and of which top management has no knowledge.

### **NEWLY ACTIVE GROUPS UNDER THE CIVIL RIGHTS UMBRELLA**

New activist groups now realize that policies that were enacted to protect racial minorities and women can also be applied to other groups. Aging Americans, young Americans, the disabled, and homosexuals have begun to exert their own demands for civil rights.

People in their eighties comprise the fastest growing age group in this country. It is not clear what the fate of the **gray liberation movement** will be as its members approach the status of a *minority majority*.

Young people have also suffered from inferior treatment under the law. There are obvious difficulties in organizing a “children’s rights movement,” but there have been instances of young people who were successful in asserting their rights (including a youth who “divorced” his parents).

Americans with disabilities have suffered from both direct and indirect discrimination. The **Americans with Disabilities Act of 1990** requires employers and public facilities to provide “*reasonable accommodations*” and prohibits employment discrimination against the disabled.

Gay activists *may face the toughest battle for equality*. Homosexual activity is illegal in some states, and homosexuals often face prejudice in hiring, education, access to public accommodations, and housing. A substantial percentage of the American public expresses opposition to the entrance of homosexuals into many common occupations. However, gay activists have won some important victories. Seven states and more than 100 communities have passed laws protecting homosexuals against some forms of discrimination.

### **AFFIRMATIVE ACTION**

The interests of women and minorities have converged on the issue of **affirmative action** (policies requiring special efforts in employment, promotion, or school admissions on behalf of disadvantaged groups). The goal of affirmative action is to *move beyond equal opportunity* toward *equal results*.

Some groups have claimed that affirmative action programs constitute “**reverse discrimination**.” In *Regents of the University of California v. Bakke* (1978), the Supreme Court rejected a plan at the University of California at Davis that set aside 16 out of a total of 100 places in the entering class for “disadvantaged groups.” The Court objected to the use of a quota of positions for particular groups, but the Court said that a university could use race or ethnic background as one component in the admissions procedure. The Court has also permitted a special training program that was intended to rectify years of past discrimination (*United Steelworkers of America, AFL-CIO v. Weber*, 1979). However, in 1995, in *Adarand Constructors v. Pena*, the Court held that federal programs that classify people by race, even for an ostensibly benign purpose such as expanding opportunities for minorities, should be presumed to be unconstitutional.

In 1996, California voters passed Proposition 209, which banned state affirmative action programs based on race, ethnicity, or gender in public hiring, contracting, and education admissions. Opponents immediately filed a lawsuit in federal court to block enforcement of the law, claiming that it violated the Fourteenth Amendment. Ultimately, the U.S. Supreme Court will have to resolve the issue, but there is little question that support for Proposition 209 represents a widespread skepticism about affirmative action programs. A federal court of appeals placed a similar ban on universities in Texas, Oklahoma, and Mississippi, while another court upheld racial preferences at the University of Michigan in 2002, agreeing that there was a compelling interest in promoting racial diversity on campus. In *Gratz v. Bollinger* (2003), however, the Court struck down the University of Michigan's system of undergraduate admissions in which every applicant from an underrepresented racial or ethnic minority group was automatically awarded 20 points of the 100 needed to guarantee admission.

Surveys find that most Americans oppose affirmative action programs, even though Americans in general support nondiscrimination in employment and education. Opposition is especially strong when people view affirmative action as *reverse discrimination*, where less qualified individuals get hired or admitted to educational or training programs.

Affirmative action supporters believe that increasing the number of women and minorities in desirable jobs is such an important social goal that it should be considered when determining an individual's qualifications. They claim that what White males lose from affirmative action programs are privileges to which they were never entitled in the first place; after all, nobody has the right to be a doctor or a road dispatcher.

## **UNDERSTANDING CIVIL RIGHTS AND PUBLIC POLICY**

Democracy is often in conflict with itself—both *equality* and *individual liberty* are important democratic principles, but they *may conflict with each other*. For example, equality tends to favor majority rule, but equality threatens individual liberty in situations where the majority may want to deprive the minority of its rights.

Civil rights laws increase the *scope and power of government* since these laws place both restrictions and obligations on individuals and institutions. Libertarians and those conservatives who want to reduce the size of government are uneasy with civil rights laws (and sometimes hostile to them).

## **CHAPTER OUTLINE**

### **I. TWO CENTURIES OF STRUGGLE**

- A. Most Americans favor **equality** in the *abstract*, but the *concrete struggle for equal rights* has been our nation's most bitter battle.
- B. The real meaning of equality is both elusive and divisive.
  - 1. **Civil rights** are the policies that extend basic rights to groups historically subject to discrimination.
  - 2. The modern **civil rights movement** began in 1955 when Rosa Parks refused to give up her seat in the front of a Montgomery, Alabama, bus (where only Whites were permitted to sit); the boycott that followed her arrest is often seen as the beginning of the African-American civil rights movement.

- C. Today's debates over inequality in America center on racial discrimination, gender discrimination, and factors such as discrimination based on age, disability, and sexual preference.
- D. Conceptions of equality.
  - 1. Philosophically, the struggle for equality involves defining the term; constitutionally, it involves interpreting laws; politically, it often involves power.
  - 2. American society does not emphasize equal results or equal rewards—a belief in equal rights has often led to a belief in equality of *opportunity*.
- E. Early American views of equality.
  - 1. Jefferson's statement in the Declaration of Independence that "all men are created equal" did not mean that he thought there were no differences among people.
  - 2. Few colonists were eager to defend slavery, and the delegates to the Constitutional Convention *did their best to avoid* facing the divergence between slavery and the principles of the Declaration of Independence.
  - 3. Women's rights received even less attention than did slavery at the Convention.
- F. The Constitution and inequality.
  - 1. The delegates to the Constitutional Convention came up with *a plan for government*, not guarantees of individual rights: the word *equality* does not even appear in the original Constitution.
    - a. Even the Bill of Rights does not directly mention equality, but it does have implications for the principle of equality since it does not limit the scope of its guarantees to any specified groups.
    - b. The only place in which the idea of equality clearly appears in the Constitution is in the **Fourteenth Amendment**, which prohibits the states from denying "*equal protection of the laws*" to any person.
  - 2. What does **equal protection of the laws** mean?
    - a. It was not until the mid-twentieth century that the Fourteenth Amendment was used to assure rights for disadvantaged groups.
    - b. Over the last 100 years, the equal protection clause has become the vehicle for more expansive constitutional interpretations.
  - 3. The Court has developed three levels of *judicial scrutiny* (or *classifications*).
    - a. Most classifications that are **reasonable** (that bear a rational relationship to some legitimate governmental purpose) are constitutional.
    - b. Racial and ethnic classifications are **inherently suspect**: they are presumed to be invalid and are upheld only if they serve a "*compelling public interest*" that cannot be accomplished in some other way.
    - c. Classifications based on gender fit somewhere between *reasonable* and *inherently suspect*: gender classifications must bear a **substantial** relationship to an *important legislative purpose* (and is sometimes called "*medium scrutiny*").

## II. RACE, THE CONSTITUTION, AND PUBLIC POLICY

- A. The civil rights laws that African-American groups pushed for have also benefited members of other minority groups.
- B. Three eras define African Americans' struggle for equality in America: the era of slavery, from the beginnings of colonization until the end of the Civil War; the era of reconstruction and resegregation, from the end of the Civil War until 1954; and the era of civil rights, from 1954 to the present.

- C. The era of slavery (1600s–1865).
  - 1. During the slavery era, any public policy of the slave states or the federal government had to accommodate the property interests of slave owners.
  - 2. The most infamous statement in defense of slavery occurred in **Dred Scott v. Sandford** (1857), in which Chief Justice Taney declared that an African-American man was “chattel” and had no rights under a White man’s government; Congress had no power to ban slavery in the western territories (thereby effectively invalidating the *Missouri Compromise*).
  - 3. The Union victory in the Civil War and the ratification of the **Thirteenth Amendment** ended slavery.
- D. The era of reconstruction and resegregation (end of Civil War to 1954).
  - 1. After the Civil War ended, Congress imposed strict conditions on the former Confederate States before they could be readmitted to the Union.
  - 2. As soon as they regained power, White Southerners imposed a code of “**Jim Crow laws**,” or *Black Codes* (segregation laws that required African Americans to use separate public facilities and school systems); although not required *by law*, segregation was also *common practice* in the North.
  - 3. In the era of segregation, housing, schools, and jobs were—in one way or another—classified as “White” or “colored.”
  - 4. The Supreme Court provided constitutional justification for segregation in **Plessy v. Ferguson** (1896) when it held that segregation in public facilities was not unconstitutional as long as the facilities were *substantially equal* (a principle that was commonly referred to as the “**separate but equal**” doctrine, though subsequent decisions paid more attention to the “separate” than to the “equal” part).
  - 5. Some limited progress was made in the first half of the twentieth century, including executive orders (such as desegregation of the armed forces) and court decisions (including **Guinn v. United States**, 1915, which banned the grandfather clause in voting; **Smith v. Allwright**, 1944, overturning all-White primaries; and **Sweatt v. Painter**, 1950, which held that Blacks are entitled to the same professional and graduate education as students of other races).
- E. The era of civil rights (1954–present).
  - 1. During the period leading up to the civil rights movement, segregation was legally required in the South (*de jure*) and sanctioned in the North (*de facto*).
  - 2. **Brown v. Board of Education** (1954) marks the *beginning of the era of civil rights*.
    - a. The Supreme Court used *Brown* to set aside its earlier precedent of **Plessy v. Ferguson** (1896).
    - b. In a landmark decision, the Court held that school segregation was *inherently unconstitutional* because it violated the Fourteenth Amendment’s guarantee of *equal protection*.
    - c. In 1955, the Court ordered lower courts to proceed with “all deliberate speed” to desegregate public schools; however, desegregation moved very slowly until the passage of the **Civil Rights Act of 1964**, which denied federal funds to segregated schools.
  - 3. The **civil rights movement** organized both African Americans and Whites to end the policies and practices of segregation.

- a. The movement began in 1955 when Rosa Parks refused to give up her seat in the front of a Montgomery, Alabama, bus (where only Whites were allowed to sit); her arrest resulted in a boycott led by Rev. Martin Luther King, Jr.
  - b. *Sit-ins, marches, and civil disobedience* were key strategies of the civil rights movement, which sought to establish *equal opportunities* in the *political and economic sectors* and to bring an end to policies that put up barriers against people because of race.
4. The 1950s and 1960s saw a marked increase in public policies designed to foster racial equality.
- a. The Civil Rights Act of 1964 made racial discrimination illegal in hotels, motels, restaurants, and other places of public accommodation; it also forbade many forms of job discrimination, and Congress cut off federal aid to schools that remained segregated.
  - b. Desegregation proceeded slowly in the South and some federal judges ordered the *busing* of students to achieve *racially balanced schools* (upheld by the Supreme Court in ***Swann v. Charlotte-Mecklenberg County Schools***, 1971).
- F. Getting and using the right to vote.
1. The early Republic limited **suffrage** (the legal right to vote) primarily to property-holding White males.
  2. The **Fifteenth Amendment** (1870) guaranteed African Americans the right to vote, but full *implementation* did not occur for another century.
  3. States used various methods to circumvent the Fifteenth Amendment:
    - a. **Grandfather clause** - exempted persons whose grandfathers were eligible to vote in 1860 from taking *literacy tests* in order to vote; the exemption obviously did not apply to grandchildren of slaves (declared unconstitutional in ***Guinn v. U.S.***, 1915).
    - b. **Poll tax** - small taxes levied on the right to vote; the taxes often fell due at a time of year when poor sharecroppers had the least amount of cash available.
    - c. **White primary** - permitted political parties in the heavily Democratic South to exclude Blacks from primary elections on the pretext that political parties (and primaries) were private and not public institutions; this device deprived Blacks of a voice in the primaries, where the *real contest* occurred (declared unconstitutional in ***Smith v. Allwright***, 1944).
    - d. Many areas in the South employed **voter registration** tests (sometimes called **voter literacy tests**) in a discriminatory manner; some of the tests checked for an understanding of the Constitution.
  4. The civil rights movement put suffrage high on its political agenda, and many barriers to African-American voting fell during the 1960s.
    - a. Poll taxes in federal elections were prohibited by the **Twenty-fourth Amendment** (1964); poll taxes in state elections were invalidated two years later in ***Harper v. Virginia State Board of Elections***.
    - b. The **Voting Rights Act of 1965** prohibited any government from using voting procedures that denied a person the vote on the basis of race or color.
      - (1) Federal election registrars were sent to areas that had long *histories of discrimination*, and many African Americans were registered in southern states as a direct result.

- (2) The Voting Rights Act produced a major increase in the number of African Americans registered to vote in the southern states, and in the number of African Americans who held public office.
- G. The civil rights laws that African-American groups pushed for have benefited members of other minority groups such as American Indians, Asians, and Hispanics. The United States is heading toward a *minority majority* status, when minority groups will outnumber Caucasians of European descent.
1. Native Americans:
    - a. The oldest minority group in America, but they were not made U.S. citizens until 1924.
    - b. The *Indian Claims Act* was enacted in 1946 to settle financial disputes arising from land taken from the Indians.
  2. Hispanic Americans:
    - a. Have *displaced* African Americans as the largest minority group, comprising about 13 percent of the U.S. population.
  3. Asian Americans:
    - a. The *fastest growing minority group*, they now comprise four percent of the U.S. population.
    - b. During World War II, the U.S. government rounded up more than 100,000 Americans of Japanese descent and placed them in *internment encampments* known as “war relocation centers.”
    - c. The Supreme Court upheld the internment as constitutional in ***Korematsu v. United States*** (1944), but Congress later provided benefits for the former internees (which still have not been distributed).
  4. Other groups:
    - a. There are more than 1.2 million persons of Arab ancestry in the United States.
    - b. Since the terrorist attacks of September 11, 2001, Arab, Muslim, Sikh, and South Asian Americans, and those perceived to be members of these groups, have been the victims of increased numbers of bias-related assaults, threats, vandalism, and arson.

### III. WOMEN, THE CONSTITUTION, AND PUBLIC POLICY

- A. The struggle for women’s equality has *emphasized legislation over litigation*.
- B. The battle for the vote.
1. The *first women’s rights activists* were products of the *abolition* movement.
  2. The legal doctrine of **coverture** deprived married women of any identity separate from that of their husbands.
  3. Lucretia Mott and Elizabeth Cady Stanton organized a meeting at Seneca Falls, New York, to discuss women’s rights.
  4. The *Seneca Falls Declaration of Sentiments and Resolutions* (signed on July 19, 1848) was the beginning of the movement that would culminate in the ratification of the **Nineteenth Amendment** (1920), which gave women the right to vote.
- C. The “doldrums”: 1920–1960.
1. The feminist movement seemed to lose momentum after winning the vote, possibly because the vote was about the only goal on which all feminists agreed.
  2. Alice Paul, the author of the **Equal Rights Amendment (ERA)**, claimed that the real result of protectionist law was to perpetuate *sexual inequality*; but most people in the 1920s saw the ERA as a *threat to the family*.

- D. The second feminist wave.
  - 1. The civil rights movement of the 1950s and 1960s attracted many women activists.
  - 2. Groups like the *National Organization for Women (NOW)* and the *National Women's Political Caucus* were organized in the 1960s and 1970s.
  - 3. Judicial development.
    - a. Before the advent of the contemporary feminist movement, the Supreme Court upheld virtually all cases of sex-based discrimination.
    - b. In *Reed v. Reed* (1971), the Court ruled that any “arbitrary” sex-based classification violated the equal protection clause of the Fourteenth Amendment (marking the first time the Court applied the Fourteenth Amendment to a case involving classification by sex).
    - c. In *Craig v. Boren* (1976), the Court established a “*medium scrutiny*” standard, under which sex discrimination would be presumed to be neither valid nor invalid.
    - d. The Supreme Court has now struck down many laws and rules for discriminating on the basis of gender; some of the litigants have been *men seeking equality with women* in their treatment under the law.
  - 4. The ERA was revived when Congress passed it in 1972 and granted a three-year extension six years later; the ERA fell three states short of ratification, but losing the ERA battle has stimulated vigorous feminist activity.
- E. Women in the workplace.
  - 1. As conditions have changed, public opinion and public policy demands have also changed.
    - a. The traditional family role of father at work/mother at home is becoming a thing of the past.
    - b. The civilian labor force includes 67 million women (78 million males).
    - c. There are 33 million female-headed households; about two-thirds of American mothers who have children below school age are in the labor force.
  - 2. Some important progress was made through congressional legislation:
    - a. The *Civil Rights Act of 1964* banned sex discrimination in employment.
    - b. In 1972, the *Equal Employment Opportunity Commission (EEOC)* was given the power to sue employers suspected of illegal discrimination.
    - c. *Title IX of the Education Act of 1972* forbade sex discrimination in federally subsidized education programs, including athletics.
    - d. Three of the most controversial issues that legislators will continue to face are wage discrimination, the role of women in the military, and sexual harassment.
  - 3. The Supreme Court has frequently ruled against gender discrimination in employment and business activity.
- F. Wage discrimination and comparable worth.
  - 1. The U.S. Supreme Court has remained silent so far on the issue of “**comparable worth**,” which refers to the fact that traditional women’s jobs often pay much less than men’s jobs that demand comparable skill.
  - 2. Median annual earnings for full-time women workers are only about three-fourths those of men.
- G. Women in the military.

1. Women have served in every branch of the armed services since World War II (originally in separate units, but now as part of the regular service).
  2. Women comprise 15 percent of the armed forces, and compete directly with men for promotion.
  3. There are still two important differences between the treatment of men and women in military service:
    - a. Only men must register for the draft when they turn age 18 (upheld in *Rostker v. Goldberg*, 1981).
    - b. Statutes and regulations prohibit women from serving in combat.
- H. **Sexual harassment** can occur anywhere, but may be especially prevalent in male-dominated occupations such as the military. Sexual harassment violates federal policies against sexual discrimination in the workplace (although it was not a violation of federal policy when Anita Hill worked for Clarence Thomas).
1. In *Harris v. Forklift Systems* (1993), the Supreme Court held that no single factor is required to win a sexual harassment case under Title VII of the 1964 Civil Rights Act. The law is violated when the workplace environment “would reasonably be perceived, and is perceived, as hostile or abusive.”
  2. In 1996 and 1997, a number of army officers and noncommissioned officers had their careers ended, and some went to prison, for sexual harassment of female soldiers in training situations.
  3. In *Faragher v. City of Boca Raton* (1998), the Supreme Court stated that employers can be held liable for even those harassing acts of supervisory employees that violate clear policies and of which top management has no knowledge.

#### **IV. NEWLY ACTIVE GROUPS UNDER THE CIVIL RIGHTS UMBRELLA**

- A. New activist groups began to realize that policies that were enacted to protect racial minorities and women can also be applied to other groups, such as aging Americans, young Americans, the disabled, and homosexuals.
- B. Civil rights and the graying of America.
  1. People in their eighties comprise the fastest growing age group in this country.
  2. Since 1967, Congress has passed several laws that ban various types of age discrimination.
  3. It is not clear what the fate of the **gray liberation movement** will be as its members approach the status of a *minority majority*.
- C. Are the young a disadvantaged group, too?
  1. Young people have also suffered from inferior treatment under the law.
  2. There are obvious difficulties in organizing a “children’s rights movement,” but there have been instances of young people who were successful in asserting their rights (illustrated by Walter Polovchak, who refused to return to the Ukraine with his parents, and a 12-year-old boy in Florida who “divorced” his family so he could be adopted by foster parents).
- D. Civil rights and people with disabilities.
  1. Americans with disabilities have suffered from both direct and indirect discrimination.
  2. The first rehabilitation laws were passed in the late 1920s; the *Rehabilitation Act of 1973* (twice vetoed by President Nixon as “too costly”) added disabled people to the list of Americans protected from discrimination.

3. The **Americans with Disabilities Act of 1990** requires employers and public facilities to provide “*reasonable accommodations*,” and prohibits employment discrimination against the disabled.
  4. Questions have been raised over whether AIDS victims are handicapped and thus entitled to protection. So far, no case dealing with AIDS victims has reached the Supreme Court.
- E. Gay and lesbian rights.
1. Gay (or homosexual) activists *may face the toughest battle for equality*.
    - a. Homosexual activity is illegal in some states, and homosexuals often face prejudice in hiring, education, access to public accommodations, and housing.
    - b. There are no positive stereotypes commonly associated with homosexuality.
    - c. *Homophobia* (fear and hatred of homosexuals) has many causes, and homosexuals are often seen as safe targets for public hostility.
    - d. A substantial percentage of the American public express opposition to homosexuals entering many common occupations.
    - e. In 1993, President Clinton announced a new policy that barred the Pentagon from asking recruits or service personnel to disclose their sexual orientation. Popularly known as the “don’t ask, don’t tell” policy, it also reaffirmed the Defense Department’s strict prohibition against homosexual conduct.
  2. Despite some setbacks, gay activists have won some important victories.
    - a. Seven states and more than 100 communities have passed laws protecting homosexuals against some forms of discrimination.
    - b. Most colleges and universities now have gay rights organizations on campus.

## V. AFFIRMATIVE ACTION

- A. The interests of women and minorities have converged on the issue of **affirmative action** (policies requiring special efforts on behalf of disadvantaged groups).
  1. Affirmative action involves efforts to bring about increased employment, promotion, or admission for members of such groups.
  2. The goal of affirmative action is to *move beyond equal opportunity* toward *equal results*.
  3. The federal government has mandated that all state and local governments—together with each institution receiving aid from or contracting with the federal government—adopt an affirmative action program.
- B. Some groups have claimed that affirmative action programs constitute “**reverse discrimination**.
  1. In *Regents of the University of California v. Bakke* (1978), the Court rejected a plan at the University of California at Davis that set aside 16 of a total of 100 places in the entering medical school class for “disadvantaged groups.”
    - a. The Court said a university could not set aside a *quota* of spots for particular groups.
    - b. However, the Court said that a university could adopt an “admissions program where race or ethnic background is simply one element in the selection process.”
  2. The following year, the Court ruled that a voluntary union-and-management-sponsored program was *not* discriminatory because the Kaiser Aluminum Company’s special training program was intended to rectify years of past

employment discrimination at Kaiser (*United Steelworkers of America, AFL-CIO v. Weber*, 1979).

- C. In other cases, the Court has ruled that public employers may use affirmative action plans to counter underrepresentation of women and minorities, but the Court has also ruled that affirmative action does not exempt recently hired minorities from traditional work rules specifying the “last hired, first fired” order of layoffs.
- D. Opposition to affirmative action policies.
  - 1. Surveys find that most Americans oppose affirmative action programs, even though Americans in general support nondiscrimination in employment and education.
  - 2. Opposition is especially strong when people view affirmative action as reverse discrimination where less qualified individuals get hired or admitted to educational or training programs.
  - 3. In 1996, California voters passed Proposition 209, which banned state affirmative action programs based on race, ethnicity, or gender in public hiring, contracting, and educational admissions. Ultimately the U.S. Supreme Court will decide the issue.
  - 4. A federal court of appeals placed a similar ban on universities in Texas, Oklahoma, and Mississippi, while another court upheld racial preferences at the University of Michigan in 2002, affirming that there was a compelling interest in promoting racial diversity on campus.
  - 5. In *Gratz v. Bollinger* (2003), however, the Court struck down the University of Michigan’s system of undergraduate admissions in which every applicant from an underrepresented racial or ethnic minority group was automatically awarded 20 points of the 100 needed to guarantee admission.

## VI. UNDERSTANDING CIVIL RIGHTS AND THE CONSTITUTION

- A. Civil rights and democracy.
  - 1. Democracy is often in conflict with itself: both *equality* and *individual liberty* are important democratic principles, but they *may conflict with each other*.
    - a. Equality tends to favor *majority rule*, but *equality threatens individual liberty* in situations where the majority wants to deprive the minority of its rights.
    - b. Majority rule is not the only threat to liberty: *minorities* have suppressed majorities as well as other minorities.
  - 2. Even when they lacked the power of the vote, both African Americans and women made many gains by using other rights (such as the First Amendment freedoms) to fight for equality.
- B. Civil rights and the scope of government.
  - 1. Civil rights laws increase the *scope and power of government*.
    - a. These laws place both restrictions and obligations on individuals and institutions—they tell individuals and institutions that there are things they must do and other things they cannot do.
    - b. Libertarians and those conservatives who want to reduce the size of government are uneasy with these laws (and sometimes hostile to them).
  - 2. Civil rights is an area in which *increased government activity in protecting basic rights* can lead to *greater checks on the government* by those who benefit from such protections.

## **KEY TERMS AND CONCEPTS**

**Affirmative action:** a policy designed to give special consideration to those previously discriminated against.

**Americans with Disabilities Act of 1990:** strengthened protections of individuals with disabilities by requiring employers and public facilities to make “reasonable accommodations” and prohibiting employment discrimination against people with disabilities.

**Civil rights:** extending citizenship rights to participate to those previously denied them.

**Civil Rights Act of 1964:** forbids discrimination in public accommodations and facilities.

**Comparable worth:** equal pay for equal worth.

**Equal protection of the laws:** provided by the Fourteenth Amendment mandating that all people be protected by the law.

**Equal Rights Amendment:** proposal that equality of rights under the law not be denied on the account of sex.

**Fifteenth Amendment:** provides the right to vote for Blacks.

**Fourteenth Amendment:** prohibits states from denying equal protection of the laws.

**Nineteenth Amendment:** provides women with the right to vote.

**Poll Taxes:** taxes levied on the right to vote designed to hurt poor Blacks.

**Suffrage:** the legal right to vote.

**Thirteenth Amendment:** abolished slavery and involuntary servitude.

**Twenty-fourth Amendment:** prohibited poll taxes in federal elections.

**Voting Rights Act of 1965:** a policy designed to reduce the barriers to voting for those suffering discrimination.

**White Primary:** practice where only Whites could vote in primaries.

## **KEY CASES**

*Adarand Constructors v. Pena* (1995)

*Brown v. Board of Education* (1954)

*Craig v. Boren* (1976)

*Dred Scott v. Sandford* (1857)

*Korematsu v. United States* (1944)

*Plessy v. Ferguson* (1896)

*Reed v. Reed* (1971)

*Regents of the University of California v. Bakke* (1978)

*Scott v. Sandford* (1857)

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Have your students select a court case that is currently in the news or being discussed on the Internet that has implications for civil rights. The class should follow the case as it develops and try to evaluate how well it fits within the framework of what they have been reading in the textbook.
- During World War II, Americans of Japanese descent were sent to “relocation centers.” Ask your students to discuss whether the alleged threat of espionage and a Japanese

invasion of the Pacific Coast justified this action. Ask students to review the Court decision (and public reaction) in *Korematsu v. United States*, as well as the recent decision to pay families sent to relocation centers for damages incurred. Finally, are there any parallels regarding the detainment and questioning of large numbers of Arab Americans and U.S. residents of Muslim descent?

- Suggest that your students compare the Equal Rights Amendment with the Fourteenth Amendment. Did the ERA cover some of the same ground as the Fourteenth Amendment, or did they deal with completely separate concepts?
- Divide your class into panels to discuss the role that women and homosexuals should play in the military. One team should be assigned to examine the congressional hearings that were conducted after the Persian Gulf War which led to a congressional decision to permit women to serve as combat pilots; another team should be given an assignment to look at coverage in the media of public reaction to the 1993 compromise concerning gays in the military (“don’t ask, don’t tell, don’t pursue”).
- Ask students to write brief essays assessing the formal role of women in combat and how the media covered the role of the women in the military during the Persian Gulf War of the early 1990s with that of the U.S.’s invasion of Iraq. How similar or different was the coverage? Why?
- Surveys show that most Americans oppose affirmative action programs, even though Americans in general support nondiscrimination in employment and education. Ask students to research the legal rationale behind affirmative action policies, and how the courts have evaluated various affirmative action programs. Have several members of your class debate the concepts of affirmative action and reverse discrimination. Can one group be protected without discriminating against another? Where would your students place their priorities?
- It can be instructive to show a segment of *Eyes on the Prize* in a classroom setting. The civil rights era is recreated through newsreel footage and interviews, and the era is “brought to life” for students who otherwise view the 1950s and 1960s only as “history.” This award-winning series is available on videocassette.
- Engage the students in a discussion of the recent Michigan Supreme Court case on affirmative action. What will it mean, if anything, for minority attendance levels in undergraduate and professional schools?
- Ask students to document historical and contemporary civil rights issues in South Africa to assess whether there is anything familiar about the problems of citizenship and discrimination. In general, the discussion should focus on disenfranchisement and dual citizenship problems, which Blacks and women have especially suffered both there and in the United States.
- Have students do a clipping file of current or recent events involving violations of civil rights and the expansion of government. Ask them to write an essay identifying the violations and to describe how government has expanded as a result of efforts to provide protections.
- For a reading and writing connection, have students choose one of the key conflicts of the 1960s civil rights movements (e.g., Selma, Montgomery). Ask students to write a brief description of the events, explaining why Blacks and Whites engaged in the behaviors they did. Who won? Who lost? Why?

## **BACKGROUND READING**

Chong, Dennis. Collective Action and the Civil Rights Movement. Chicago: University of Chicago Press, 1991.

Cohen, Carl. Affirmative Action and Racial Preference : A Debate. New York: Oxford University Press, 2003.

Hampton, Henry, and Steve Fayer. Voice of Freedom. New York: Bantam, 1990.

Klein, Ethel. Gender Politics. Cambridge, MA: Harvard University Press, 1974.

McAdam, Doug. Freedom Summer. New York: Oxford University Press, 1988.

McGlen, Nancy E., and Karen O'Conner. Women, Politics, and American Society, 2nd ed. Englewood Cliffs, NJ: Prentice Hall, 1998.

Steele, Shelby. The Content of Our Character: A New Vision of Race in America. New York: St. Martin's Press, 1990.

## **MEDIA SUGGESTIONS**

Affirmative Action: The History of an Idea. This program considers the historical development of affirmative action policies and highlights current debates over its usefulness. Films for the Humanities and Sciences.

American Civil Liberties Union: A History. This program reviews the history of the ACLU, highlighting its contributions to protecting minorities. Films for the Humanities.

Eyes on the Prize. A Public Broadcasting Service series chronicling the civil rights movement in America. Excerpts are especially useful for visual effect.

Figures of the Civil Rights Movement: Sit-Ins and the Little Rock Nine. This show highlights the 1960 Nashville sit-ins and the desegregation of Little Rock's Central High School in 1957. Includes archival footage. Films for the Humanities and Sciences.

Murder in Mississippi: The Price for Freedom. 1996. This film provides an in-depth examination of the murders of three civil rights workers during Freedom Summer in Mississippi. Films for the Humanities and Sciences.

Politics in Action, Chapter 8: A History of the Women's Movement. Provides a history of the women's movement, noting its successes and failures.

Racism in Theory and Practice. 1995. A historical examination of racism. Insight Media.

Religion and Race in America: Martin Luther King's Lament. 1996. This film provides an analysis of the different roles churches play in shaping a nation's political culture. Films for the Humanities and Sciences.

Walk a Mile in My Shoes: The 90-Year History of the NAACP. This program, hosted by Julian Bond, provides a historical overview of the NAACP and the issues that it has worked on since 1920. Edudex.com.

## CHAPTER SIX: PUBLIC OPINION AND POLITICAL ACTION

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### LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Contrast the relative positions of African Americans, Hispanic Americans, Asian Americans, and Native Americans in the American political and economic spheres.
- Identify the political implications of an increasingly elderly population.
- Describe the process of political socialization and identify the primary agents of socialization.
- Outline the components that are essential to obtain accuracy in public opinion polling.
- Evaluate the role of polls in American democracy.
- Identify the political beliefs that are likely to be preferred by liberals and conservatives.
- Identify the activities that encompass political participation in the United States.
- Distinguish between conventional and unconventional types of political participation.
- Show how nonviolent civil disobedience was one of the most effective techniques of the civil rights movement in the American South.
- Explain what political scientists mean when they conclude that Americans are ideological conservatives but operational liberals.

### CHAPTER OVERVIEW

#### INTRODUCTION

In a representative democracy, citizens' preferences are supposed to guide policymakers. Yet the American people are amazingly diverse, which means that there are many groups with many

opinions rather than a single public opinion. And most citizens know very little about politics. This chapter focuses on the nature of these “public opinions,” how citizens learn about politics, and the extent to which these opinions are conveyed to government officials through various types of political participation.

## THE AMERICAN PEOPLE

One way of looking at the American public is through **demography**: the science of human populations. The most valuable tool for understanding demographic changes in America is the **census**.

With its long history of immigration, the United States has often been called a **melting pot**; but policymakers now speak of a new **minority majority** because it is estimated that all the minority groups combined should pass the 50 percent mark by the year 2060. The largest component of the minority majority currently is the *African-American population*. A legacy of racism and discrimination has left the African-American population economically and politically disadvantaged, but African Americans have recently been exercising a good deal of political power. If current immigration and birth rates continue, the *Hispanic population* will outnumber the Black population early in the twenty-first century. Hispanics are rapidly gaining power in the Southwest. The problem of what to do about *illegal immigration* is of particular concern to the Hispanic community. The recent influx of *Asians* has been headed by a new class of professional workers. Asian Americans are the most highly skilled immigrant group in American history, and they are the best off of America’s minority groups. *Native Americans* are by far the worst off of America’s minority groups. Statistics show that they are the least healthy, the poorest, and the least educated group. Most remain economically and politically disadvantaged.

Americans live in an increasingly multicultural and multilingual society. Yet, regardless of ethnic background most Americans share a common **political culture** – an overall set of values widely shared within a society. Over the last 60 years, much of America’s population growth has been centered in the West and South, particularly with movement to the states of Florida, California, and Texas from states like Pennsylvania, Ohio, and Michigan. This demographic change is associated with political change, as the process of **reapportionment** brings with it gains or losses of congressional representation as the states’ population balance changes. The *fastest growing age group* in America is composed of citizens over age 65. The new political interests of the elderly have been mobilized under the umbrella of “**gray power**.”

## HOW AMERICANS LEARN ABOUT POLITICS: POLITICAL SOCIALIZATION

Richard Dawson notes that **political socialization** is “the process through which an individual acquires his or her own political orientations.” **Agents of socialization** are numerous, including the family, the media, and schools. Only a small portion of Americans’ political learning is formal; *informal learning* is much more important.

*Politics is a lifelong activity*, and political behavior is to some degree *learned behavior*. The family’s role is central because of its monopoly on time and emotional commitment in the early years. Although most students like to think of themselves as independent thinkers, one can accurately predict how the majority of young people will vote simply by knowing the political leanings of their parents. In fact, research with identical twins indicates that genetics plays a substantial part in the political attitudes people possess.

The mass media has been referred to as “the new parent.” Television now displaces parents as the chief source of information as children get older. Governments throughout the world use the

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schools in their attempt to instill a commitment to the basic values of the system. Both democratic and authoritarian governments want students to learn positive features about their political system because it helps ensure that youth will grow up to be supportive citizens. Governments largely aim their socialization efforts at the young because one's *political orientations grow firmer* as one becomes more socialized with age.

### MEASURING PUBLIC OPINION AND POLITICAL INFORMATION

**Public opinion** is the distribution of people's beliefs about politics and policy issues. There is *rarely a single public opinion*: with so many people and such diversity of populations, there are also many opinions. Public opinion is one of the products of political learning.

Public opinion **polling** was first developed by George Gallup in 1932. Polls rely on a **sample** of the population (a relatively small proportion of people who are chosen as *representative* of the whole) to measure public opinion. The key to the accuracy of opinion polls is **random sampling**, which operates on the principle that everyone should have an equal probability of being selected. However, there is always a certain amount of risk of inaccuracy involved, known as the **sampling error**.

Sophisticated technology is now available for measuring public opinion. Most polling is now done on the telephone with samples selected through **random digit dialing**, in which calls are placed to telephone numbers within randomly chosen exchanges. Supporters of polling consider that it is a *tool for democracy* by which policymakers can keep in touch with changing opinions on issues. Critics of polling think polls can weaken democracy by *distorting the election process*. Polls are often accused of creating a "**bandwagon effect**," in which voters may support a candidate only because they see that others are doing so. Moreover, emphasis on poll results sometimes has drowned out the *issues* of recent presidential campaigns. The election day **exit poll** is probably the most criticized type of poll. In the 1980, 1984, 1988, and 1996 presidential elections, the networks declared a winner while millions on the west coast still had hours to vote (but analysis of survey data shows that few voters have actually been influenced by exit poll results). In 2000, the exit polls received much of the blame for the media's inaccurate calls of the Florida result on election night. Perhaps the most pervasive criticism of polling is that by altering the *wording* of questions, pollsters can get pretty much the results they want.

Polls have revealed again and again that the average American has a low level of political knowledge. While people around the globe are less informed than they should be, Americans know even less. Increased levels of education over the last four decades and our information-rich modern society have scarcely raised public knowledge about politics. Part of the reason the American political system works as well as it does is that people do know what *basic values* they want upheld, even when they do not have information on policy questions or decision makers. Sadly, the American public has become increasingly dissatisfied with government over the last three decades. This in turn has undermined the ability of government to address pressing social problems.

### WHAT AMERICANS VALUE: POLITICAL IDEOLOGIES

Generally, Americans tend to identify themselves as conservatives more than moderates or liberals—which helps to account for the relatively limited scope of government in the United States. But who identifies as a liberal or conservative often varies according to age, gender, race and socioeconomic status. Groups with political clout tend to be more conservative than groups whose members have often been shut out from the halls of political power.

Women are not a minority group, making up about 54 percent of the population, but they have nevertheless been politically and economically disadvantaged. Compared to men, women are more likely to support spending on social services and to oppose the higher levels of military spending, which conservatives typically advocate. This ideological difference between men and women has led to the gender gap, which refers to the regular pattern by which women are more likely to support Democratic candidates.

Ideological thinking is not widespread in the American public, nor are people necessarily consistent in their attitudes. For most people, the terms *liberal* and *conservative* are not as important as they are for political elites. Thus, the authors of the classic study *The American Voter* (Angus Campbell, et al.) concluded that to speak of election results as indicating a movement of the public to either the “left” or “right” is a misnomer because most voters do not think in such terms. Some polling data disputes media claims of a polarizing “culture war.” For example, long-term tracking polls indicate a gradually increasing acceptance of gays and lesbians among liberals, moderates, and conservatives alike.

Furthermore, those who do think in ideological terms are actually the least likely to shift from one election to the next. The relatively small percentage of voters who made up their minds in the last couple of days of the Bush-Gore campaign in 2000 were far more concerned with integrity and competence than ideology.

## HOW AMERICANS PARTICIPATE IN POLITICS

**Political participation** encompasses the many activities used by citizens to influence the selection of political leaders or the policies they pursue. Paradoxically, the United States has a *participatory political culture*; but only 51 percent of Americans voted in the 2000 presidential election, and only 39 percent voted in the 2002 mid-term elections. Turnout in local elections is even lower.

Political scientists generally distinguish between two broad types of participation, conventional and unconventional. **Conventional participation** includes many widely accepted modes of influencing government, such as voting, trying to persuade others, ringing doorbells for a petition, and running for office. Although the decline of voter turnout is a development Americans should rightly be concerned about, a broader look at political participation reveals some positive developments for participatory democracy. **Unconventional participation** includes activities that are often dramatic, such as protesting, civil disobedience, and even violence.

**Protest** is a form of political participation designed to achieve policy change through dramatic and unconventional tactics, and protests today are often orchestrated to provide television cameras with vivid images. Throughout American history, individuals and groups have sometimes used **civil disobedience**, in which they consciously break laws that they think are unjust. Nonviolent civil disobedience was one of the most effective techniques of the civil rights movement in the American South. Although political participation can also be violent (as in some of the Vietnam War protests of the 1960s), perhaps the best indicator of *how well socialized Americans are to democracy* is that protest typically is aimed at *getting the attention of government* rather than at overthrowing it.

In the United States, participation is a *class-biased activity*, with citizens of higher socioeconomic status participating more than others. Minority groups like Hispanics and African Americans are below average in terms of political participation. However, the participation differences between these groups and the national average have been declining. When Blacks, Hispanics, and Whites

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of equal incomes and educations are compared, it is the *minorities who participate more* in politics.

### **UNDERSTANDING PUBLIC OPINION AND POLITICAL ACTION**

While more people today think the government is too big rather than too small, a plurality has consistently called for spending on programs like education, healthcare, aid to big cities, protecting the environment, and fighting crime. Many political scientists have looked at these contradictory findings and concluded that Americans are *ideological conservatives* but *operational liberals*.

Americans often take for granted the opportunity to replace our leaders at the next election. Even if they are only voting according to the nature of the times, voters are being heard—which holds elected officials accountable for their actions.

## **CHAPTER OUTLINE**

### **I. THE AMERICAN PEOPLE**

- A. Public opinion
  - 1. The United States remains *one of the most diverse countries* in the world today.
  - 2. The study of American **public opinion** aims to understand the distribution of the population's belief about politics and policy issues.
  - 3. Such diversity *makes the study of American public opinion especially complex*, for there are many groups with a great variety of opinions.
  - 4. The task is further complicated by the fact that people are often not well informed about the issues, and they may have contradictory attitudes.
  - 5. There are also *consequences for democracy*: the least informed are also the least likely to participate in the political process, thereby leading to inequalities in who takes part in political action.
- B. One way of looking at the American public is through **demography** (the science of population changes).
  - 1. The most valuable tool for understanding demographic changes in America is the **census**, which was first conducted in 1790 to comply with the constitutional requirement that the government conduct an “actual enumeration” of the population every ten years.
  - 2. Once a group can establish its numbers, it can then ask for federal aid in proportion to its size.
- C. The United States has always been a nation of immigrants.
  - 1. Americans live in a *multicultural and multilingual society* that is becoming more diverse all the time.
  - 2. Despite this diversity, minority groups have *assimilated many basic American values*, such as the principle of equality.
  - 3. Until recently, the largest minority group in the country has been the African-American population.
  - 4. The 2000 Census reported that for the first time the Hispanic population outnumbered the African-American population.
  - 5. Unlike Hispanics, who have come to America to escape poverty, the recent influx of Asians has been driven by a new class of professional workers looking for greater opportunity.

6. By far the worst off minority group is the one indigenous minority, known today as Native Americans.
7. Regardless of ethnic background, most Americans share a common political culture – an overall set of values widely shared within a society.
- D. Over the last fifty years, much of America's population growth has been centered in the West and South, particularly with *movement to* the “sunbelt” states of Florida, California, and Texas *from* “rust belt” states like Pennsylvania, Ohio, and Michigan.
  1. The process of **reapportionment** occurs every ten years following the census, and brings with it gains or losses of congressional representation as the states' population balance changes. (New York has lost about one-third of its delegation over the last fifty years.)
- E. The *fastest growing age group* in America is composed of citizens *over age 65*: people are living longer as a result of medical advances, and the birth rate has dropped.
  1. The *Social Security system* is second only to national defense as America's most costly public policy; the growing demands to care for the elderly will almost certainly become more acute in the decades ahead.

## II. HOW AMERICANS LEARN ABOUT POLITICS: POLITICAL SOCIALIZATION

- A. How Americans learn: the process of political socialization.
  1. **Political socialization** is “the process through which an individual acquires his or her own political orientations.”
  2. Only a small portion of Americans' political learning is formal; *informal learning* is much more important.
  3. **Agents of socialization** are numerous; they include family, the media, and schools.
    - a. *The family's* role is central because of its monopoly on two crucial resources in the early years—time and emotional commitment. There may even be genetic predispositions towards attitudes.
    - b. The *mass media* has been referred to as “the new parent.”
    - c. Governments throughout the world use the *schools* in their attempt to instill a commitment to the basic values of the system.
- B. Politics is a lifelong activity.
  1. Aging increases one's *political participation* and the strength of one's *party attachment*.
  2. Political behavior is to some degree a *learned behavior*.
  3. Governments largely aim their socialization efforts at the young (not the old) because one's *political orientations grow firmer* as one becomes more socialized with age.

## III. MEASURING PUBLIC OPINION AND POLITICAL INFORMATION

- A. Public opinion.
  1. What Americans believe (and believe they know) is **public opinion**—the distribution of people's beliefs about politics and policy issues.
  2. There is *rarely a single public opinion*: with so many people and such diversity of populations, there are also many opinions.
  3. Public opinion is one of the products of political learning.
- B. Measuring public opinion.

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1. Public opinion **polling** was first developed by George Gallup in 1932.
  2. Polls rely on a **sample** of the population (a relatively small proportion of people who are chosen as *representative* of the whole) to measure public opinion.
    - a. A sample of about 1,500 to 2,000 people can be representative of the “**universe**” (the larger group whose opinion is being measured) of potential voters.
    - b. The key to the accuracy of opinion polls is **random sampling**, which operates on the principle that everyone should have *an equal probability of being selected*.
    - c. There is always a certain amount of risk of inaccuracy involved, known as the **sampling error**.
  3. Sophisticated technology is now available for measuring public opinion.
    - a. Computer and telephone technology have made surveying less expensive and more commonplace.
    - b. Most polling is now done on the telephone with samples selected through **random digit dialing**, in which calls are placed to telephone numbers within randomly chosen exchanges.
    - c. In this era of cell phones, many pollsters are starting to worry whether this methodology will continue to work much longer.
- C. The role of polls in American democracy.
1. *Supporters* of polling believe it is a *tool for democracy* by which policymakers can keep in touch with changing opinions on issues.
  2. *Critics* of polling think it makes politicians *more concerned with following than leading* and may thus discourage bold leadership. Recent research by Jacobs and Shapiro argues that the common perception of politicians pandering to the results of public opinion polls may be mistaken. Rather than using polls to identify centrist approaches that will have the broadest appeal, Jacobs and Shapiro argue that elites use them to formulate strategies that enable them to avoid compromising on what they want to do.
  3. Polls can weaken democracy by *distorting the election process*; polls are often accused of creating a “**bandwagon effect**” in which voters may support a candidate only because they see that others are doing so.
  4. Emphasis on poll results sometimes has drowned out the *issues* of recent presidential campaigns.
  5. The election day **exit poll** is probably the most criticized *type* of poll.
  6. Perhaps the most pervasive criticism of polling is that pollsters can get pretty much the results they want by altering the *wording* of questions. Although the *bias* in such questions may be easy to detect, the ethical problem is that *an organization may not report how the survey questions were worded*.
- D. What polls reveal about Americans’ political information.
1. Polls reveal that the average American has a lower level of political knowledge than citizens of other countries at similar levels of development.
  2. Part of the reason the American political system works as well as it does is that people do know what *basic values* they want upheld, even when they do not have information on policy questions or decision makers.
  3. Increased levels of education and the increased availability of information over the last four decades have scarcely raised public knowledge about politics.
  4. Public cynicism and mistrust of government undermines the ability of government to address pressing social problems.

#### IV. WHAT AMERICANS VALUE: POLITICAL IDEOLOGIES

- A. Who are the liberals and conservatives?
  - 1. A **political ideology** is a *coherent set of values and beliefs about public policy*.
  - 2. Overall, more Americans consistently choose the ideological label of conservative over liberal.
  - 3. Some groups are more liberal than others, and want to see government do more; this includes people under the age of 30, minorities, and women.
  - 4. Groups with political clout tend to be more conservative than groups whose members have often been shut out from the halls of political power.
  - 5. Women are not a minority group, making up about 54 percent of the population, but they have nevertheless been politically and economically disadvantaged. Compared to men, women are more likely to support spending on social services and to oppose the higher levels of military spending, which conservatives typically advocate. This ideological difference between men and women has led to the gender gap, which refers to the regular pattern by which women are more likely to support Democratic candidates.
- B. Do people think in ideological terms?
  - 1. Ideological thinking is not widespread in the American public, nor are people necessarily consistent in their attitudes.
  - 2. The authors of the classic study *The American Voter* (Angus Campbell, et al.) first looked carefully at the ideological sophistication of the American electorate in the 1950s. They divided the public into four groups, according to ideological sophistication.
    - a. **Ideologues** - Only 12 percent could connect their opinions and beliefs with broad policy positions taken by parties or candidates.
    - b. **Group benefits voters** - Forty-two percent of Americans thought of politics mainly by the groups they liked or disliked.
    - c. **Nature of the times voters** - The “handle on politics” of 24 percent of the population was limited to whether the times seemed good or bad to them.
    - d. **No issue content voters** - Twenty-two percent of the voters were devoid of any ideological or issue content in their political evaluations; most simply voted routinely for a party or judged the candidates by their personalities.
  - 3. If the same methods are used to update the analysis of *The American Voter* through the 1980’s, one finds some increase in the proportion of ideologues, but the overall picture looks much the same.
  - 4. For most people, the terms liberal and conservative are just not as important as they are for the political elite such as politicians, activists, journalists, and the like.
  - 5. Although some point to gay rights as an example of an issue that polarizes the country into a “culture war,” polling data indicates a gradually increasing acceptance of gays and lesbians among liberals, moderates, and conservatives alike.

#### V. HOW AMERICANS PARTICIPATE IN POLITICS

- A. **Political participation** encompasses the many activities used by citizens to influence the selection of political leaders or the policies they pursue.
  - 1. Americans have many avenues of political participation open to them.

## Chapter 6

2. The United States has a *participatory political culture*, but only 55 percent of Americans voted in the 2004 presidential election, 39 percent turned out for the 2002 mid-term elections, and the numbers get even smaller for state and local elections.
- B. Political scientists generally distinguish between two broad types of participation: *conventional* and *unconventional*.
  1. **Conventional participation** includes many widely accepted modes of influencing government, such as voting, trying to persuade others, ringing doorbells for a petition, and running for office.
  2. **Unconventional participation** includes activities that are often dramatic, such as protesting, civil disobedience, and even violence.
    - a. **Protest** is a form of political participation designed to achieve policy change through dramatic and unconventional tactics, and protests today are often orchestrated to provide television cameras with vivid images.
    - b. Throughout American history, individuals and groups have sometimes used **civil disobedience** (consciously breaking a law that they think is unjust), illustrated in different eras by people like Henry David Thoreau in the 1840s and the Rev. Martin Luther King, Jr., in the 1950s and 1960s.
    - c. Nonviolent civil disobedience was one of the most effective techniques of the civil rights movement in the American South. Rev. King's *Letter from a Birmingham Jail* is a classic defense of civil disobedience.
    - d. Political participation can also be violent (as in some of the Vietnam war protests of the 1960s).
- C. Class, inequality, and participation.
  1. In the United States, participation is a *class-biased activity*, with citizens of higher socioeconomic status participating more than others.
  2. *Minority groups* like Hispanics and African Americans are *below average* in terms of political participation.
    - a. The participation differences between these groups and the national average has been declining.
    - b. When Blacks, Hispanics, and Whites of *equal incomes and educations* are compared, it is *minorities who participate more* in politics.

## VI. UNDERSTANDING PUBLIC OPINION AND POLITICAL ACTION

- A. Public attitudes toward the scope of government.
  1. The question of government power is a complex one, but it is one of the key controversies in American politics today.
    - a. Public opinions on different aspects of the same issue do not always hold together well: while more people today think the government is too big rather than too small, a plurality has consistently called for spending on programs like education, healthcare, aid to big cities, protecting the environment, and fighting crime.
    - b. Many political scientists have looked at these contradictory findings and concluded that Americans are *ideological conservatives* but *operational liberals*.
- B. Democracy, public opinion, and political action.
  1. Americans often take for granted the opportunity to replace our leaders at the next election.

2. Perhaps the best indicator of *how well socialized Americans are to democracy* is that protest typically is aimed at *getting the attention of government*, not at overthrowing it.
3. Even if they are only voting according to the nature of the times, voters are clearly being heard, which holds elected officials accountable for their actions.

## **KEY TERMS AND CONCEPTS**

**Census:** a count of the American population conducted every ten years.

**Civil disobedience:** a form of unconventional participation designed to consciously break a law thought to be unjust.

**Demography:** the science of human populations.

**Exit poll:** a poll taken at randomly selected polling places after the citizens have placed their votes.

**Gender gap:** a consistent attitudinal pattern where women are more likely than men to express liberal attitudes and to support Democratic candidates.

**Melting pot:** the mixture of cultures, ideas, and peoples in the United States.

**Minority majority:** a reference to the impending status of White, Anglo-Saxon Americans, currently holding majority status.

**Political culture:** an overall set of values widely shared within a society.

**Political ideology:** a coherent set of values and beliefs about public policy.

**Political participation:** the activities used by citizens to influence political outcomes.

**Political socialization:** the process by which citizens acquire their knowledge, feelings, and evaluations of the political world.

**Protest:** a form of political participation designed to change policy through unconventional tactics.

**Public opinion:** the distribution of the population's beliefs about politics and issues.

**Random digit dialing:** phone numbers are dialed at random around the country.

**Random sampling:** a polling technique which is based on the principle that everyone has an equal probability of being selected as part of the sample.

**Reapportionment:** the reallocation of 435 seats in the House of Representatives based on changes in residency and population found in the census.

**Sample:** a small proportion of the population chosen as representative of the whole population.

**Sampling error:** the level of confidence involved in a sample result—the level is dependent on the size of the sample.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Public opinion surveys consistently reveal an astounding lack of public knowledge about politics. Give students a pop quiz on several major political issues and have them grade their own quiz. Alternatively, administer to them a subset of questions from the exam that the U.S. Citizenship and Immigration Services administers to immigrants applying for citizenship. Briefly discuss their performance, and possible reasons for it.

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Then ask your students to discuss whether the American political system is affected by such a low level of public information.

- The textbook points out that the diversity of the American public and its opinions must be faithfully channeled through the political process in order for the American government to work efficiently and effectively. At the same time, the least informed among the public are also the least likely to participate in the political process. Ask your class to evaluate the effect that this inequality of participation has on the democratic process.
- Select a controversial topic (such as flag burning, partial birth abortion, or affirmative action). Call for each student to devise a survey to measure attitudes on this issue and administer it to a group of friends. Their surveys will not be representative, so they should obtain very different results. Use the results to discuss the problems that may arise with improperly administered surveys, particularly if the public relies on the results.
- The authors of the textbook point out that more people today think the government is too big rather than too small, yet a plurality has consistently called for increased spending on domestic programs. Many political scientists have looked at these contradictory findings and concluded that Americans are ideological conservatives but operational liberals. Ask your class to examine this theory with reference to public debate over the latest presidential budget proposals.
- Have students visit the Internet site operated by Gallup, the National Election Study, or the General Social Survey to find public opinion data on a question of interest. Have each student write up, or present orally in class, what the question wording was, the response distribution, and how to interpret the data.
- The concept of political socialization is difficult for students to grasp without examples and discussion. Ask students to think about the role of political symbols in society. In particular, ask students to list these symbols and where they are most often seen. For example, the flag, the constitution, Uncle Sam, etc. Discuss the Pledge of Allegiance as a socializing agent for young children as well as activities during Fourth of July celebrations, which are often used to reinforce public values of nationalism, patriotism, and reverence for the Constitution. Once they have listed a variety of these, then ask them to explain why the national anthem is sung at baseball games. Ask how many know all of the words, how many have stood but did not sing, and how many did not sing or stand while the national anthem was being sung at a baseball game. This exercise provides an unintimidating yet thoughtful way of emphasizing just how pervasive political socialization has been used to instill principles, values, and beliefs in citizens. A follow-up exercise may include a short essay debating whether the reciting of the Pledge of Allegiance or the singing of the national anthem is more appropriate for baseball games, given that most people can say the pledge without hesitation, but have trouble singing the national anthem.
- Ask students to watch criminal justice entertainment shows from the 1970s compared to those in the 2000s. Then have students write brief essays on the political value or information conveyed in these shows, and the implications of these for individuals' political beliefs.
- In the 2004 election, many of the exit polls had John Kerry winning several states that George W. Bush actually won once the votes were counted. Discuss with the students some of the potential causes of this disparity in polling results and the actual vote count.
- Have the students watch a couple of episodes of *The Daily Show with Jon Stewart*. Have each student write an essay debating the legitimacy of this show as a positive tool for

shaping public opinion. Point out to them that recent polls suggest that many 18–30-year-olds claim that this is their only source of world events.

## **BACKGROUND READING**

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## **MEDIA SUGGESTIONS**

Leading Questions. Part of the Public Mind series distributed by Films for the Humanities and Sciences. This program examines public opinion polling and marketing techniques used in campaigns.

Eyes on the Prize. Selected videos cover various protest strategies of the civil rights movement.

## CHAPTER SEVEN: THE MASS MEDIA AND THE POLITICAL AGENDA

### PEDAGOGICAL FEATURES

- p. 219 *A Generation of Change: How Network News Broadcasts Are Going the Way of the Dinosaurs*
- p. 220 *Young People and Politics: How the Under-30 Crowd Learns from Different Media Sources Compared to Older Americans*
- p. 223 *Table 7.1: The Top 25 Lycos Searches for the Week Before the 2004 Presidential Election*
- p. 223 *How You Can Make a Difference: The Internet and the Media*
- p. 225 *America in Perspective: Press Freedom Around the World*
- p. 227 *Table 7.2: Embedded Reporting of the Iraq War: Opposing Opinions*
- p. 229 *Figure 7.1: The Incredible Shrinking Sound Bite*
- p. 230 *You Are the Policymaker: Should the Networks Have to Provide Free Air Time to Presidential Candidates?*
- p. 232 *Table 7.3: Stories Citizens Have Tuned In and Stories They Have Tuned Out*
- p. 237 *Key Terms*
- p. 237 *Internet Resources*
- p. 238 *Get Connected: Campaign Advertising*
- p. 238 *For Further Reading*

### LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Trace the development of the mass media and the way in which presidents have used the media in different periods of our history.
- Describe the major sources that people rely on for their information about politics, and how technologies—especially the Internet—are changing this.
- Determine how journalists define what is newsworthy, where they get their information, and how they present it.
- Explain the role that the profit motive plays in decisions by the mass media on how to report the news.
- Examine and analyze the charge that the media have a liberal bias.
- Identify factors that would explain why the news is typically characterized by political *neutrality*.
- Determine methods used by political activists to get their ideas placed high on the governmental agenda.
- Clarify how the media act as *key linkage institutions* between the people and the policymakers.
- Explain how functions of the media may help to keep government small and those functions that may encourage the growth of government.
- Describe how the rise of television broadcasting has encouraged individualism in the American political system.

- Explain why the rise of the “information society” has not brought about a corresponding rise of an “informed society.”
- Summarize how the news and its presentation are important influences in shaping public opinion on political issues.

## CHAPTER OVERVIEW

### INTRODUCTION

The American political system has entered a new period of **high-tech politics** in which the behavior of citizens and policymakers, as well as the political agenda itself, is increasingly shaped by technology. The **mass media** are a key part of that technology. Television, radio, newspapers, magazines, and other means of popular communication are called mass media because they reach out and profoundly influence not only the elites but the masses. This chapter describes the historical development of the mass media as it relates to news coverage of government and politics. Questions regarding how news is defined, how it is presented, and what impact it has in politics are also addressed.

### THE MASS MEDIA TODAY

Modern political success depends upon control of the mass media. Image making does not stop with the campaign. It is also a critical element in day-to-day governing since politicians’ images in the press are seen as good indicators of their clout. Politicians have learned that one way to guide the media’s focus successfully is to limit what they can report on to carefully scripted events. A **media event** is staged primarily for the purpose of being covered. A large part of today’s so-called *30-second presidency* is the slickly produced TV commercial. Few, if any, administrations devoted so much effort and energy to the president’s media appearance as did Ronald Reagan’s.

The Reagan White House operated on the following seven principles:

- 1) plan ahead
- 2) stay on the offensive
- 3) control the flow of information
- 4) limit reporters’ access to the president
- 5) talk about the issues you want to talk about
- 6) speak in one voice
- 7) repeat the same message many times

### THE DEVELOPMENT OF MEDIA POLITICS

The daily newspaper is largely a product of the late nineteenth century, while radio and television have been around only since the first half of the twentieth century. As recently as the presidency of Herbert Hoover (1929-1933), reporters submitted their questions to the president in writing, and he responded in writing (if at all). Franklin D. Roosevelt (1933-1945) was the first president to use the media effectively. Roosevelt held about *one thousand press conferences* in his 12 years in the White House and broadcast a series of “*fireside chats*” over the radio to reassure the nation during the Great Depression.

## Chapter 7

At the time of Roosevelt's administration, the press had not yet started to report on a political leader's public life. The events of the Vietnam War and the Watergate scandal soured the press on government. Today's newspeople work in an environment of cynicism; the press sees ferreting out the truth as their job since they believe that politicians rarely tell the whole story. **Investigative journalism**—the use of detective-like reporting methods to unearth scandals—pits reporters against political leaders. There is evidence that TV's fondness for investigative journalism has contributed to greater public cynicism and negativism about politics.

Scholars distinguish between two kinds of media: the **print media**, which include newspapers and magazines, and the **broadcast media**, which consist of television, radio, and the Internet. Each has reshaped political communication at different points in American history.

The first American daily newspaper was printed in Philadelphia in 1783, but daily newspapers did not become common until the technological advances of the mid-nineteenth century. Ever since the rise of TV news, however, newspaper circulation rates have been declining.

The broadcast media have gradually displaced the print media as Americans' principal source of news and information. As a form of technology, television is almost as old as radio; the first television station appeared in 1931. Nevertheless, the 1950s and 1960s were the developmental years for American television. The first televised presidential debates were the 1960 Kennedy-Nixon debates. The poll results from this debate illustrate the visual power of television in American politics: whereas people listening to the radio gave the edge to Nixon, those who saw it on television thought Kennedy won.

Television took the nation to the war in Vietnam during the 1960s, and TV exposed governmental naïveté (some said it was outright lying) about the progress of the war. With the growth of *cable TV*, particularly the Cable News Network (CNN), television has entered a new era of bringing news to people (and to political leaders) *as it happens*. Since 1963, surveys have consistently shown that more people rely on TV for the news than on any other medium; and by a regular two-to-one margin, people think television reports are more believable than newspaper stories. Young people are particularly likely to rely on television, as opposed to newspapers, for news.

In 1934, Congress created the Federal Communications Commission (FCC) to regulate the use of airwaves. Today, the FCC regulates communications via radio, television, telephone, cable, and satellite. The FCC is an independent regulatory body, but in practice it is subject to many political pressures. The FCC has regulated the airwaves in three important ways. First, to prevent near-monopolies of control over a broadcast market, it has instituted rules to limit the number of stations owned or controlled by one company. Second, the FCC conducts periodic examinations of the goals and performance of stations as part of its licensing authority. Third, the FCC has issued a number of fair treatment rules concerning access to the airwaves for political candidates and officeholders.

With the increase in cable channels and Internet usage, a recent trend has been the increase in “broadcast” channels that are oriented toward particularly narrow audiences, often referred to as **narrowcasting**. Traditional broadcast news is being partially replaced by political Web sites, bloggers, and even Jon Stewart's *The Daily Show*. With so many readily available

sources of information (cable, satellite, Internet, etc.) for so many specific interests, it will also be extremely easy for those who are not very interested in politics to completely avoid news and public affairs. Further, scholars are not impressed with the news value of most of what is broadcast on cable news networks. At the same time, those who *are* interested can now access far more information than before due to the limitless possibilities of the Internet and the democratization of the news through blogging and other trends. The result could well be an increasing inequality of political information, with the politically interested becoming even more knowledgeable while the rest of the public slips further into political apathy.

Only a relatively small number of TV stations are publicly owned in America, and these PBS stations play a minimal role in the news business, attracting low ratings. In contrast, in many other countries major TV networks are owned by the government.

## REPORTING THE NEWS

Although the American media is free and independent when it comes to journalistic content, they are totally dependent on advertising revenues to keep their businesses going. That is, news reporting is a *business* in America in which *profits shape how journalists define what is newsworthy, where they get their information, and how they present it*. To a large extent, TV networks define *news* as what is entertaining to the average viewer.

A surprising amount of news comes from *well-established sources*. Most news organizations assign their best reporters to particular **beats**—specific locations where news frequently emanates from, such as Congress. Very little of the news is generated by spontaneous events or a reporter's own analysis. Most stories are drawn from situations over which *newsmakers have substantial control*. For example, those who make the news depend on the media to spread certain information and ideas to the general public. Sometimes they feed stories to reporters in the form of **trial balloons**: information leaked to see what the political reaction will be.

TV news is little more than a headline service. With exceptions like the *Newshour* (PBS) and *Nightline* (ABC), analysis of news events rarely lasts more than a minute. At the same time, complex issues—like nuclear power, the nation's money supply, and pollution—are difficult to treat in a short news clip.

Strangely enough, as technology has enabled the media to pass along information with greater speed, news coverage has become less thorough. Newspapers once routinely reprinted the entire text of important political speeches; now the *New York Times* is virtually the only paper that does so—and even the *Times* has cut back sharply on this practice. In place of speeches, Americans now hear sound bites of less than ten seconds on TV.

The charge that the media have a *liberal bias* has become a familiar one in American politics, and there is some limited evidence to support it. National reporters are more likely to call themselves liberal than the general public, and more journalists identify themselves as Democrats than Republicans. However, there is little reason to believe that journalists' personal attitudes sway their reporting of the news. Most stories are presented in a "point/counterpoint" format in which two opposing points of view are presented.

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A conclusion that news reporting contains little explicit *partisan or ideological* bias is *not* to argue that it does not *distort reality* in its coverage. Ideally, the news should mirror reality. In practice, there are too many potential stories for this to be the case. Journalists must select which stories to cover and to what degree. Due to economic pressures, the media are biased in favor of stories with high drama that will attract people's interest (rather than extended analyses of complex issues). Television is particularly biased toward stories that generate good pictures. Seeing a talking head (a shot of a person's face talking directly to the camera) is boring; viewers will switch channels in search of more interesting visual stimulation.

### THE NEWS AND PUBLIC OPINION

For many years, students of the subject tended to doubt that the media had more than a marginal effect on public opinion. The “minimal effects hypothesis” stemmed from the fact that early scholars were looking for direct impacts—for example, whether the media affected how people voted. When the focus turned to how the media affect *what Americans think about*, more positive results were uncovered. The decision to cover or to ignore certain issues can affect public opinion. By focusing public attention on specific problems, the media influence the criteria by which the public evaluates political leaders.

### THE MEDIA'S AGENDA-SETTING FUNCTION

As was explained in Chapter 1, people are trying to influence the government's **policy agenda** when they confront government officials with problems they expect them to solve. Interest groups, political parties, politicians, public relations firms, and bureaucratic agencies are all pushing for their priorities to take precedence over others. *Political activists* (often called **policy entrepreneurs**—people who invest their political “capital” in an issue) depend heavily upon the *media* to get their ideas placed high on the governmental agenda.

The *staging of political events to attract media attention* is a political art form. Important political events are orchestrated minute by minute with an eye on American TV audiences. Moreover, it is not only the elites who have successfully used the media. Civil rights groups in the 1960s relied heavily on the media to tell their stories of unjust treatment. Many believe that the introduction of television helped to accelerate the movement by graphically showing Americans (in both the North and South) what the situation was.

### UNDERSTANDING THE MASS MEDIA

The media act as *key linkage institutions* between the people and the policymakers and have a profound impact on the political policy agenda.

The watchdog function of the media *helps to keep government small*. Many observers feel that the press is *biased against whoever holds office* and that reporters want to expose them in the media. With every new proposal being met with skepticism, regular constraints are placed on the growth of government. Conversely, when they focus on injustice in society, the media inevitably *encourage the growth of government*. The media *portray government as responsible for handling* almost every major problem.

The rise of television has furthered individualism in the American political process. Candidates are now much more capable of running for office on their own by appealing to

people directly through television. Television finds it easier to focus on individuals than on groups. As a result, parties have declined, and candidate personality is more important than ever.

The rise of the “information society” has not brought about a corresponding rise of an “informed society.” With the media’s superficial treatment of important policy issues, it is not surprising that the incredible amount of information available to Americans today has not visibly increased their political awareness or participation. The media’s defense is to say that this is what the people want. Since they are in business to make a profit, they have to appeal to the maximum number of people.

## **CHAPTER OUTLINE**

### I. THE MASS MEDIA TODAY

- A. The American political system has entered a new period of **high-tech politics** in which the behavior of citizens and policymakers, as well as the political agenda itself, is increasingly shaped by technology.
- B. The **mass media** are a key part of that technology. Television, radio, newspapers, magazines, and other means of popular communication are called mass media because they reach out and profoundly influence not only the elites but the masses.
- C. Modern political success depends upon control of the mass media.
  - 1. Candidates have learned that one way to *guide the media's focus* is to limit what they report on to carefully *scripted events*. These events are known as **media events**, that is, events that are staged primarily for the purpose of being covered.
  - 2. Image making does not stop with the campaign. It is also a critical element in day-to-day governing since politicians’ images in the press are seen as good indicators of their clout. For example, the Reagan administration was particularly effective in controlling the president’s image as presented by the media. A large part of today’s so-called *30-second presidency* (a reference to 30-second sound bites on TV) is the slickly produced TV commercial.

### II. THE DEVELOPMENT OF THE MASS MEDIA

- A. The daily newspaper is largely a product of the late nineteenth century, while radio and television have been around only since the first half of the twentieth.
- B. As recently as the presidency of Herbert Hoover (1929–1933), reporters submitted their questions to the president in writing, and he responded in writing (if at all).
- C. Franklin D. Roosevelt (1933–1945) was the first president to use the media effectively. To Roosevelt, the media were a potential ally, and he promised reporters two **press conferences** (presidential meetings with reporters) a week.
- D. At the time of Roosevelt’s administration, the press had not yet started to report on a political leader’s private life: the press *never even reported to the American public that the president was confined to a wheelchair*.
  - 1. The events of the Vietnam War and the Watergate scandal soured the press on government. Today’s newspeople work in an environment of cynicism; the press sees *ferreting out the truth* as their job since they believe that politicians rarely tell the whole story.
  - 2. **Investigative journalism**—the use of detective-like reporting methods to unearth scandals—pits reporters against political leaders. There is evidence that

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TV's fondness for investigative journalism has contributed to greater public cynicism and negativism about politics.

### E. The **print media**.

1. Newspapers.
  - a. The first American daily newspaper was printed in Philadelphia in 1783, but daily newspapers did not become common until the technological advances of the mid-nineteenth century. Rapid printing and cheap paper made the “*penny press*” possible—a paper that could be bought for a penny and read at home.
  - b. By the 1840s, the telegraph permitted a primitive “*wire service*,” which relayed news stories from city to city faster than ever before. The Associated Press, founded in 1849, depended heavily on this new technology.
  - c. Two newspaper magnates, Joseph Pulitzer and William Randolph Hearst, enlivened journalism around the turn of the century. This was the era of yellow journalism, where the main topics were sensationalized accounts of violence, corruption, wars, and gossip.
  - d. Newspapers consolidated into **chains** during the early part of the twentieth century. Today’s massive media conglomerates control newspapers with 78 percent of the nation’s daily circulation; these chains often control television and radio stations as well.
  - e. Among the most influential newspapers today are the *New York Times* (a cut above most newspapers in its influence and impact almost from the beginning), the *Washington Post* (perhaps the best coverage inside Washington), and papers from a few major cities (the *Chicago Tribune*, the *Los Angeles Times*, and others). For most newspapers in medium-sized and small towns, the main source of national and world news is the Associated Press wire service.
2. Magazines.
  - a. The political content of leading magazines is pretty slim. Newsweeklies such as *Time*, *Newsweek*, and *U.S. News and World Report* rank well behind popular favorites such as *Reader’s Digest*, *TV Guide*, and *National Geographic*.
  - b. Serious magazines of political news and opinion (such as the *New Republic*, the *National Review*, and *Commentary*) are primarily read by the educated elite.

### F. The **broadcast media**.

1. The broadcast media have gradually displaced the print media as Americans’ principal source of news and information.
  - a. Radio was invented in 1903; the first modern commercial radio station was Pittsburgh’s KDKA, whose first broadcast was of the 1920 Harding-Cox presidential election returns.
  - b. As a form of technology, television is almost as old as radio; the first television station appeared in 1931.
2. The 1950s and 1960s were the adolescent years for American television.
  - a. The first televised presidential debate was the 1960 Kennedy-Nixon debate. The poll results from this debate illustrate the visual power of television in American politics: whereas people listening to the radio gave the edge to Nixon, those who saw it on television thought Kennedy won.

- b. Television took the nation to the war in Vietnam during the 1960s, and TV exposed governmental naïveté (some said it was outright lying) about the progress of the war. President Johnson soon had two wars on his hands, one in Vietnam and the other at home with antiwar protesters—both covered in detail by the media.
- 3. With the growth of *cable TV*, and a variety of cable news networks such as the Cable News Network (CNN), television has entered a new era of bringing news to people (and to political leaders) *as it happens*. However, scholars criticize cable news for its lack of deep news value and in-depth reporting.
- 4. Broadcast news viewership continues to decline due to competition with cable news, the Internet, and other new technologies. Increasingly, **narrowcasting** has replaced broadcasting, meaning stations target particularly narrow audiences.
- 5. The greater availability for those who are politically interested to access limitless amounts of information through the Internet and specialized narrowcasts, combined with the ability of those who are uninterested to avoid news of any kind while using the media, is increasing the division between the knowledgeable and the apathetic.

### III. REPORTING THE NEWS

#### A. Defining news.

- 1. News reporting is a *business* in America in which *profits shape how journalists define what is newsworthy, where they get their information, and how they present it*.
- 2. Edward J. Epstein found that to a large extent, TV networks define *news* as what is entertaining to the average viewer.

#### B. Finding the news.

- 1. A surprising amount of news comes from *well-established sources*. Most news organizations assign their best reporters to particular **beats**—specific locations where news frequently emanates from, such as Congress.
  - a. Numerous studies of both the electronic and print media have found that journalists rely almost exclusively on such established sources to get their information.
  - b. Those who make the news depend on the media to spread certain information and ideas to the general public (sometimes via stories fed to reporters in the form of **trial balloons**—information leaked to see what the political reaction will be).
  - c. In turn, reporters rely on public officials to keep them informed. Official sources who have the information (such as knowledge about movements during the Gulf War) usually have the upper hand over those who merely report it.
  - d. Very little of the news is generated by spontaneous events or a reporter's own analysis. Most stories are drawn from situations over which *newsmakers have substantial control*.
- 2. Despite this dependence on familiar sources, reporters occasionally have an opportunity to live up to the image of the “crusading truth-seeker.”
  - a. Local reporters Carl Bernstein and Bob Woodward of the *Washington Post* uncovered important evidence in the Watergate case.

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- b. Columnists like Jack Anderson regularly expose government corruption and inefficiency.
- 3. The Watergate scandal signaled *a new era in the relationship between journalists and politicians*. Journalists began to assume that politicians had something to hide, and politicians assumed that reporters were out to embarrass them.
- C. Presenting the news.
  - 1. Once the news has been “found,” it has to be compressed into a 30-second news segment or fit in among the advertisements in a newspaper.
  - 2. TV news is little more than a headline service. With exceptions like the *Newshour* (PBS) and *Nightline* (ABC), analysis of news events rarely lasts more than a minute. At the same time, complex issues—like nuclear power, the nation’s money supply, and pollution—are difficult to treat in a short news clip.
  - 3. Paradoxically, as technology has enabled the media to pass along information with greater speed, news coverage has become less complete. Americans now hear **sound bites** of ten seconds or less on TV.
- D. Bias in the news.
  - 1. The charge that the media have a *liberal bias* has become a familiar one in American politics, and there is some limited evidence to support it.
    - a. National reporters are more likely to call themselves liberal than the general public, and a 2002 survey of 1,149 journalists found that 37 percent identified themselves as Democrats, compared to 19 percent who said they were Republicans.
    - b. However, there is little reason to believe that journalists’ personal attitudes sway their reporting of the news. Most stories are presented in a “point/counterpoint” format in which two opposing points of view are presented.
  - 2. The news is typically characterized by political neutrality.
    - a. Most reporters strongly believe in journalistic objectivity.
    - b. Those who are best at objective reporting are usually rewarded by their editors.
    - c. Media outlets have a direct financial stake in attracting viewers and subscribers.
  - 3. A conclusion that news reporting contains little explicit *partisan or ideological bias* is *not* to argue that it does not *distort reality* in its coverage.
    - a. Ideally, the news should mirror reality. In practice, there are too many potential stories for this to be the case.
    - b. Journalists must select which stories to cover and to what degree. Due to economic pressures, the media are biased in favor of stories with high drama that will attract people’s interest (rather than extended analyses of complex issues).
    - c. Television is particularly biased toward stories that generate good pictures; seeing a **talking head** (a shot of a person’s face talking directly to the camera) is boring, and viewers will switch channels in search of more interesting visual stimulation.

## IV. THE NEWS AND PUBLIC OPINION

- A. It is difficult to study the effects of the news media on people’s opinions and behavior. One reason is that it is hard to separate the media from other influences.

- In addition, the effect of one news story on public opinion may be negligible, while the cumulative effect of dozens of news stories may be quite important.
- B. There is evidence that the news and its presentation are important in shaping public opinion about political issues.
    - 1. The decision to cover or to ignore certain issues can affect public opinion.
    - 2. By focusing public attention on specific problems, the media influence the criteria by which the public evaluates political leaders.
    - 3. There is also some evidence that people's opinions shift with the tone of the news coverage. Popular presidents prompt the public to support policies, but the most powerful influence is that of news commentators on public opinion change.
  - C. Much remains unknown about the effects of the media and the news on American political behavior. Enough is known, however, to conclude that the media are a *key political institution*.

## V. THE MEDIA'S AGENDA-SETTING FUNCTION

- A. As was explained in Chapter 1, people are trying to influence the government's **policy agenda** when they confront government officials with problems they expect them to solve.
  - 1. Interest groups, political parties, politicians (including the president and Congress), public relations firms, and bureaucratic agencies are all pushing for their priorities to take precedence over others.
  - 2. *Political activists* (often called **policy entrepreneurs**)—people who invest their political “capital” in an issue) depend heavily upon the *media* to get their ideas placed high on the governmental agenda.
    - a. Policy entrepreneurs' weapons include press releases, press conferences, letter writing, buttonholing reporters and columnists, and trading personal contacts.
    - b. People in power can also use a **leak**, a carefully placed bit of inside information that is given to a friendly reporter.
- B. The *staging of political events to attract media attention* is a political art form.
  - 1. Important political events (such as Nixon's famous trip to China) are orchestrated minute by minute with an eye on American TV audiences.
  - 2. It is not only the elites who have successfully used the media. Civil rights groups in the 1960s relied heavily on the media to tell their stories of unjust treatment. Many believe that the introduction of television helped to accelerate the movement by graphically showing Americans (in both the North and South) what the situation was.
  - 3. Conveying a *long-term, positive image* via the media is *more important than a few dramatic events*. Policy entrepreneurs depend on goodwill and good images. Public relations firms may be hired to improve a group's (or individual's) image and its ability to sell its policy positions.

## VI. UNDERSTANDING THE MASS MEDIA

- A. The media act as *key linkage institutions* between the people and the policymakers and have a profound impact on the political policy agenda.
- B. The media and the scope of government.
  - 1. The **watchdog function** of the media *helps to keep government small*.

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- a. Many observers feel that the press is *biased against whomever holds office* and that reporters want to expose them in the media. With every new proposal being met with skepticism, regular constraints are placed on the growth of government.
- b. The watchdog orientation of the press can be characterized as *neither liberal nor conservative*, but *reformist*.
2. When they focus on injustice in society, the media inevitably *encourage the growth of government*.
  - a. Once the media identify a problem in society, reporters usually begin to ask what the government is doing about the problem.
  - b. The media *portray government as responsible for handling* almost every major problem.
- C. Individualism and the media.
  1. The rise of television has furthered individualism in the American political process.
    - a. Candidates are now much more capable of running for office on their own by appealing to people directly through television.
    - b. Congress is difficult to cover on television because there are 535 members, but there is only one president, so the presidency has increasingly received more exposure vis-à-vis the Congress.
- D. Democracy and the media.
  1. The rise of the “information society” has not brought about the rise of the “informed society.”
    - a. The media do a much better job of covering the “horse race” aspects of politics than of covering substantive issues.
    - b. With the media’s superficial treatment of important policy issues, it is not surprising that the incredible amount of information available to Americans today has not visibly increased their political awareness or participation.
  2. The media’s defense is to say that this is what the people want. Network executives claim that they are in business to make a profit, and to do so they have to appeal to the maximum number of people.

## KEY TERMS AND CONCEPTS

**Beats:** specific locations where news frequently occurs.

**Broadcast media:** one of two kinds of media, includes television and radio.

**Chains:** media conglomerates that control a large percentage of daily newspaper circulation and some television and radio stations as well.

**High-tech politics:** politics where technology has shaped political behavior and the political agenda.

**Investigative journalism:** the use of detective-like reporting methods to unearth scandals.

**Mass media:** media which reaches and influences both elites and the masses.

**Media event:** an event staged primarily for the purpose of being covered.

**Narrowcasting:** strategy of some broadcast channels that appeal to a narrow, rather than a broad, audience.

**Policy agenda:** the list of subjects or problems to which government officials and people outside of government closely associated with those officials are paying some serious attention at any given time.

**Policy entrepreneurs:** political activists who invest their political capital in an issue.

**Press conferences:** presidential meetings with the press.

**Print media:** one of two kinds of media, includes newspapers and magazines.

**Sound bites:** a portion of a speech aired on TV of fifteen seconds or less.

**Talking head:** a shot of a person's face talking directly into the camera.

**Trial balloons:** information leaked to the media to see what the political reaction will be.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- We frequently complain about bias by the media in reporting the policies and activities of the president and Congress, but officeholders also manipulate the media. In fact, modern political success depends upon control of the mass media. Have your class try to determine how each manipulates the other.
- Assign students to debate the question as to whether—or in what ways—the mass media are biased. Require that they develop working definitions of bias and gather evidence regarding characteristics of reporters and editors, chain ownership and advertising, and actual media content.
- Ask your students to discuss the role that the *profit motive* plays in how journalists report the news. What would be their reactions to proposals to have a *publicly funded* information service?
- If there is a local newspaper in your town, contact the editor and ask if one of the reporters would be willing to speak to your class. This is often seen as good public relations for the newspaper, and can enliven a class by bringing in the “real world” of reporting.
- For class discussion, ask students to evaluate whether American mass media has become too powerful. In particular, ask students to debate whether mass media’s impact on public opinion and political outcomes is consistent with the concepts of limited government and balanced power. Is there any democratic way to hold mass media organizations accountable for their behavior?
- For class discussion, ask students to discuss the ways in which mass media influences the political thought and behavior of citizens. In particular, have students evaluate the media’s role in creating an informed citizenry, which is vital to the successful functioning of democratic government.
- For a reading and writing connection, have students prepare a content analysis of the following news media including a local newspaper, the *New York Times*, the local television news, a national television news, the *Newshour* on PBS television, a local radio station’s news, and the local NPR radio station’s news. Using a coding sheet, have them code the content of the headline news reports for one week. The coding sheet should include the date/time of the media presentations, the subject, the length of time the item was discussed, and an evaluation of the amount of detail provided for each news story. Then have students write an essay comparing and contrasting the differences in information acquired from each medium in terms of quality, depth, breadth, originality, and timeliness.

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- Divide your class into five groups: network television, daily local newspapers, daily national newspapers, cable news, and radio. Ask that they watch, read, or listen to the news only from their arranged source for one or two weeks, and then quiz them in terms of their knowledge of current events. Do students relying on one source know more than those relying on other sources?
- In recent years, the Fox News Network has become the most popular cable news network, almost doubling the audience of CNN and MSNBC. Have the students write an opinion essay as to why this is the case.

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West, Darrell M. Air Wars: Television Advertising in Election Campaigns, 1952–1992. Washington, D.C.: Congressional Quarterly Press, 1993.

## **MEDIA SUGGESTIONS**

All the President's Men. A 1976 movie dramatization of Woodward and Bernstein's investigation of the Watergate scandal.

Cost of Free Speech. This film analyzes the effect of freedom of the press, especially examining the possible harm from media having too much freedom. Films for the Humanities and Sciences.

Disconnected: Politics, the Press and the Public. This program focuses on the extent to which the media, with their emphasis on profit, deadlines, and entertainment, compromise media coverage of elections and disconnect the public from the political system. Films for the Humanities and Sciences.

Free Speech for Sale: A Bill Moyers Special. Moyers and various public advocates discuss the ability of well-funded interests to dominate public debate, largely due to their access to the mass media. Films for the Humanities and Sciences.

Outfoxed: Rupert Murdoch's War on Journalism. Documentary by Robert Greenwald. This film alleges that Fox News is little more than an unprofessional and propagandistic corporate mouthpiece for Murdoch and his right-wing political beliefs. Greenwald bases much of his evidence on interviews with Fox employees themselves. Distributed by Moveon.org.

Politics in Action, Chapter 9: Media at War. Contrasts the style of media coverage of wars across five decades, highlighting the changing nature of reporting norms in covering political events.

## CHAPTER EIGHT: POLITICAL PARTIES

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### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Understand the roles of the party-in-the-electorate, the party as an organization, and the party-in-government.
- Examine how political parties in a democracy serve as key linkage institutions to translate inputs from the public into outputs from the policymakers.
- Describe Anthony Downs' *rational-choice theory* as a working model of the relationship among citizens, parties, and policy.
- Trace the historical development of the American two-party system.
- Describe what is meant by *party eras*, *critical elections*, and *party realignment*.
- Examine the significance of *divided government* and explain how the recent pattern of divided government may explain party *dealignment*.
- Differentiate between the ideology or party philosophy of the Democratic and Republican parties.
- Explain how electoral rules such as the “winner-take-all” plurality system have helped to maintain a two-party system in the United States.
- Evaluate the impact of third parties on American politics and the American party system.
- Describe the consequences or effects of the American two-party system as contrasted with a multiparty system.
- Understand the significance of the weak and decentralized character of the American party system.

# CHAPTER OVERVIEW

## INTRODUCTION

Although political parties may not be highly regarded by all, many observers of politics agree that political parties are central to representative government because they provide meaning to citizens' choices between competing candidates in elections. The alternating of power and influence between the two major parties is one of the most important elements in American politics. **Party competition** is the battle between Democrats and Republicans for the control of public offices. Historically, changes in party control of government have been associated with substantial changes in the nature and scope of government. The recent trend toward divided government—where Congress is controlled by one party and the president represents the other—seems to have blocked any major changes in the scope of government.

## THE MEANING OF PARTY

In a large democracy, **linkage institutions** translate inputs from the public into outputs from the policymakers. Linkage institutions help ensure that public preferences are heard. The four main linkage institutions in the United States are *parties, elections, interest groups, and the media*.

As linkage institutions, **political parties** nominate candidates for office, coordinate campaigns, provide cues for voters, articulate policies, and coordinate policy-making. It is not always easy to distinguish between the parties since each rationally chooses to stay near the center of public opinion.

Political scientists often view parties as “*three-headed political giants*”—the party-in-the-electorate, the party as an organization, and the party-in-government. The **party-in-the-electorate** are voters who identify with a political party. Unlike many European political parties, American parties do not require dues or membership cards to distinguish members from nonmembers. One needs only to *claim to be a member* to be a member of a party in the United States. The **party as an organization** has a national office, a full-time staff, rules and bylaws, and budgets. These are the people who keep the party running between elections and make its rules. The **party-in-government** consists of elected officials who call themselves members of the party, such as the president and Congress. These leaders are the main spokespersons of the party.

Economist Anthony Downs has provided a working model of *the relationship among citizens, parties, and policy*, employing a rational-choice perspective. **Rational choice theory** assumes that parties and political actors have pragmatic goals (such as winning elections) that are more important to the party than ideology. A party that wants to win office will pursue policies that have broad public appeal.

## THE PARTY-IN-THE-ELECTORATE

The *party-in-the-electorate* consists largely of symbolic images. There is no formal “membership” in American parties, and the party is a psychological label for most people. Party images help shape people’s **party identification**—the *self-proclaimed preference* for

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one of the parties. The clearest trend in party identification over the last five decades has been *the decline of both parties* and the resultant *upsurge of Independents* (mostly at the expense of the Democrats). Party identification still remains strongly linked to the voter's choice, but **ticket-splitting** is near an all-time high, with many people voting with one party for one office and another for other offices. *Divided government* has often been the result (frequently with Republican control of the White House and Democratic control of Congress).

### THE PARTY ORGANIZATIONS: FROM THE GRASS ROOTS TO WASHINGTON

American political parties are *decentralized and fragmented*. Unlike many European parties, formal party organizations in America have little power to enforce their decisions by offering rewards to officeholders who follow the party line and punishing those who do not. American national parties are a loose aggregation of state parties, which in turn are a fluid association of individuals, groups, and local organizations. There are fifty state party systems, no two exactly alike.

At one time, the urban political party was the basis of political party organization in America; but urban party organizations are no longer very active. From the late nineteenth century through the New Deal of the 1930s, scores of cities were dominated by **party machines** (a party organization that depends on material inducements such as **patronage**, in which jobs are awarded for political reasons rather than for merit or competence). Urban party organizations are also no longer very active as a rule. Progressive reforms that placed jobs under the merit system rather than at the machine's discretion weakened the machine's power. Filling in the void created by the decline of the inner-city machines has been a revitalization of party organization at the county level—particularly in affluent suburbs.

Some states give parties greater power than others to limit who can participate in their nomination contests. In **closed primaries**, only people who have registered in advance with the party can vote in its primary, thus encouraging greater party loyalty. In contrast, **open primaries** allow voters to decide on election day whether they want to participate in the Democratic or Republican contests. And most antiparty of all are **blanket primaries**, which present voters with a list of candidates from all the parties and allow them to pick some Democrats and some Republicans if they like. Organizationally, state parties are on the upswing throughout the country. Though no study of state parties has been conducted recently, it is almost certain that their financial resources have increased.

The **national convention** of each party meets every four years to write the party's platform and nominate its candidates for president and vice president. The **national committee**, composed of representatives from the states and territories, keeps the party operating between conventions. Day-to-day activities of the national party are the responsibility of the **national chairperson**, who hires the staff, raises the money, pays the bills, and attends to the daily duties of the party.

### THE PARTY-IN-GOVERNMENT: PROMISES AND POLICY

Party control *does matter* because each party and the elected officials who represent it generally try to turn campaign promises into action. Voters and **coalitions** of voters are attracted to different parties largely (though not entirely) by their performance and policies. The parties have done a fairly good job over the years of *translating their platform promises*

*into public policy*; the impression that politicians and parties never live up to their policy promises is largely erroneous.

## PARTY ERAS IN AMERICAN HISTORY

America has always had two parties, in contrast to most democratic nations. Throughout American history, one party has been the dominant majority party for long periods of time (referred to as **party eras**). Party eras were punctuated by **critical elections**—in which new issues appeared that divided the electorate—and *party coalitions underwent realignment*. A **party realignment** (a rare event) is typically associated with a major crisis or trauma in the nation’s history, such as the Civil War and the Great Depression, both of which led to realignments. A new coalition is formed for each party, and the coalition endures for many years.

Alexander Hamilton was probably the person most instrumental in establishing the first party system. The foundation of the **Federalist** party developed from his politicking and coalition building while he tried to get congressional support for policies he favored (particularly a national bank). The **Democratic-Republicans** (also known as *Jeffersonians*), which replaced the Federalists, were based on a coalition derived from agrarian interests. This made the party popular in the rural South, but the coalition was torn apart by *factionalism*.

General Andrew Jackson founded the modern American political party when he forged a new coalition in 1828. Jackson was originally a Democratic-Republican, but soon after his election his party became known simply as the **Democratic** party (which continues to this day). Jackson’s successor, Martin Van Buren, was a realist who argued that a governing party needed a loyal opposition to represent other parts of society. This opposition was provided by the **Whigs**, but the Whig party was only able to win the presidency when it nominated popular military heroes such as William Henry Harrison (1840) and Zachary Taylor (1848).

The **Republican** party rose in the late 1850s as the antislavery party. The Republicans forged a coalition out of the remnants of several minor parties and elected Abraham Lincoln as president in 1860. The Civil War brought a *party realignment*, and the Republican party was in ascendancy for more than sixty years (though the Democrats controlled the South). The election of 1896 was a watershed event during this era—a period when party coalitions shifted and the Republicans were entrenched for another generation.

The Republicans continued as the nation’s majority party until the stock market crash of 1929 and the ensuing Great Depression. President Herbert Hoover’s handling of the Great Depression was disastrous for the Republican Party. Franklin D. Roosevelt promised a *New Deal* and easily defeated Hoover in 1932. Congress passed scores of Roosevelt’s anti-Depression measures during his *first 100 days* in office. Party realignment began in earnest after the Roosevelt administration got the country moving again, and Roosevelt forged the **New Deal coalition** from such diverse groups as union members, southerners, intellectuals, liberals, the poor, and African Americans.

Roosevelt’s New Deal coalition made Democrats the majority party, although it steadily weakened, particularly beginning in the mid-1960s. Much of the loss was due to the erosion of the former “Solid [Democratic] South,” as conservative Democrats became increasingly unsatisfied with their national party over issues such as the Vietnam War, civil rights for

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women and minorities, and social welfare programs. Today the south is now strongly Republican, whereas there are fewer Republicans in the northeast and Pacific coast.

An unprecedented period of **divided government** (when the executive and legislative branches are controlled by different parties) has existed frequently since the mid-1960s. Many political scientists believe that this means that the party system has **dealigned**, with people gradually moving away from *both* political parties. Many scholars fear that the parties are becoming useless and ineffective through the pattern of divided government and dealignment. However, the recent dealignment has been characterized by growing **party neutrality** in that they are indifferent to the two major political parties. Those who do identify with a party are more likely to belong to *the party that matches their ideology*; and *party organizations have become more energetic and effective* even though party loyalty has declined.

### THIRD PARTIES: THEIR IMPACT ON AMERICAN POLITICS

Although the United States has a two-party system, **third parties** have controlled enough votes in one-third of the last 36 presidential elections to have decisively tipped the electoral college vote. Third parties have brought new groups into the electorate, have served as “safety valves” for popular discontent, and have brought new issues to the political agenda.

The *most obvious consequence of two-party governance* is the *moderation of political conflict*. With just two parties, both will cling to a centrist position to maximize their appeal to voters. The result is often political ambiguity—parties will not want to risk taking a strong stand on a controversial policy if doing so will only antagonize many voters.

Election rules in the United States tend to favor a two-party system. For example, the **winner-take-all system** has meant that the party that receives a plurality is declared the winner and the other parties get nothing. By contrast, in a system that uses **proportional representation** (used in most European countries), legislative seats are allocated according to each party’s percentage of the nationwide vote. A small party may use its seats to combine with one of the larger parties to form a coalition government.

### UNDERSTANDING POLITICAL PARTIES

Political parties are essential components of democratic government. Ideally, candidates in a democracy should say what they mean to do if elected and be able to carry out what they promised once they are elected. Critics of the American party system complain that this is all too often not the case, and have called for a more **responsible party** system. The responsible party model calls for each party to present distinct, comprehensive programs; carry out its program if elected; implement its programs if it is the majority party or state what it would do if it were in power; and accept responsibility for the performance of the government. American parties do not meet the criteria of the responsible party model. They are too *decentralized* to take a single national position and then enforce it; parties *do not have control* over those who run under their labels; and there is no mechanism for a party to discipline officeholders and ensure cohesion in policymaking.

There are also supporters of America’s two-party system who criticize the responsible party model. They argue that the complexity and diversity of American society needs a different

form of representation, and that local differences need an outlet for expression. Advocates of America's decentralized parties consider them appropriate for the type of *limited government* the founders sought to create and most Americans wish to maintain.

Because no single party in the United States can ever be said to have firm control over the government, the hard choices necessary to limit the growth of government are rarely addressed. Divided government has meant that neither party is really in charge, and each tries to blame the other for failures and limitations of government.

Parties are no longer the main source of political information. More and more political communication is through the mass media rather than face-to-face. However, there are indications that the parties are beginning to adapt to the high-tech age. State and national party organizations have become more visible and active. Although more people than ever before call themselves independent and split their tickets, the majority still identify with a party (and this percentage seems to have stabilized).

## **CHAPTER OUTLINE**

### **I. INTRODUCTION**

- A. **Party competition** is the battle between Democrats and Republicans for control of public office.
- B. Without this competition there would be no choice, and without choice there would be no democracy.

### **II. THE MEANING OF PARTY**

- A. **Political parties** endorse candidates for public office and *try to win elections*.
- B. Party leaders often disagree about policy, and between elections the parties are nearly invisible.
- C. Political scientists often view parties as "*three-headed political giants*"—the *party-in-the-electorate*, the *party as an organization*, and the *party-in-government*.
  - 1. The **party-in-the-electorate** are individuals who perceive themselves as party members; many voters have a party identification that guides and influences their votes. Unlike many European political parties, American parties do not require dues or membership cards to distinguish members from nonmembers. To be a *member of a party*, one needs only to claim to be a member.
  - 2. The **party as an organization** has a national office, a full-time staff, rules and bylaws, and budgets. Party activists *keep the party running* between elections and *make its rules*. Although American parties are loosely organized at the national, state, and local levels, the party organization *pursues electoral victory*.
  - 3. The **party-in-government** consists of *elected officials* who call themselves members of the party (such as president and Congress). These leaders *do not always agree on policy*; but they are the main spokespersons of the party.
- D. Tasks of the parties.
  - 1. In a large democracy, **linkage institutions** *translate inputs from the public into outputs from the policymakers*.
  - 2. Tasks performed by parties as linkage institutions:
    - a. Parties pick policymakers; a **nomination** is the party's endorsement of a candidate.

- b. Parties run campaigns; although parties *coordinate the campaigns*, recent technology has made it easier for candidates to campaign on their own.
  - c. Parties give **cues** to voters; even though party ties have weakened, most voters have a **party image** of each party; and many voters still rely on a party to give them cues for voting.
  - d. Parties *articulate policies*; within the electorate and in the government, each political party advocates specific policy alternatives.
  - e. Parties *coordinate policymaking*; each officeholder is also a member of a party, and the first place they look for support is to their fellow partisans.
- E. Parties, voters, and policy: The **Downs model**.
- 1. Anthony Downs has provided a working model of *the relationship among citizens, parties, and policy*, employing a *rational-choice perspective*.
  - 2. **Rational-choice theory** assumes that parties and political actors have goals (such as winning elections) that are more important to the party than ideology.
    - a. If both parties and voters are rational, both will try to select the best way to achieve their goals.
    - b. In order to win an office, the wise party pursues policies that have broad public appeal.
    - c. The majority of the American electorate are in the middle, and successful parties in the U.S. rarely stray far from the midpoint of public opinion.
    - d. Although we frequently hear criticism that there is not much difference between the Democrats and Republicans, the two parties have little choice (given the nature of the American political market).
    - e. From a rational-choice perspective, one should expect the parties to *differentiate* themselves to some extent. The two parties have to forge different identities in order to build voter loyalty.

### III. THE PARTY-IN-THE-ELECTORATE

- A. The *party-in-the-electorate* consists largely of symbolic images.
  - 1. There is no formal “membership” in American parties.
  - 2. For most people, the party is a psychological label.
- B. Party images help shape people’s **party identification**—the *self-proclaimed preference* for one of the parties.
  - 1. The clearest trend in party identification over the last four decades has been *the decline of both parties* and the resultant *upsurge of Independents* (mostly at the expense of the Democrats).
  - 2. Virtually every major social group (except African-American voters) has moved toward a position of increased independence.
  - 3. By contrast, African Americans have moved even more solidly into the Democratic party (currently only five percent of African Americans identify themselves as Republicans).
- C. Party identification remains strongly linked to the voter’s choice, but **ticket-splitting** (voting with one party for one office and another for other offices) is near an all-time high.
  - 1. Not only are there more Independents now, but those who still identify with a party are no longer as loyal in the voting booth as they once were.
  - 2. *Divided government* has frequently been the result (often with Republican control of the White House and Democratic control of Congress).

#### IV. THE PARTY ORGANIZATIONS: FROM THE GRASS ROOTS TO WASHINGTON

- A. American political parties are *decentralized and fragmented*.
  - 1. Unlike many European parties, formal party organizations in America have little power to enforce their decisions by offering rewards (like campaign funds and appointments) to officeholders who follow the party line and punishing those who do not.
  - 2. Candidates in the United States can get elected on their own, and the party organization is relegated to a relatively limited role.
- B. Local parties: the dying urban machines.
  - 1. Urban party organizations are no longer very active.
  - 2. At one time, the urban political party was the basis of political party organization in America.
    - a. From the late nineteenth century through the New Deal of the 1930s, scores of cities were dominated by **party machines** (a party organization that depends on material inducements such as **patronage**, in which jobs were awarded for political reasons rather than for merit or competence).
- C. The 50 state party systems.
  - 1. American national parties are a loose aggregation of state parties, which in turn are a fluid association of individuals, groups, and local organizations.
  - 2. There are 50 state party systems, no two exactly alike. Parties in some states (such as Pennsylvania) are well organized, have sizable staffs, and spend a lot of money, while parties in other states (such as California) are very weak.
  - 3. The states are allowed great discretion in the regulation of party activities, and how they choose to organize elections influences the strength of the parties profoundly. States determine how easy it is to participate in nomination contests by their adoption of **closed primaries**, **open primaries**, or **blanket primaries**.
- D. The national party organizations.
  - 1. The **national convention** of each party meets every four years to *write the party's platform* and *nominate its candidates for president and vice president*.
  - 2. The **national committee**, composed of representatives from the states and territories, keeps the party operating between conventions.
  - 3. Day-to-day activities of the national party are the responsibility of the **national chairperson**.

#### V. THE PARTY-IN-GOVERNMENT: PROMISES AND POLICY

- A. Party control *does matter* because each party and the elected officials who represent it generally try to turn campaign promises into action.
- B. Since candidates are now much less dependent upon parties to get nominated and elected, party control has weakened. In addition, presidents are now less likely to play the role of party leader, and members of Congress are less amenable to being led.
- C. Voters and coalitions of voters are attracted to different parties largely (though not entirely) by their performance and policies.
- D. The parties have done a fairly good job over the years of *translating their platform promises into public policy*—the impression that politicians and parties never produce policy out of promises is largely erroneous.

## VI. PARTY ERAS IN AMERICAN HISTORY

- A. In contrast to the United States, most democratic nations have more than two parties represented in their national legislature.
- B. Throughout American history, one party has been the dominant majority party for long periods of time (referred to as **party eras**).
  - 1. Party eras were punctuated by **critical elections**, in which new issues appeared that divided the electorate and *party coalitions underwent realignment*.
  - 2. A **party realignment** (a rare event) is typically associated with a major crisis or trauma in the nation's history (such as the Civil War and the Great Depression, both of which led to realignments).
  - 3. A new **coalition** (a set of individuals or groups supporting the party) is formed for each party, and the coalition endures for many years.
  - 4. A critical election period may require more than one election before change is apparent, but the party system will be transformed in such a period.
- C. 1796–1824: The first party system.
  - 1. Alexander Hamilton was probably the person most instrumental in establishing the first party system.
  - 2. Hamilton needed congressional support for policies he favored (particularly a national bank), and the foundation of the **Federalist** party came from his politicking and coalition building.
  - 3. The Federalists were America's shortest-lived major party: they were poorly organized, they faded after John Adams was defeated in his reelection bid of 1800, and they no longer even had a candidate for president after 1820.
  - 4. The **Democratic-Republicans** (also known as *Jeffersonians*) replaced the Federalists. The Democratic-Republican coalition was derived from agrarian interests—which made the party popular in the rural South—but the coalition was torn apart by *factionalism*.
- D. 1828–1856: Jackson and the Democrats versus the Whigs.
  - 1. General Andrew Jackson founded the modern American political party when he forged a new coalition in 1828.
  - 2. Jackson was originally a Democratic-Republican, but soon after his election his party became known simply as the **Democratic** party (which continues to this day).
  - 3. Jackson's successor, Martin Van Buren, was a realist who argued that a governing party needed a loyal opposition to represent other parts of society. This opposition was provided by the **Whigs**, but the Whig party was only able to win the presidency when it nominated popular military heroes such as William Henry Harrison (1840) and Zachary Taylor (1848).
  - 4. The Whigs had two distinct wings—northern industrialists and southern planters—who were brought together more by the Democratic policies they opposed than by issues on which they agreed.
- E. 1860–1928: The Republican Era.
  - 1. The issue of slavery dominated American politics and split both the Whigs and the Democrats in the 1850s.
  - 2. The **Republican** party rose in the late 1850s as the antislavery party.
  - 3. The Republicans forged a coalition out of the remnants of several minor parties and elected Abraham Lincoln as president in 1860.
  - 4. The Civil War brought a *party realignment*, and the Republican party was in ascendancy for more than 60 years (though the Democrats controlled the South).

5. The election of 1896 was a watershed during this era—a period when party coalitions shifted and the Republicans were entrenched for another generation.
  6. The Republicans continued as the nation’s majority party until the *stock market crash of 1929* and the ensuing *Great Depression*.
- F. 1932–1964: The New Deal coalition.
1. President Herbert Hoover’s handling of the Great Depression was disastrous for the Republicans. He took the position that “economic depression cannot be cured by legislative action.”
  2. Franklin D. Roosevelt promised a *New Deal* and easily defeated Hoover in 1932.
  3. Congress passed scores of Roosevelt’s anti-Depression measures during his *first 100 days* in office.
  4. Party realignment began in earnest after the Roosevelt administration got the country moving again, and Roosevelt forged the **New Deal coalition** from such diverse groups as union members, southerners, intellectuals, liberals, the poor, and African Americans.
- G. 1968–present: The era of divided government.
1. The New Deal coalition has weakened, especially due to the erosion of the former “Solid [Democratic] South,” as conservative Democrats became increasingly unsatisfied with their national party. Today the south is now strongly Republican, whereas there are fewer Republicans in the northeast and Pacific coast.
  2. An unprecedented period of **divided government** (when the executive and legislative branches are controlled by different parties) has existed since 1968.
  3. It is likely that divided party government will be a regular phenomenon at both the federal and state levels.
- H. **Party dealignment** means that people are gradually moving away from *both* political parties.
1. Many political scientists believe that the recent pattern of *divided government* means that the party system has dealigned rather than realigned.
  2. Many scholars fear that the parties are becoming useless and ineffective through the pattern of divided government and dealignment.
  3. Conversely, there are also some signs of party renewal, such as the increase in the regular Washington staff of the national party organizations.
  4. The recent dealignment has been characterized by growing **party neutrality**; many voters are indifferent toward both of the parties.
  5. Those who do identify with a party are *more likely to belong to the party that matches their ideology*—the parties have become ideologically differentiated, and people who call themselves conservatives are more likely to be in the Republican party, while liberals are concentrated in the Democratic party.
  6. *Even though party loyalty has lagged, party organizations have become more energetic and effective*—the parties learned the secrets of high-tech fund-raising; the parties’ national, congressional, and senatorial campaign committees are now wealthier, more stable, better organized, and better staffed.

## VII. THIRD PARTIES: THEIR IMPACT ON AMERICAN POLITICS

- A. There are three basic varieties of **third parties**.

## Chapter 8

1. Parties that promote certain causes—either a controversial single issue such as prohibition of alcoholic beverages or an extreme ideological position such as socialism or libertarianism.
  2. *Splinter parties* that are offshoots of a major party—such as Teddy Roosevelt's Progressives (1912), Strom Thurmond's States' Righters (1948), and George Wallace's American Independents (1968).
  3. Parties that are an extension of a popular individual with presidential aspirations—including John Anderson (1980) and Ross Perot (1992 and 1996).
- B. Importance of third parties.
1. Third parties have controlled enough votes in one-third of the last 36 presidential elections to have decisively tipped the electoral college vote. For example, if Ralph Nader did not run in 2000, exit polls show quite conclusively that Al Gore would have been elected.
  2. They have brought new groups into the electorate and have served as “safety valves” for popular discontent.
  3. They have brought new issues to the political agenda.
- C. Consequences of the two-party system.
1. The most obvious consequence of two-party governance is the *moderation of political conflict*.
    - a. With just two parties, both will cling to a centrist position to maximize their appeal to voters.
    - b. The result is often political ambiguity—parties will not want to risk taking a strong stand on a controversial policy if doing so will only antagonize many voters (as with Goldwater in 1964 and McGovern in 1972).
  2. One of the major reasons the United States has only two parties represented in government is structural—America has a **winner-take-all system**.
    - a. In this system, the party that receives a plurality (more votes than anyone else, even though it may be less than a majority) is declared the winner; the other parties get nothing.
    - b. This system discourages small parties, because they never get a foothold in government upon which to build for the future.
  3. In a system that uses **proportional representation** (used in most European countries), legislative seats are allocated roughly according to each party's percentage of the nationwide vote.
    - a. In most countries, parties must achieve a certain small percentage of votes to be awarded any seats in the legislature; this generally excludes extremist parties.
    - b. A **coalition government** is created when two or more parties combine their numbers to form a majority of seats in a national legislature. This form of government is quite common in the multiparty systems of Europe.

## VIII. UNDERSTANDING POLITICAL PARTIES

- A. Political parties are considered *essential elements of democratic government*.
- B. Democracy and responsible party government.
  1. Ideally, in a democracy candidates should say what they mean to do if elected and be able to do what they promised once they are elected.
  2. Critics of the American party system complain that this is all too often not the case, and have called for a more disciplined, **responsible party** system.

- a. The responsible party model calls for each party to present distinct, comprehensive programs; carry out its program if elected; implement its programs if it is the majority party or state what it would do if it were in power; and accept responsibility for the performance of the government.
  - b. Under this model, a party's officeholders would have firm control of the government, and they would be *collectively* (rather than individually) *responsible* for their actions.
- 3. American parties do not meet the criteria of the responsible party model.
    - a. They are too *decentralized* to take a single national position and then enforce it.
    - b. Because virtually anyone can vote in party primaries, parties *do not have control* over those who run under their labels.
    - c. In America's loosely organized party system, there is no mechanism for a party to discipline officeholders and ensure cohesion in policymaking.
  - 4. There are supporters of America's two-party system who criticize the responsible party model.
    - a. They argue that the complexity and diversity of American society needs a different form of representation; local differences need an outlet for expression.
    - b. America's decentralized parties are appropriate for the type of *limited government* the founders sought to create and most Americans wish to maintain.
- C. Individualism and gridlock.
    - 1. The Founding Fathers wanted to preserve individual freedom of action by elected officials.
      - a. With America's weak party system, this is certainly the case.
    - 2. Weak parties make it easier for politicians to avoid tough decisions; this creates *gridlock*.
  - D. American political parties and the scope of government.
    - 1. Weak parties limit the scope of government in America because the president cannot command party discipline to pass important legislation, such as healthcare.
    - 2. Because no single party can ever be said to have firm control over government, the hard choices necessary to cut back on existing government spending are rarely addressed.
    - 3. *Divided government* has meant that neither party is really in charge, and each points the finger at the other.
  - E. Is the party over?
    - 1. Parties are no longer the main source of political information.
      - a. More and more political communication is not face-to-face but rather through the mass media.
      - b. The technology of campaigning—television, polls, computers, political consultants, media specialists, and the like—can be bought by candidates for themselves, and they therefore do not need to be dependent on the party.
      - c. With the advent of television, *voters* no longer need the party to find out what the candidates are like and what they stand for.

- d. The power of *interest groups* has grown enormously in recent years; they pioneered much of the technology of modern politics, including mass mailings and sophisticated fund-raising.
2. There are indications that the parties are beginning to adapt to the high-tech age.
  - a. State and national party organizations have become more visible and active.
  - b. Although more people than ever before call themselves Independent and split their tickets, the majority still identify with a party (and this percentage seems to have stabilized).

## **KEY TERMS AND CONCEPTS**

**Blanket primaries:** nomination contests where voters are presented with a list of the candidates from all the parties and allows them to pick candidates from all parties.

**Coalition:** a set of individuals and groups supporting a political party.

**Coalition governments:** governments where smaller parties combine with larger parties to control half of the seats in the legislature.

**Closed primaries:** nomination contests where only people who have registered in advance with the party can vote.

**Critical election:** an election where each party's coalition of support begins to break up and a new coalition of forces is formed for each party.

**Linkage institutions:** institutions such as parties, elections, interest groups, and the media translate inputs from the public into outputs from policymakers.

**National chairperson:** the person responsible for taking care of the day-to-day activities and daily duties of the party.

**National committee:** a coalition of representatives from the states and territories charged with maintaining the party between elections.

**National convention:** the supreme power within each party, which meets every four years, writes the party platform, and nominates candidates for president and vice president.

**New Deal coalition:** the new coalition of forces (urban, unions, Catholics, Jews, the poor, southerners, African Americans, and intellectuals) in the Democratic party that was forged as a result of national economic crisis associated with the Great Depression.

**Open primaries:** nomination contests where voters can decide on election day whether they want to participate in the Democratic or Republican contest.

**Party competition:** the battle between the two dominant parties in the American system.

**Party dealignment:** when voters move away from both parties.

**Party eras:** occasions where there has been a dominant majority party for long periods of time.

**Party identification:** the self-proclaimed preference for one or the other party.

**Party image:** is what voters know or think they know about what each party stands for.

**Party machine:** a particular kind of party organization that depends on both specific and material inducements for rewarding loyal party members.

**Party neutrality:** when voters have an indifferent attitude toward both parties.

**Party realignment:** process whereby the major political parties form new support coalitions that endure for a long period.

**Patronage:** one of the key inducements used by machines whereby jobs are given for political reasons rather than for merit or competence alone.

**Political party:** a team of men and women seeking to control the governing apparatus by gaining office in a duly constituted election.

**Proportional representation:** an electoral system where legislative seats are allocated on the basis of each party's percentage of the national vote.

**Rational-choice theory:** a theory that seeks to explain political processes and outcomes as consequences of purposive behavior, where political actors are assumed to have goals and who pursue those goals rationally.

**Responsible party model:** an ideal model of party organization recommending that parties provide distinct programs, encourage candidates to be committed to the party platform, intend to implement their programs, and accept responsibility for the performance of government.

**Third parties:** minor parties which either promote narrow ideological issues or are splinter groups from the major parties.

**Ticket-splitting:** voting with one party for one office and another for other offices.

**Winner-take-all system:** an electoral system where whoever gets the most votes wins the election.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- As a library project, ask students to read editorials for a period of several days following Ronald Reagan's 1980 and 1984 elections. They should have no difficulty in finding a number of articles that speculated on whether this was a *realigning* election. Ask them to write "follow-up" essays reflecting on Bill Clinton's victories in 1992 and 1996 and on Bush's elections in 2000 and 2004. Were the journalists correct in describing the early 1980s as a realigning period? Why or why not?
- For an interesting class discussion, first ask students whether there is any difference between Republicans and Democrats. Then repeat the question, focusing on specific political issues (e.g., abortion, obscenity, environment, tax policy) and which social groups identify with each party.
- To reinforce the lecture material, have students debate the reasons why parties have declined in popularity. In particular, have them draw comparisons between the benefits of membership in an interest group versus the benefits of membership in a political party.
- For a reading and writing connection, give students a research assignment where they compare and contrast the role of the parties and their platforms in the 2000 and 2004 elections and in the 1948 election of Harry Truman. In particular, ask students to pay special attention to how media, especially television, were used to promote party goals. Because television was still very new in 1948 and was used strategically in 1996 and 1998, the comparisons should result in starkly different images of parties. In addition, students should see the difference between party-centered and candidate-centered campaigns.

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- Have the students write an essay on the role of the increasing Latino population in America and the response by the political parties. In the 2004 election both parties targeted this large segment of the American population. Some argue that the Republicans are slowly winning the support of Latinos. Others argue Latinos will remain a strong voting block in the Democratic Party. Which is more likely to be the case in future elections, and why? Which issue positions is each party likely to promote in order to appeal to Latinos?

## **BACKGROUND READING**

Aldrich, John H. Why Parties? The Origin and Transformation of Political Parties in America. Chicago: University of Chicago Press, 1995.

Diamond, Larry, and Richard Gunther, eds. Political Parties and Democracy. Baltimore: Johns Hopkins University Press, 2001.

Maisel, L. Sandy, ed. The Parties Respond. Boulder, CO: Westview Press, 1990.

Rosenstone, Steven J., Roy L. Behr, and Edward H. Lazarus. Third Parties in America. 2nd ed. Princeton, NJ: Princeton University Press, 1996.

Sabato, Larry. The Party's Just Begun: Shaping Political Parties for America's Future. Glenview, IL: Scott, Foresman/Little Brown, 1988.

Sundquist, James L. Dynamics of the Party System. Rev. ed. Washington, D.C.: Brookings Institution, 1983.

## **MEDIA SUGGESTIONS**

A Third Choice. This program examines third parties in the U.S., including interviews with academic experts, campaign memorabilia, and rare archival footage. Films for the Humanities and Sciences.

The Candidate. A 1972 Warner Brothers film about packaging a political candidate. In an exposé style, this movie provides a dramatic portrayal of high-tech political campaigning and public manipulation. In particular, it shows how a party-centered campaign can easily turn into a candidate-centered campaign with the help of professional campaign consultants.

Third Parties in American Politics. 1996. This film examines the impact of third parties on presidential elections. Films for the Humanities and Sciences.

Election 1999. An insidiously funny black comedy, far superior to the book from which it was adapted, Election. The battle lines are thus drawn, teacher against student, and it's anybody's guess who will emerge victorious. Director Alexander Payne, who co-wrote the script based on Tom Perotta's novel, recreates with amazing fidelity the countless little cruelties, minor disappointments, and petty grievances that often make high school such an interminable ordeal.

# CHAPTER NINE: NOMINATIONS AND CAMPAIGNS

## PEDAGOGICAL FEATURES

- p. 275 **Figure 9.1:** *The Inflated Importance of Iowa and New Hampshire*
- p. 276 **You Are the Policymaker:** *National and Regional Presidential Primary Proposals*
- p. 277 **Figure 9.2:** *The Declining Coverage of Conventions on Network TV*
- p. 282 **Table 9.1:** *Horse Race Versus Policy Coverage on the Network News, 1988–2004*
- p. 283 **Young People and Politics:** *Declining Interest in Working in Campaigns*
- p. 284 **How You Can Make a Difference:** *Political Campaigns*
- p. 285 **A Generation of Change:** *The Incredible Increase in Fund-Raising for Presidential Nomination Campaigns*
- p. 289 **Table 9.2:** *The Big-Spending PACs*
- p. 290 **America in Perspective:** *Arlene McCarthy's Election to the European Parliament*
- p. 294 **Key Terms**
- p. 294 **Internet Resources**
- p. 294 **Get Connected:** *The Delegate Selection Process and Presidential Nominations*
- p. 295 **For Further Reading**

## LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Describe the role of *campaign strategy* in winning a nomination to elective office.
- Describe and evaluate the *caucus* and *primary* methods of delegate selection.
- Contrast the American primary system of nomination with those of other countries such as those in Europe.
- Trace the historical evolution of national party conventions as nominating vehicles for presidential candidates.
- Consider the ways that high-tech campaigning has changed the nature of American politics.
- Examine the growth of PACs and their impact on modern campaigning.
- Assess the crucial (and increasing) role of money and technology in American campaign organizations.
- Analyze the role the media play in influencing the style and substance of presidential campaigns.
- Evaluate whether the “openness” of the American style of campaigning leads to a more democratic system or a less democratic system of government.
- Assess whether or not American presidential elections lead to an increased scope of government.

## CHAPTER OVERVIEW

### INTRODUCTION

The long and arduous campaign required of campaign hopefuls is unique to the United States. While some argue that this extended period is a useful testing ground, others question its effectiveness in helping citizens choose the best candidate. This chapter discusses the structure and dynamics of presidential election campaigns, with special attention given to the role of money in campaigns.

### THE NOMINATION GAME

There are two types of campaigns in American politics: campaigns for party nominations and campaigns between the nominees. A **nomination** is a party's official endorsement of a candidate for office. Success in the nomination game generally requires money, media attention, and momentum. Candidates attempt to manipulate each of these elements through **campaign strategy**. The goal of the nomination game is to win the majority of delegates' support at the **national party convention**.

From February through June of election year, the individual *state parties* choose their delegates to the national convention through caucuses or primaries. At one time, all states selected their delegates to the national convention in a meeting of state party leaders, called a **caucus**. Today, caucuses are open to all voters who are registered with the party. The Democrats also require strict adherence to complex rules of representation. Only a minority of states hold caucuses today, with the earliest caucus traditionally held in Iowa.

Today, most of the delegates to the national conventions are selected in **presidential primaries**, in which voters in a state go to the polls and vote for a candidate or for delegates pledged to a candidate.

The most recent restructuring of Democratic party primaries began in 1968. Riots at the Democratic National Convention that year led to the creation of the **McGovern-Fraser Commission**, which established open procedures and quota requirements for delegate selection. The party has since replaced most of its quota requirements with affirmative action guidelines, with the exception that each delegation must be half male and half female. Many believe that the divisiveness of the Democrats' open procedures has hurt their ability to unite for the fall campaign, and the party has tried to restore a role for its party leaders by setting aside a portion of delegate slots for party leaders and elected officials (known as **superdelegates**).

The primary season begins in the winter in New Hampshire. At this early stage, the campaign is not for delegates but for *images*. **Frontloading** refers to the recent tendency of states to hold primaries early in the calendar in order to capitalize on media attention. A wide variety of different procedures are used because *state laws* (not federal) determine when primaries are held, and each state party sets up its own rules for how delegates are allocated.

There are a number of criticisms of the primary system, including the disproportionate amount of attention that is given to the early caucuses and primaries. Running for the

presidency has become a full-time job, and prominent politicians find it difficult to take time out from their duties to run. Money plays too big a role in the caucuses and primaries. Participation is low and is not representative of the voting population. There are also numerous defenders of the system, including most of the candidates—many of whom feel that the primary contest keeps candidates in touch with the public.

The idea of holding a **national primary** to select party nominees has been discussed virtually ever since state primaries were introduced. According to its proponents, a national primary would bring directness and simplicity to the process for the voters as well as the candidates. The length of the campaign would be shortened, and no longer would votes in one state have more political impact than votes in another. Critics claim that because Americans would not want a candidate nominated with 25 percent of the vote from among a field of six candidates, in most primaries a runoff election between the top two finishers in each party would have to be held. Another common criticism of a national primary is that only well-established politicians would have a shot at breaking through in such a system.

Perhaps more feasible than a national primary is holding a series of **regional primaries** in which, say, states in the eastern time zone would vote one week, those in the central time zone the next, and so on. Recently, the National Association of Secretaries of State (the organization of the leading election officials of the states) endorsed a plan to establish regional primaries for the 2004 campaign. The major problem with the regional primary proposal, however, is the advantage gained by whichever region goes first.

The winners of presidential nominations are usually a foregone conclusion by the time of the national party conventions. The preferences of delegates selected in primaries and open caucuses are known before the conventions begin. Nevertheless, conventions are *a significant rallying point* for the parties and they are important in *developing the party's policy positions* as expressed in the **party platforms** and in *promoting political representation*.

## THE CAMPAIGN GAME

Modern campaigning is *heavily dependent on technology*. As one of its most important uses, computer technology targets mailings to prospective supporters. The technique of **direct mail** involves locating potential supporters by sending information and a request for money to huge lists of people who have supported candidates of similar views in the past. Direct mail induces millions of people each year to contribute to various candidates and political causes, totaling over \$1 billion. The accumulation of mailing lists enables a candidate to pick almost any issue and write to a list of people concerned about it.

The media focuses heavily on the “horse race,” meaning who is leading and who is winning. Usually, less attention is given to substantive policy issues.

Once nominated, candidates concentrate on **campaigning** for the **general election** in November. Three ingredients are needed to project the right image to the voters: a high-tech media campaign, organization, and money.

## MONEY, ORGANIZATION, AND CAMPAIGNING

Most voters imagine that campaigns are staffed primarily by people with great expertise in policy matters, government, and political science. Campaigns do hire such advisers. However, increasingly the modern “high-tech campaign” is staffed with people with professional skills in fund-raising, law, the media, volunteer recruitment and organization, logistics, polling, press relations, the Internet, etc. All of this, not to mention the media buys, takes a lot of money.

Thus, campaigns are growing more and more expensive. Candidates with the most money can build better campaign organizations and better get their message out. There is a common *perception that money buys votes* and influence.

In the early 1970s, momentum developed for *campaign financing reform*. Several public interest lobbies led the drive for reform. Congress subsequently passed the **Federal Election Campaign Act (FECA)** in 1974 with the goals of *tightening reporting requirements for contributions* and *limiting overall expenditures*. A bipartisan **Federal Election Commission (FEC)** was created to administer campaign finance laws and enforce compliance with their requirements. Among other provisions, the act provided public financing for presidential primaries and general elections, and limits were established for presidential campaign spending. The FEC and its subsequent amendments:

- Created the Federal Election Commission (FEC).
- Created the Presidential Election Campaign Fund.
- Provided public financing for presidential primaries and general elections.
- Limited presidential campaign spending.
- Required disclosures.
- Limited contributions.

Another amendment to the FECA made it easier for political parties to raise money for voter registration drives and the distribution of campaign material at the grass roots level or for generic party advertising. Money raised for such purposes was known as **soft money** and was not subject to any contribution limits. However, the soft money loophole was closed in 2002, only to prompt the rise of “**527 groups**” who are unlimited because they do not *directly* endorse candidates.

Campaign spending reforms have made campaigns more open and honest. All contribution and expenditure records are open, and FEC auditors try to make sure that the regulations are enforced. However, campaign reforms also encouraged the spread of **Political Action Committees (PACs)**. A PAC is formed when a business association, or some other interest group, decides to contribute to candidates whom it believes will be favorable toward its goals. Any interest group can now form its own PAC to directly channel contributions of up to \$5,000 per candidate.

PACs have proliferated in recent years and play a major role in paying for expensive campaigns. Critics of the PAC system believe that this has led to a system of open graft. They fear that the large amount of money controlled by PACs leads to PAC control over what the winners do once they are in office. On the other hand, this chapter notes that the perception that PACs control officeholders may be misleading since *most PACs give money to candidates who already agree with them*. The impact of PAC money on presidents is even

more doubtful since presidential campaigns are partly subsidized by the public and presidents have well-articulated positions on most important issues.

Money is critical to electoral victory. In this era of high-tech politics, pollsters, public relations people, direct-mail consultants, and many other specialists are crucial to a campaign. Perhaps the most basic complaint about money and politics is that there may be a direct *link between dollars spent and votes received*.

## THE IMPACT OF CAMPAIGNS

Political scientists have found that campaigns have three major *effects on voters*: reinforcement, activation, and conversion. Campaigns can reinforce voters' preferences for candidates; they can activate voters, getting them to contribute money or become active in campaigns; and they can convert by changing voters' minds. However, campaigns rarely convert; they *primarily reinforce and activate*. Political scientists' emphasis on reinforcement and activation reflects the fact that most people pay relatively little attention to campaigns in the first place. People have a remarkable capacity for **selective perception**, paying most attention to things they already agree with and interpreting events according to their own predispositions.

## UNDERSTANDING NOMINATIONS AND CAMPAIGNS

The American political system *allows citizens a voice at almost every point* of the election process, unlike many countries where a political elite controls nominations and elections. As a result, party outsiders can get elected in a way that is virtually unknown outside the United States. The process has also led to what some call "the permanent campaign" and what Martin Wattenberg has termed the "candidate-centered age." Some analysts believe the process of openness places numerous demands on citizens; many are overwhelmed by the process and do not participate.

States are the key battlegrounds of presidential campaigns. To secure votes from each region of the country, candidates end up supporting a variety of local interests. The way modern campaigns are conducted is thus one of many reasons why politicians usually find it easier to expand the scope of American government than to limit it.

# CHAPTER OUTLINE

## I. THE NOMINATION GAME

- A. A **nomination** is a party's official endorsement of a candidate for office.
- B. Success in the nomination game generally requires money, media attention, and momentum. Candidates attempt to manipulate each of these elements through **campaign strategy**.
- C. Deciding to run.
  - 1. Campaigns are more strenuous than ever, and many strong (perhaps electable) candidates decide not to run.
  - 2. Unlike Britain—where campaigns are limited by law to five weeks—a presidential candidacy in the United States needs to be either announced or an "open secret" for at least a year before the election.

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3. Presidential candidates need to be risk takers; they need enough self-confidence to put everything on the line in pursuit of the presidency.
- D. Competing for delegates.
  1. The goal of the nomination game is to win the majority of delegates' support at the **national party convention**.
  2. From February through June of election year, the individual *state parties* choose their delegates to the national convention through *caucuses* or *primaries*.
  3. Party caucuses.
    - a. At one time, all states selected their delegates to the national convention in a meeting of state party leaders, called a **caucus**.
    - b. Today, caucuses are open to all voters who are registered with the party. The Democrats also require strict adherence to complex rules of representation.
    - c. Only a minority of states hold caucuses today, and the earliest caucus is traditionally held in Iowa.
    - d. Caucuses are usually *organized like a pyramid*.
  4. Presidential primaries.
    - a. Today, most of the delegates to the national conventions are selected in **presidential primaries**, in which voters in a state go to the polls and vote for a candidate or for delegates pledged to a candidate.
    - b. The primary season begins in the winter in New Hampshire. At this early stage, the campaign is not for delegates but for *images*.
    - c. The Democratic Party began to reform its delegate selection procedures after a highly conflicted national convention in 1968; these reforms were proposed by the **McGovern-Fraser Commission**.
  5. Political scientists and commentators have a number of *criticisms* of the primary and caucus system:
    - a. A disproportionate amount of attention goes to the early caucuses and primaries. Critics think America's media-dominated campaigns are distorted by early primaries and caucuses.
    - b. Running for the presidency has become a full-time job, and prominent politicians find it difficult to take time out from their duties to run.
    - c. Money plays too big a role in the caucuses and primaries.
    - d. Participation is low and is not representative of the voting population. Although about 50 percent of the population votes in the November presidential election, only about 20 percent casts ballots in presidential primaries. Voters in primaries and caucuses also tend to be better educated and more affluent than voters in general.
    - e. Primaries and caucuses exaggerate regional factors in decision making.
    - f. The system gives too much power to the media.
  6. The current system also has powerful *defenders*, including many of the candidates themselves.
    - a. George W. Bush has written that the system "brings presidential candidates into contact with the flesh-and-blood world."
    - b. Even losing candidates usually support the process. Senator Paul Simon argued that it is best to start the race in small states where people can meet the candidates face-to-face.
  7. Proposals for national and regional presidential primaries.

- a. Proponents of a **national primary** to select party nominees believe that this would bring directness and simplicity to the process for both the voters and the candidates. The length and cost of the campaign would be reduced, and concentration of media coverage on this one event would increase political interest and public understanding of the issues involved.
  - b. Critics of a national primary respond that a national primary would almost inevitably require a runoff election between the top two finishers to avoid having a candidate win with only a plurality of the vote. Big money and intense attention from the national media would become more crucial than ever, and obscure candidates would never have a chance.
  - c. There have also been proposals for **regional primaries** in which groups of states (such as those in a particular time zone) would vote one week, then another the following week, and so on. The major problem with the regional primary proposal is the advantage gained by whichever region goes first.
- 8. The convention send-off.
    - a. The “drama” has now been largely drained from conventions, as the winner is usually a foregone conclusion. The preferences of delegates selected in primaries and open caucuses are known before the conventions begin.
    - b. The last time there was any doubt as to who would win at the convention was in 1976, when Gerald Ford barely defeated Ronald Reagan for the Republican nomination.
    - c. Today’s conventions are carefully scripted to present the party in its best light.
    - d. Although conventions are no longer very interesting, they are *a significant rallying point* for the parties. Conventions are also important in *developing the party’s policy positions* and in *promoting political representation*.

## II. THE CAMPAIGN GAME

- A. Campaigning today is *heavily dependent on technology*.
  - 1. Television is the most prevalent means used by candidates to reach voters. However, it focuses heavily on the “horse race” (who’s winning) rather than substantive policy issues.
  - 2. As one of its most important uses, computer technology targets mailings to prospective supporters.
    - a. The technique of **direct mail** involves sending information and a request for money to names obtained from lists of people who have supported candidates of similar views in the past.
    - b. The accumulation of mailing lists enables a candidate to pick almost any issue and write to a list of people concerned about it.
- B. Once nominated, candidates concentrate on **campaigning** for the **general election** in November.
- C. Three ingredients are needed to project the right *image* to the voters: a high-tech media campaign, organization, and money.
- D. To effectively *organize* their campaigns, candidates must succeed in numerous key areas:
  - 1. Get a campaign manager.
  - 2. Get a fund-raiser.
  - 3. Get a campaign counsel.

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4. Hire media and campaign consultants.
5. Assemble a campaign staff.
6. Plan the logistics.
7. Get a research staff and policy advisors.
8. Hire a pollster.
9. Get a good press secretary.
10. Establish a Web site.

### III. MONEY IN CAMPAIGNS

- A. Campaigns are *expensive*, and they are growing more so in America's high-tech political arena.
  1. Candidates need money to build a campaign organization and to get the message out.
  2. There is a common *perception that money buys votes* and influence. This chapter examines the *role of money in campaigns*.
- B. Congress passed the **Federal Election Campaign Act** in 1974 with the goals of *tightening reporting requirements for contributions* and *limiting overall expenditures*. Provisions of the act (with subsequent amendments) included the following:
  1. A bipartisan **Federal Election Commission (FEC)** was created to administer campaign finance laws and enforce compliance with their requirements.
  2. It provided public financing for presidential primaries and general elections by establishing the **Presidential Election Campaign Fund**.
  3. Limits were established for presidential campaign spending.
  4. All candidates must file periodic financial disclosure reports with the FEC, listing who contributed funds and how the money was spent.
  5. It limited contributions, with individual contributions restricted to \$1,000; the McCain-Feingold Act raised this limit to \$2,000 as of 2004. PACs can give up to \$5,000 per federal candidate per election.
- C. Impact of the act.
  1. Campaign spending reforms have made campaigns more open and honest.
  2. Small donors are encouraged, and the rich are restricted in terms of the money they can give directly to a candidate.
  3. All contribution and expenditure records are open, and FEC auditors try to make sure that the regulations are enforced.
- D. Limiting the impact of money is a difficult task—loopholes are hard to close.
  1. A 1979 amendment to the original FECA made it easier for political parties to raise money for voter registration drives and the distribution of campaign material at the grass roots level. Money used for these purposes was referred to as **soft money**, because it was a loophole that had few limitations. The 2002 McCain-Feingold Act finally banned soft money after years of complaints by public-minded observers.
  2. Supposedly independent “**527 groups**” (named after a federal tax code section) are now the loophole of choice. They do not *directly* endorse candidates, but make strong and obvious attacks on their opponents.
- E. Campaign reforms also encouraged the spread of **Political Action Committees (PACs)**.

1. The 1974 reforms created a new way for interest groups like business and labor to contribute to campaigns. Any interest group can now form its own PAC to directly channel contributions of up to \$5,000 per candidate.
  2. A PAC is formed when a business association—or some other interest group—decides to contribute to candidates it believes will be favorable toward its goals. After the group registers with the FEC as a PAC, the PAC can collect money from interested parties and contribute money to candidates. (All expenditures must be accounted for to the FEC.)
  3. PACs have proliferated in recent years and play a major role in paying for expensive campaigns. PACs contributed \$258 million to congressional candidates for the 2002 campaign.
  4. Critics of the PAC system believe that this has led to a system of open graft. They fear that the large amount of money controlled by PACs leads to PAC control over what the winners do once they are in office.
  5. However, the perception that PACs control officeholders may be misleading since *most PACs give money to candidates who already agree with them*. The impact of PAC money on presidents is even more doubtful since presidential campaigns are partly subsidized by the public and presidents have well-articulated positions on most important issues.
- F. Are campaigns too expensive?
1. Bush and Kerry spent half a billion dollars in the 2004 campaign, compared to the 1988 total of \$60 million.
  2. Every four years, Americans spend over \$2 billion on national, state, and local elections. Although this seems like a tremendous amount of money, campaigns are actually relatively inexpensive when compared with the amount of money Americans spend on items of much less importance.
  3. Many officeholders feel that the need for continuous fund-raising distracts them from their jobs as legislators.
  4. Although some lawmakers support public financing reform, it is felt that incumbents (current officeholders) will not readily give up the advantage they have in raising money.
- G. Does money buy victory?
1. Money is crucial to electoral victory. In this era of *high-tech politics*, pollsters, public relations people, direct-mail consultants, and many other specialists are crucial to a campaign.
  2. Perhaps the most basic complaint about money and politics is that there may be a direct *link between dollars spent and votes received*.

#### IV. THE IMPACT OF CAMPAIGNS

- A. Politicians tend to overestimate the impact of campaigns. Political scientists have found that campaigns have three major *effects on voters*: **reinforcement**, **activation**, and **conversion**. Campaigns can *reinforce* voters' preferences for candidates; they can *activate* voters, getting them to contribute money or become active in campaigns; and they can *convert* by changing voters' minds.
- B. Campaigns *primarily reinforce and activate*. Only rarely do campaigns convert because several factors tend to weaken campaigns' impact on voters:
1. People have a remarkable capacity for **selective perception**—paying most attention to positions they already agree with and interpreting events according to their own predispositions.

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2. Although party identification is not as important as it once was, such factors still influence voting behavior.
3. Incumbents start with a substantial advantage in terms of name recognition and an established record.

### V. UNDERSTANDING NOMINATIONS AND CAMPAIGNS

- A. Impact of nominations and campaigns on democracy.
  1. The American political system *allows citizens a voice at almost every point* of the election process, unlike many countries where a political elite controls nominations and elections. As a result, party outsiders can get elected in a way that is virtually unknown outside the United States.
  2. The process has also led to what some call “the permanent campaign.” Some analysts believe the process of openness places numerous demands on citizens; many are overwhelmed by the process and do not participate.
  3. The burdens of the modern campaign can also discourage good candidates from entering the fray.
  4. The current system of running for office has been labeled by Wattenberg as the “candidate-centered age.” It allows for politicians to decide on their own to run, to raise their own campaign funds, to build their own personal organizations, and to make promises as to how they specifically will act in office.
- B. Do big campaigns lead to an increased scope of government?
  1. Because states are the key battlegrounds of presidential campaigns, candidates must tailor their appeals to the particular interests of each major state.
  2. Candidates end up supporting a variety of local interests in order to secure votes from each region of the country.
  3. The way modern campaigns are conducted is thus one of the many reasons why politicians always find it easier to *expand the scope of American government* than to limit it.

## KEY TERMS AND CONCEPTS

**Campaign strategy:** the way candidates use scarce resources to achieve the nomination or win office.

**Caucus:** a meeting to determine which candidate delegates from a state party will support.

**Direct mail:** the use of targeted mailings to prospective supporters, usually compiled from lists of those who have contributed to candidates and parties in the past.

**Federal Election Campaign Act:** 1974 legislation designed to regulate campaign contributions and limit campaign expenditures.

**Federal Election Commission (FEC):** A bipartisan body charged with administering campaign finance laws.

**Frontloading:** states’ decisions to move their presidential primaries and caucuses to earlier in the nomination season in order to capitalize on media attention.

**Matching funds:** money provided to qualifying presidential candidates from the Presidential Election Campaign Fund, the amount of which is determined by the amount of contributions raised by the candidate.

**McGovern-Fraser Commission:** a committee in the Democratic party charged with recommending changes in party rules to promote more representation of women and minorities in the delegate selection process.

**National party convention:** a meeting of the delegates from each state to determine the party's nominee for president.

**National primary:** a proposal by critics of the caucuses and presidential primaries systems who would replace these electoral methods with a nationwide primary held early in the election year.

**Nomination:** a party's official endorsement of a candidate for office.

**Party platform:** the party's statement of its goals and policies for the next four years.

**Political Action Committee (PAC):** a legal entity formed expressly for the purpose of contributing money to candidates and influencing electoral outcomes.

**Presidential Election Campaign Fund:** Money from the \$3 federal income tax check-off goes into this fund, which is then distributed to qualified candidates to subsidize their presidential campaigns.

**Presidential primaries:** a state-level election to determine which candidate the state's delegates will support.

**Regional primaries:** a proposal by critics of the caucuses and presidential primaries to replace these electoral methods with a series of primaries held in each geographic region.

**Selective perception:** the act of paying the most attention to things that one already agrees with or has a predisposition towards.

**Soft money:** money raised by political parties for voter registration drives and the distribution of campaign material at the grass roots level, now banned at the national level.

**Superdelegates:** delegates to the Democratic Party's national convention who obtain their seats on the basis of their positions within the party structure.

**527 groups:** independent groups that seek to influence the political process but are not subject to contribution restrictions because they do not directly advocate the election of a particular candidate.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- The great length and cost of American campaigns is unusual when compared to the systems used in other nations. Refer to the systems used in other Western democracies for comparison and contrast. Ask students to reflect on what changes (such as types of candidates) might occur if the United States adopted a shorter campaign period. Preface the assignment with a reminder that reforms often are accompanied by unintended (and unforeseen) consequences, and ask your class to consider the implications of this possibility. Brief reading selections could be placed on reserve in the library to supplement this section.
- If student body officer elections attract a lot of attention on your campus (and are currently being held), have your students interview the various candidates regarding their campaign strategies. Have students write brief essays about how “their” candidate could improve his/her campaign.
- As a class project, have each student interview a recent candidate for a local office to get the candidate’s reaction to questions of ethics in campaigning. (If your class is large,

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- consider dividing the class into teams to avoid overwhelming local candidates with requests for interviews!) What are the candidate's views on the nature of the campaign process? Are there any concerns with possible invasion of privacy? Is "mud-slinging" becoming more of a problem? Is there a link between campaign expenditures and the number of votes received?
- If this is an election year, have students gather campaign material from both the Democratic and Republican local headquarters. Compare both the style and content of the literature. Suggest that students volunteer to work for a few hours for one of the parties, then compare notes in class about their experiences.
  - According to the textbook: "*Reformers in the nineteenth and twentieth centuries held that the solution to democratic problems was more democracy.... In principle, more democracy always sounds better than less, but it is not such a simple issue in practice.*" This statement could be the basis for a provocative class discussion and analysis.
  - Review and discuss debates regarding passage of the McCain-Feingold Campaign Finance Act of 2002. What did its sponsors initially include in the bill? How and why did the final version differ? Did it influence the 2004 election?
  - For a reading and writing connection (and if the course is being taught in an election year), have students keep a clipping file on candidates for an office of their choice. Using broadcast and print media sources and descriptive journal entries for each item, have students identify the policy positions of the candidate from these sources. In a short analytical essay, have them compare the information they obtained through news coverage of their candidates with information they obtained in campaign advertisements about the candidates' issue positions. Alternatively, students could compare media images between competing candidates using the same format.

## **BACKGROUND READING**

Asher, Herbert B. Presidential Elections and American Politics. 5th ed. Pacific Grove, CA: Brooks/Cole, 1992.

Bartels, Larry M. Presidential Primaries and the Dynamics of Public Choice. Princeton, NJ: Princeton University Press, 1988.

Corrado, Anthony. Campaign Finance Reform: Beyond the Basics. Washington, D.C.: Brookings Institution, 2000.

Corrado, Anthony, Thomas Mann, Daniel Ortiz, and Trevor Potter. The New Campaign Finance Sourcebook. Washington, D.C.: Brookings Institution, 2000.

Edwards, George C. Why the Electoral College Is Bad for America. New Haven, Yale University Press, 2004.

Lavrakas, Paul J., and Michael W. Traugott. Election Polls, the News Media and Democracy. New York: Chatham House Publishers, 2000.

Orren, Gary R., and Nelson W. Polsby. Media and Momentum: The New Hampshire Primary and Nomination Politics. Chatham, NJ: Chatham House Publishers, 1987.

Polsby, Nelson W., and Aaron Wildavsky. Presidential Elections. 7th ed. New York: Free Press, 1992.

Wayne, Stephen H. The Road to the White House 1996: The Politics of Presidential Elections. New York: St. Martin's Press, 1997.

## **MEDIA SUGGESTIONS**

American Presidents: The Most Powerful Man on Earth. 1998. In American Presidents: The Most Powerful Man on Earth, host Walter Cronkite presents a history of the highest office in the nation. Illustrated with newsreel footage and historic material from the National Archives, Cronkite guides the viewer through a look at past presidents from the Depression years through the cold war. Several scholars, including Alan Brinkley, Martin Walker, Ben Wattenberg, and Kenneth C. Davis, lend their commentary to the program. The office of the presidency has changed dramatically since the days of George Washington, and those developments, influenced by factors both at home and abroad, are outlined here. Alice Day.

Campaign Finance: Abuses and Reforms. This show provides an overview of campaign finance reform, including interviews with Senator John McCain, Bill Bradley, and Jack Kemp. The broad political issues are discussed, as are several case studies of campaign finance in Florida and Maine. Films for the Humanities and Sciences.

The Decline of Politics: The Superficial Democracy. 1996. This program analyzes the influence of modern campaigns, which are characterized by form over substance in American democracy. Films for the Humanities and Sciences.

Modern Campaign Techniques. An excellent 1993 documentary by Insight Media, which chronicles the evolution of campaign technology.

Politics in Action, Chapter 1: Conducting a Campaign. Provides an overview of the 1993 New York mayoral campaign.

Price of Power: Money in Politics. A 1993 program by Insight Media, which examines the role of money in influencing electoral outcomes.

War Room. A look inside the 1992 presidential race, D.A. Pennebaker and Chris Hedgus' documentary, *The War Room*, explores the backstage side of national politics by examining the day-to-day operations of Bill Clinton's campaign staff.

## CHAPTER TEN: ELECTIONS AND VOTING BEHAVIOR

### PEDAGOGICAL FEATURES

- p. 303 **Figure 10.1:** *The Electoral College Results for 2000 and 2004*
- p. 304 **Figure 10.2:** *The Decline of Turnout: 1892–2004*
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- p. 309 **Table 10.1:** *Reported Turnout Rate in 2004*
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- p. 315 *A Generation of Change: The Greater Polarization of Voters Between 1988 and 2004*
- p. 316 **Table 10.3:** *Presidential Vote in 2000 by State Representation in the Electoral College*
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### LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Explain how elections provide regular access to political power and how the process is related to the level of political *legitimacy*.
- Describe procedures that permit voters to enact legislation directly, such as the initiative, petition, and referendum.
- Trace the historical evolution of the American style of campaigning from 1800 to 2004.
- Identify the characteristics of voters and nonvoters.
- Explore the reasons why voter turnout has actually declined as the right to vote was extended to new groups.
- Ascertain the role that voter registration procedures and requirements have played in structuring voter turnout.
- Explain why *party identification* is crucial for many voters and review the decline of party affiliation since the 1950s.
- Identify the conditions that must be present for true *policy voting* to occur.
- Outline the procedures of the electoral college and compare the present system with the process that was envisioned by the framers of the Constitution.
- Understand the tasks that elections accomplish, according to democratic theory.

- Establish how elections may affect public policy and how public policy may affect elections.
- Analyze how elections influence the scope of government in a democracy.

## CHAPTER OVERVIEW

### INTRODUCTION

Elections *socialize* and *institutionalize* political activity, making it possible for most political participation to be peacefully channeled through the electoral process. Because elections provide regular access to political power, leaders can be replaced without being overthrown. American voters rarely question the fairness of election results, allowing officeholders to govern with a **legitimacy** they can take for granted. This chapter focuses on how elections work in the United States, who votes, and how individuals make their voting decisions.

### HOW AMERICAN ELECTIONS WORK

Unlike most other democracies, the United States has *three kinds of elections*: those which select *party nominees*, those which select *officeholders* from among the nominees, and those in which voters engage in *making or ratifying legislation*. Elections in most other countries perform only the function of selecting officeholders.

At present, there is no constitutional provision for specific policy questions to be decided by a nationwide vote. Procedures allowing the public to pass legislation directly have been in effect for quite some time in many American states. There are two methods for getting items on a state ballot. The first is via a **referendum** whereby voters are given the chance to approve or disapprove some legislative act, bond issue, or constitutional amendment proposed by the legislature. The second method is through an **initiative petition**, which typically requires gaining signatures on a proposed law equal to 10 percent of the number of voters in the previous election.

### A TALE OF THREE ELECTIONS

Elections have changed dramatically since 1800 when Adams ran against Jefferson. In 1800, there were no primaries, no nominating conventions, no candidate speeches, and no entourage of reporters. Both incumbent President John Adams and challenger Thomas Jefferson were nominated by their parties' elected representatives in Congress (caucuses). Once nominated, the candidates did not campaign; they let their state and local organizations promote their causes. Although the election had to be decided in the House of Representatives, the transition from Adams to Jefferson marked *the first peaceful transfer of power between parties via the electoral process* in the history of the world.

By 1896, **national nominating conventions** had become well established. William Jennings Bryan broke with tradition and actively campaigned in person, traveling through 26 states. William McKinley ran a front-porch campaign from his home in Ohio, and managed to label the Democrats as the party of depression. The *Republicans* won overwhelmingly in the industrial Northeast and Midwest, and became firmly entrenched as *the nation's majority party for the next several decades*.

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In 2004, George W. Bush became the fourth Republican president since William McKinley to win a second term. The intensity of the battle over the presidency in 2004 was at least partially due to the controversial way Bush gained the presidency four years earlier. The 2000 election coverage on television provided a wild night of entertainment, full of ups and downs for everyone. Because Bush's lead over Gore in the initial count was less than one-tenth of one percent, Florida law mandated an automatic recount. Ultimately, with the margin between Bush and Gore down to 537 votes, the election hinged on whether or not the undervotes (ballots that showed no vote for president) would be examined by hand or not. As with any dispute, this one ended up in the courts, which played a pivotal role in a presidential election for the first time ever. The U.S. Supreme Court in *Bush v. Gore* (2000) overruled the Florida Supreme Court and held that although a recount was legal, the same (and more precise) standards for evaluating ballots would have to be applied in all counties. Most importantly, they ruled that there was not enough time to recount all the ballots in an orderly fashion by the time the electors were to vote on December 12. Thus, the U.S. Supreme Court ultimately determined that George W. Bush would emerge the winner.

### WHETHER TO VOTE: A CITIZEN'S FIRST CHOICE

Nearly two centuries of American electoral history include greatly expanded **suffrage** (the right to vote). Ironically, *proportionately fewer of those eligible* have chosen to exercise that right. The highest turnout of the past 100 years was the 80 percent turnout in 1896; in 2000, only 51 percent of the adult population voted for president.

Individuals with high levels of political efficacy and civic duty are more likely to vote, as are individuals who see policy differences between the two parties. **Political efficacy** is the belief that ordinary people can influence the government. Some people will vote simply to support democratic government, that is, to make a long-term contribution toward preserving democracy. This is called doing one's **civic duty**.

Before voting, citizens in most states must register to vote, often a cumbersome procedure. Largely to prevent corruption associated with stuffing ballot boxes, states adopted **voter registration** laws around the turn of the century, which require individuals to first place their name on an electoral roll in order to be allowed to vote. Although these laws have made it more difficult to vote more than once, they have also discouraged some people from voting at all. The Motor Voter Act—which allows individuals to register to vote when they receive or renew their drivers' license—has made registration a little easier since 1993.

There are several distinguishing demographic *characteristics of voters and nonvoters*: education, age, race, gender, marital status, mobility, and government employment. Research suggests that some political outcomes would change if this class bias in turnout did not exist. Politicians listen far more carefully to groups with high turnout rates, as they know their fate may well be in their hands. Who votes does matter.

### HOW AMERICANS VOTE: EXPLAINING CITIZENS' DECISIONS

Many journalists and politicians believe the winner of an election has a **mandate** from the people to carry out the policies he or she promised during the campaign. Conversely, political scientists know that different kinds of people vote a certain way for different reasons.

Political scientists focus instead on *three major elements of voters' decisions*: voters' party identification, voters' evaluations of the candidates, and the match between voters' policy positions and those of the candidates and parties (known as policy voting).

Because of the importance of **party identification** in deciding how to vote, the parties tended to rely on groups that lean heavily in their favor to form their basic coalition. Scholars singled out party affiliation as the *single best predictor of a voter's decision* in the 1950s. With the emergence of television and candidate-centered politics, the hold of the party on the voter eroded substantially during the 1960s and 1970s, and then *stabilized at a new and lower level* during the 1980s.

Political psychologists Shawn Rosenberg and Patrick McCafferty show that it is possible to manipulate a candidate's appearance in a way that affects voters' choices. Other research has shown that the three most *important components of candidate image are integrity, reliability, and competence*.

**Policy voting** occurs when people base their choices in an election on *their own issue preferences*. True policy voting can take place only when several conditions are met: voters must have a clear view of their own policy positions; voters must know where the candidates stand on policy issues; voters must see a difference between candidates on these issues; and voters must actually cast a vote for the candidate whose policy positions coincide with their own. Research based on the 2000 election suggests that about 50 percent of survey respondents met the first three criteria.

One recurrent problem is that candidates often decide that the best way to handle a controversial issue is to cloud their positions in rhetoric; *both* candidates may be deliberately ambiguous. However, since the demise of party-boss "brokered" conventions in the 1960s, candidates of both major parties tend to stray from the ambiguous center in order to appeal to their parties' activists who vote in the primary season. That is, Democrats must appeal to liberals and Republicans must appeal to conservatives. The presidency of George W. Bush has prompted an unusually great polarization of voters because of his strong and controversial stands.

## THE LAST BATTLE: THE ELECTORAL COLLEGE

It is the **electoral vote** that actually determines the outcome of the presidential election. The founders created the **electoral college** because they wanted the president to be selected by the nation's elite. Nevertheless, it has been customary since 1828 for electors to vote for *the candidate who won their state's popular vote*.

The electoral vote may *distort* the popular vote. All states except Maine and Nebraska have a **winner-take-all** system in which electors vote as a bloc for the candidate who received the most votes in the states. One of the key reasons George W. Bush won the electoral college vote in 2000 without winning the popular vote was that he did better in the small states. The winner-take-all rule also means that candidates will necessarily focus on winning the states where the polls show that there appears to be a close contest.

## **UNDERSTANDING ELECTIONS AND VOTING BEHAVIOR**

According to democratic theory, elections accomplish two tasks: they *select the policymakers*, and they are supposed to *help shape public policy*. In the hypothetical world of *rational choice theory* and the Downs model (see Chapter 8), elections do in fact guide public policy. Social science research on the question has produced mixed findings. Elections do affect public policy to some degree, and public policy decisions also partly affect electoral outcomes.

The greater the policy differences between the candidates, the more likely voters will be able to steer government policies by their choices. If elections can affect policies, then policies can also affect elections. Most policies have consequences for the well-being of certain groups or the society as a whole. Those who feel better off as a result of certain policies are likely to support candidates who pledge to continue those policies, whereas those who feel worse off are inclined to support opposition candidates. This is known as the theory of **retrospective voting**.

While the threat of election defeat constrains policymakers, it also helps to increase generalized support for government and its powers. Elections *legitimize the power of the state*, thereby making it easier to expand the size of the government. When people have the power to dole out electoral reward and punishment, they are more likely to see government as their servant instead of their master. As a result, citizens in a democracy often *seek to benefit from government* (rather than to be protected from it). As democracy has spread, government has come to do more and more, and its size has grown.

## **CHAPTER OUTLINE**

### **I. HOW AMERICAN ELECTIONS WORK**

- A. Elections serve many important functions in American society, including legitimizing the actions of elected officials.
  - 1. They *socialize* and *institutionalize* political activity, making it possible for most political participation to be peacefully channeled through the electoral process.
  - 2. Political **legitimacy** means that the people within a nation accept the procedures by which rules and transfers of power are made.
  - 3. American voters rarely question the fairness of election results, allowing officeholders to govern with a legitimacy they can take for granted.
- B. Some unique American electoral features.
  - 1. Unlike most other democracies, the United States has *three kinds of elections*: those which select *party nominees*, those which select *officeholders* from among the nominees, and those in which voters engage in *making or ratifying legislation*.
  - 2. Elections held for the purpose of picking party nominees are called **primaries**.
  - 3. The **initiative petition** enables voters in 23 states to place proposed legislation on the ballot if they gather the required number of signatures on a petition (usually a number equaling 10 percent of the voters in the previous election).
  - 4. The **referendum** is a form of direct legislation in which voters are given the chance to approve or disapprove some legislative act (such as school bonds) or constitutional amendment.

## II. A TALE OF THREE ELECTIONS

- A. Elections have changed dramatically since 1800 when Adams ran against Jefferson.
  - 1. By 1896, it was acceptable for candidates to campaign in person, as William Jennings Bryan did.
  - 2. Today, campaigns are slick, high-tech affairs.
- B. 1800: The first electoral transition of power.
  - 1. In 1800, there were no primaries, no nominating conventions, no candidate speeches, and no entourage of reporters.
  - 2. Both incumbent President John Adams and challenger Thomas Jefferson were nominated by their parties' elected representatives in Congress (caucuses).
  - 3. Once nominated, the candidates did not campaign; they let their state and local organizations promote their causes.
  - 4. The focus of the campaign was on state legislatures (not the voters), which had the responsibility for choosing members of the electoral college.
  - 5. Most newspapers of that time were openly partisan and made no attempt to be objective.
  - 6. The election was thrown into the House of Representatives through an error when all of Jefferson's electors also voted for Aaron Burr. At that period of history, each elector cast two ballots; the winner would be president and the runner-up would be named vice president. The result in 1800 was a tie vote, and the Federalist-controlled House of Representatives took 36 ballots before electing Thomas Jefferson.
  - 7. The transition from Adams to Jefferson marked *the first peaceful transfer of power between parties via the electoral process* in the history of the world.
- C. 1896: A bitter fight over economic interests.
  - 1. By 1896, **national nominating conventions** had become well established.
  - 2. The election was fought primarily over economics.
  - 3. Bryan broke with tradition and actively campaigned in person, traveling through 26 states. McKinley ran a front-porch campaign from his home in Ohio, and managed to label the Democrats as the party of depression.
  - 4. The *Republicans* won overwhelmingly in the industrial Northeast and Midwest, and became firmly entrenched as *the nation's majority party for the next several decades*.

## III. 2004: THE RATIFICATION OF A POLARIZING PRESIDENCY

- A. In 2004, George W. Bush became the fourth Republican president since William McKinley to win a second term.
  - 1. The reelection of George W. Bush will go down in history books as one of the most important and hard-fought presidential elections ever.
  - 2. The intensity of the battle over the presidency in 2004 was at least partially due to the controversial way Bush gained the presidency four years earlier.
- B. The 2000 presidential election will no doubt go into the history books as one of the most memorable finishes in the history of democracy.
  - 1. Because Bush's lead over Gore in the initial count was less than one-tenth of one percent, Florida law mandated an automatic recount.
  - 2. Ultimately, with the margin between Bush and Gore down to 537 votes, the election hinged on whether or not the undervotes (ballots that showed no vote for president) would be examined by hand or not.

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3. As with any legal dispute, this one ended up in the courts, which played a pivotal role in a presidential election for the first time ever.
  - a. The U.S. Supreme Court in *Bush v. Gore* (2000) overruled the Florida Supreme Court and held that although a recount was legal, the same (and more precise) standards for evaluating ballots would have to be applied in all counties. Most importantly, they ruled that there was not enough time to recount all the ballots in an orderly fashion by the time the electors were to vote on December 12. Thus, the U.S. Supreme Court ultimately determined that George W. Bush would emerge the winner.
- C. Despite winning office by the narrowest of margins, Bush governed boldly, making numerous consequential decisions that reshaped American public policy.
  1. Many of his decisions further polarized his political allies from his political opponents.
- D. According to exit polls, strong leadership in the war on terrorism ended up being one of people's major reasons for voting for Bush in 2004.
  1. Many voters also said that "moral values" was the most important issue to them.
  2. Voters whose top concern was taxes also favored Bush, who promised to stay the course with his tax-cutting agenda.
  3. Kerry won votes among those who were most concerned with the war in Iraq, the economy, healthcare, and education.

## IV. WHETHER TO VOTE: A CITIZEN'S FIRST CHOICE

- A. Who votes and who stays home?
  1. Nearly two centuries of American electoral history include greatly expanded **suffrage** (the right to vote).
    - a. As the right to vote has been extended, *proportionately fewer of those eligible* have chosen to exercise that right.
    - b. The highest turnout of the past 100 years was the 80 percent turnout in 1896; in 2004, 55 percent of the adult population voted for president.
  2. One reason why many people vote is that they have a high sense of **political efficacy**— the belief that ordinary people can influence the government.
  3. Those who vote out of a sense of **civic duty** are people who vote simply to support democratic government (even if they are indifferent about the outcome).
- B. Registering to vote.
  1. States adopted **voter registration** around the turn of the century, largely to prevent corruption associated with stuffing the ballot boxes.
  2. Registration procedures differ greatly from one state to another.
    - a. States in the upper Great Plains and the Northwest make it easiest to register; there is no registration at all in North Dakota; and four states permit registration on election day.
    - b. States in the South still face the most difficult forms of registration (and they also record lower voter turnout rates).
    - c. This changed somewhat when the 1993 **Motor Voter Act** went into effect in 1996. The act requires states to permit people to register to vote at the same time citizens apply for driver's licenses. The Motor Voter Act *makes voter registration much easier* by allowing eligible voters to simply check a box on their driver's license application or renewal form.
- C. Social science research points to several characteristics of voters and nonvoters:

1. Voting is a class-biased activity. People with higher than average education and income levels have a higher rate of voting. This is *the most important factor affecting turnout*.
  2. Young people have the lowest turnout rate.
  3. Whites vote with greater frequency than members of minority groups (but Blacks and other minority groups with high levels of income and education have a higher turnout rate than Whites with comparable socioeconomic status).
  4. Women are slightly more likely than men to vote.
  5. Married people are more likely to vote than unmarried people.
  6. Government employees have higher than average turnout levels.
- D. The political consequences of class bias in turnout.
1. Research suggests that some political outcomes would be different if there was no class bias in turnout.
  2. Politicians pay attention to groups with high levels of turnout, because their fate may be in their hands at the next election.

## V. HOW AMERICANS VOTE: EXPLAINING CITIZENS' DECISIONS

- A. Mandate theory of elections.
1. Many journalists and politicians believe the winner of an election has a **mandate** from the people to carry out the policies he or she promised during the campaign.
  2. Conversely, political scientists know that people rarely vote a certain way for the same reasons. Political scientists focus instead on *three major elements of voters' decisions*: voters' party identification, voters' evaluations of the candidates, and the match between voters' policy positions and those of the candidates and parties (known as policy voting).
- B. Party identification.
1. Because of the importance of **party identification** in deciding how to vote, the parties tended to rely on groups that lean heavily in their favor to form their basic coalition.
  2. With the emergence of television and candidate-centered politics, the *hold of the party on the voter* eroded substantially during the 1960s and 1970s, and then *stabilized at a new and lower level* during the 1980s.
  3. Scholars singled out *party affiliation* as the *single best predictor of a voter's decision* in the 1950s. Voting along party lines is less common today, particularly in elections for the House of Representatives, where *incumbency* is now of paramount importance.
- C. Candidate evaluations.
1. Political psychologists Shawn Rosenberg and Patrick McCafferty show that it is possible to manipulate a candidate's appearance in a way that affects voters' choices (even by substituting a good picture for a bad one).
  2. Research by Miller, Wattenberg, and Malanchuk shows that the three most important components of candidate image are integrity, reliability, and competence.
    - a. In 2000, George W. Bush scored higher than Al Gore in the dimension of integrity.
    - b. *Integrity* is not enough; a candidate must also be seen as being *reliable*, i.e., dependable and decisive. George H. W. Bush's image of *reliability*

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- suffered when he broke his “no new taxes” pledge prior to the 1992 campaign.
- c. The personal traits most often mentioned by voters involve *competence*, i.e., experience, which is one of the reasons it is hard to beat an incumbent president.
- D. Policy voting.
- 1. **Policy voting** occurs when people base their choices in an election on *their own issue preferences*.
  - 2. True policy voting can take place only when several conditions are met.
    - a. Voters must have a clear view of their own policy positions.
    - b. Voters must know where the candidates stand on policy issues.
    - c. Voters must see a difference between candidates on these issues.
    - d. Voters must actually cast a vote for the candidate whose policy positions coincide with their own.
  - 3. One recurrent problem is that *candidates* often decide that the best way to handle a controversial issue is to cloud their positions in rhetoric; *both* candidates may be deliberately ambiguous.
  - 4. The *media* also may not be helpful, as they typically focus more on the “horse race” aspects of the campaign than on the policy stands of the candidates.
  - 5. Although it is questionable whether voters are really much more sophisticated now about issues, policy voting has become somewhat easier than in the past. Today’s candidates are compelled to take clear stands to appeal to their own party’s *primary* voters. The presidency of George W. Bush is marked by clear, strong positions, which have increased voter polarization. Thus, it is the *electoral process* that has changed rather than the voters.

## VI. THE LAST BATTLE: THE ELECTORAL COLLEGE

- A. It is the **electoral vote** rather than the popular vote that actually determines the outcome of the presidential election.
  - 1. Because the founders wanted the president to be selected by the nation’s elite—and not directly by the people—they created the electoral college.
  - 2. *Political practice* since 1828 has been for electors to vote for *the candidate who won their state’s popular vote*.
- B. Mechanics of the electoral college system.
  - 1. Each state has as many electoral votes as it has U.S. senators and representatives. Today, state parties nominate slates of electors.
  - 2. All states except Maine and Nebraska have a **winner-take-all** system in which electors vote as a bloc for the candidate who received the most popular votes in the states.
  - 3. Electors meet in their respective states in December and mail their votes to the president of the Senate (vice president of the U.S.). The vote is counted when the new congressional session opens in January, and the result is reported by the president of the Senate.
  - 4. If no candidate receives an electoral college majority, the election is thrown into the House of Representatives, which must choose from among the top three electoral vote winners. The *unit rule* is used, which means that each state delegation has one vote (not each member).

5. The electoral college system disproportionately favors less populated states because of the formula, heavily populated states because of the winner-take-all rules, and especially the swing states where it is not clear which party has the edge—that is where the bulk of the attention will go during the general election.

## VII. UNDERSTANDING ELECTIONS AND VOTING BEHAVIOR

- A. According to democratic theory, *elections* accomplish two tasks: they *select the policymakers*, and they are supposed to *help shape public policy*.
  1. In the hypothetical world of *rational choice theory* and the Downs model (see Chapter 8), elections do in fact guide public policy.
  2. Social science research on the question has produced mixed findings. Elections do affect public policy to some degree, and public policy decisions also partly affect electoral outcomes.
- B. Democracy and elections.
  1. The greater the policy differences between the candidates, the more likely it is that voters will be able to influence government policies by their choices.
  2. As long as politicians can take refuge in ambiguity, the possibility of democratic control of policy is lessened.
  3. When individual candidates offer a clear choice, voters are more able to guide the government's policy direction.
  4. Most policies have consequences for the well-being of certain groups or for society as a whole. According to the theory of **retrospective voting**, voters essentially ask the question, "What have you done for me lately?"
  5. Public policy—especially the *perception of economic policy impacts*—can affect elections. In presidential elections, people who are unhappy with the state of the economy tend to blame the incumbent.
- C. Elections and the scope of government.
  1. While the threat of election defeat constrains policymakers, it also helps to increase generalized support for government and its powers. Elections *legitimize the power of the state*, thereby making it easier to *expand the scope of the government*.
  2. When people have the power to dole out electoral reward and punishment, they are more likely to see government as their servant instead of their master. As a result, citizens in a democracy often *seek to benefit from government* (rather than to be protected from it). As democracy has spread, government has come to do more and more, and its scope has grown.

## KEY TERMS AND CONCEPTS

**Civic duty:** a belief in the obligation to vote.

**Electoral college:** the institution designated in the Constitution whereby a body of electors selects the president and vice president.

**Initiative petition:** direct democracy technique that allows proposed legislative items to be placed on a statewide ballot when enough signatures are obtained.

**Legitimacy:** widely shared belief that a democratic government was elected fairly and freely.

**Mandate theory of elections:** the belief that the election winner has a mandate to implement policy promises.

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**Motor Voter Act:** this legislation requires states to let people register to vote at the same time they apply for a driver's license.

**Policy voting:** occurs when people base their choices on how close a candidate's issues positions are to their own issue preferences.

**Political efficacy:** the belief that ordinary people can influence government.

**Referendum:** direct democracy technique that allows citizens to approve or disapprove some legislative act, bond, issue, or constitutional amendment proposed by a state legislature.

**Retrospective voting:** voting theory that suggests that individuals who feel that they are better off as a result of certain policies are likely to support candidates who pledge to continue those policies, and those who feel worse off are inclined to support opposition candidates.

**Suffrage:** the legal right to vote.

**Voter registration:** a requirement that citizens register to vote before the election is held.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- It is common to hear people in public life say, "Vote any way you want, but VOTE." Have your class consider the following question: Do people in an election campaign organization really want to increase voter turnout, or are they interested in types of people who they think will vote for their party or candidate? Small groups of students could interview local officeholders and ask for their "realistic" opinions. Are "get out the vote" campaigns geared primarily to a party's (or candidate's) supporters? Compare their responses to similar questions asked of campus student leaders.
- Divide your class into two sections and ask them to take opposing positions on the following question: *Is it reasonable for a voter to look at personality and "character" traits as a basis for judging candidates for public office?* Class discussion on this topic is often animated and responsive.
- Ask students to research the legislative history of the Motor Voter Act. Who supported the act? Who opposed it? Why? Most political scholars have found that the Motor Voter Act has failed. Why?
- Bring information to class on procedures for voter registration. Consider using your class as the basis for a voter registration drive on campus. Information, publicity, and transportation are often problems for students who would like to vote.
- Ask students to debate the relative value of voter registration. Although voter registration is designed to minimize corruption or cheating in the election, what other possible reasons could be underlying the voter registration system? How do other democratic countries control corruption without voter registration? What other possible mechanisms exist that could control corruption and cheating equally well or better? What issues are raised by current proposals for on-line voting?
- For a reading and writing connection (and if the course is being taught in an election year), have students keep a clipping file on candidates for an office of their choice. Using broadcast and print media sources and descriptive journal entries for each item, have students identify the policy positions of the candidate from these sources. In a short analytical essay, have them compare the information they obtained through news coverage

of their candidates with information they obtained in campaign advertisements about the candidates' issue positions. Alternatively, students could compare media images between competing candidates using the same format.

- Ask students to debate (or write an analytical essay) on the desirability of having a tax on non-voting. What would be the benefits? What would be the costs? Does the Constitution protect citizens' right to abstain from voting?
- Ask the students to estimate what the electoral vote would have been in 2000 had Ralph Nader not been on the ballot. (According to the text on page 261, Nader voters favored Gore over Bush by a 5-2 margin.)
- Assign an essay in which the students discuss their opinion of the 2000 election. Also have them discuss the changes states made for the 2004 elections. Have states done a better job of making sure all votes are counted?

## **BACKGROUND READING**

Aldrich, John H., David W. Rohde, and Paul R. Abramson. Change and Continuity in the 2000 Elections. Washington, D.C.: Congressional Quarterly Press, 2001.

Alvarez, R. Michael. Information and Elections. Ann Arbor, MI: University of Michigan Press, 1999.

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Leighley, Jan E. Strength in Numbers? : The Political Mobilization of Racial and Ethnic Minorities. Princeton, N.J.: Princeton University Press, 2001.

Longley, Lawrence D., and Neal R. Peirce. The Electoral College Primer 2000. New Haven: Yale University Press, 1999.

Miller, Warren, and J. Merrill Shanks. The New American Voter. Cambridge, MA: Harvard University Press, 1996.

Rosenstone, Steven J., and John Mark Hansen. Mobilization, Participation and Democracy in America. New York: MacMillan, 1993.

Simon, Adam F. The Winning Message. New York: Cambridge University Press, 2002.

## **MEDIA SUGGESTIONS**

Debating Our Destiny: 40 Years of Presidential Debates. Clips of some of the most compelling debate exchanges over the past 10 years.

Politics in Action, Chapter 3: The Electoral College. A brief animated film explaining the origin and procedures followed in the electoral college.

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Price of Power: Money in Politics. A 1993 program by Insight Media, which examines the role of money in influencing electoral outcomes.

Vote: A Right and Responsibility. 1995. This film examines the fundamentals and structure of voting in America, including information on registration, filing an absentee ballot, and opportunities for voting at each level of government. Insight Media.

Unprecedented: The 2000 Presidential Election. 2002. Independent filmmakers Richard Ray Pérez and Joan Sekler direct the political documentary Unprecedented: The 2000 Presidential Election. Narrated by Peter Coyote, this 50-minute film examines the controversial occurrences in Florida during the 2000 presidential election, leading up to the eventual administration of George W. Bush. The filmmakers examine what went wrong before, during, and after the disputed election decision. It explores the topic of voter rolls, ballot design, vote recounting, and the actions of the Supreme Court. Andrea LeVasseur.

## CHAPTER ELEVEN: INTEREST GROUPS

### PEDAGOGICAL FEATURES

- p. 325 *America in Perspective: Interest Groups as Parties in Other Democracies*
- p. 327 *Figure 11.1: Perceptions of the Dominance of Big Interests*
- p. 329 *Table 11.1: The Power 25*
- p. 331 *Figure 11.2: The Benefits of Membership in the AARP*
- p. 332 *Young People and Politics: The Virginia 21 Coalition*
- p. 334 *Figure 11.3: Associations by Type*
- p. 339 *You Are the Policymaker: Should PACs Be Eliminated?*
- p. 341 *How You Can Make a Difference: Interest Groups*
- p. 344 *A Generation of Change: How Non-Labor PACs Have Shifted to the GOP*
- p. 350 *Key Terms*
- p. 350 *Internet Resources*
- p. 350 *Get Connected: Interest Groups and PACs*
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### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Distinguish the essential differences between *interest groups* and *political parties*.
- Understand three basic theories of interest group politics: *pluralist* theory, *elite* theory, and *hyperpluralist* theory.
- Determine the factors that tend to make an interest group successful.
- Differentiate between a *potential group* and an *actual group*, and determine how the *free-rider problem* applies.
- Explain how interest groups try to shape public policy and how lobbyists represent interest groups in influencing the legislative agenda.
- Describe various types of interest groups.
- Explain why the authors of the textbook say that the problems of honest lobbying now appear to outweigh the traditional problems of dishonest lobbying.
- Summarize the implications for the size of government that are generated by the power of PACs and special interest groups.
- Analyze the appropriate role of interest groups within a democratic environment.

### CHAPTER OVERVIEW

#### INTRODUCTION

Although voter turnout has declined substantially in the U.S. since the 1960s, the number of interest groups active in lobbying the government has increased dramatically. This chapter

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examines this growth and the activities of interest groups, why individuals join groups, and what groups get for their efforts.

### THE ROLE OF INTEREST GROUPS

An **interest group** is *an organization of people with similar policy goals* that tries to influence the political process to try to achieve those goals. In so doing, interest groups try to influence every branch and every level of government. This *multiplicity of policy arenas* helps distinguish interest groups from political parties. Interest groups may also support candidates for office, but American interest groups *do not run their own slate of candidates*. Interest groups are often *policy specialists*, whereas parties are policy generalists. Thus, interest groups do not face the constraint imposed by trying to appeal to everyone (unlike political parties).

Despite their importance to democratic government, interest groups traditionally have had a negative image in America. Even Madison's term **faction** was general enough to include both parties and groups. There is little doubt that honest lobbying outpaces dishonest lobbying by a wide margin. Ironically, many political scientists now believe that *honest lobbying poses greater problems for democracy* than dishonest lobbying.

### THEORIES OF INTEREST GROUP POLITICS

Understanding the debate over whether honest lobbying creates problems requires an examination of three important theories: (1) **pluralist theory** argues that interest group activity brings representation to all as groups *compete and counterbalance one another*; (2) **elite theory** argues that *a few groups (mostly the wealthy) have most of the power*; (3) **hyperpluralist theory** asserts that *too many groups are getting too much of what they want*, resulting in a *government policy that is often contradictory and lacking in direction*.

According to pluralist theory, groups win some and lose some, but *no group wins or loses all the time*. Pluralists do not deny that some groups are stronger than others or that competing interests do not always get an equal hearing, but they argue that *lobbying is open to all* and should not be regarded as a problem. No one group is likely to become too dominant, and *all legitimate groups are able to affect public policy*.

Elite theorists maintain that *real power is held by relatively few people, key groups, and institutions*. Government is run by *a few big interests* looking out for themselves. Interest groups are extremely unequal in power; thus the preponderance of power held by elites means that *pluralist theory does not accurately describe the reality of American politics*.

This chapter also explores *hyperpluralism and interest group liberalism*. Theodore Lowi coined the phrase **interest group liberalism** to refer to the government's *excessive deference to groups*. Interest group liberalism holds that virtually all pressure group demands are legitimate and that the job of the government is to advance them all. In an effort to appease every interest, government agencies proliferate, conflicting regulations expand, programs multiply, and the budget skyrockets.

Interest group liberalism is promoted by the network of **subgovernments** (also known as **iron triangles**). These subgovernments are composed of key interest groups interested in a

particular policy, the government agency in charge of administering the policy, and the members of congressional committees and subcommittees handling the policy. Relations between groups and the government become too cozy. Hard choices about national policy rarely get made as the government tries to favor all groups, leading to *policy paralysis*. Hyperpluralist theorists often point to the government's contradictory tobacco-related policies as an example of interest group liberalism.

## WHAT MAKES AN INTEREST GROUP SUCCESSFUL?

Many factors affect the success of an interest group, including the *size of the group*, the *intensity*, and its *financial resources*. Small groups actually have *organizational advantages over large groups*. A **potential group** is composed of all people who might be group members because they share some common interest. An **actual group** is composed of those in the potential group who choose to join. Groups vary enormously in the degree to which they enroll their potential membership.

A **collective good** is something of value (such as clean air or a higher minimum wage) that cannot be withheld from a potential group member. Members of the potential group share in benefits that members of the actual group work to secure. The **free-rider problem** occurs when potential members decide not to join but to sit back and let other people do the work (from which they will nevertheless benefit). According to **Olson's law of large groups**, *the bigger the group, the more serious the free-rider problem*.

The primary way for large potential groups to overcome Olson's law is to provide attractive benefits for only those who join the organization. Selective benefits are goods that a group can restrict to those who pay their yearly dues, such as information publications, travel discounts, and group insurance rates.

One way a large potential group may be mobilized is through an issue that *people feel intensely* about, such as abortion. Both small and large groups enjoy a psychological advantage when intensity is involved. Politicians are more likely to listen when a group shows that it cares deeply about an issue, and many votes may be won or lost on a single issue. One of the biggest indictments of the interest group system is that it is biased toward the wealthy.

## THE INTEREST GROUP EXPLOSION

The number of interest groups in the United States has been increasing rapidly over the last several decades. Between 1959 and 2001, the number of groups listed in the Encyclopedia of Associations skyrocketed from about 6,000 to 22,000. The increase in the number of groups reflects a growing diversity in the interest group universe. Whereas trade groups clearly dominated the picture in 1959, this is no longer the case. It seems that there is now an organized group for every conceivable interest. Very few occupations or industries now go without an organized group to represent them in Washington.

## HOW GROUPS TRY TO SHAPE POLICY

The three *traditional strategies* of interest groups are *lobbying*, *electioneering*, and *litigation*. In addition, groups have recently developed *a variety of sophisticated techniques* to appeal to the public for widespread support.

**Lobbyists** are political persuaders who are the representatives of organized groups. They normally work in Washington, handling groups' legislative business. Although lobbyists primarily try to *influence* members of Congress, they can also be of *help* to them. For example, lobbyists are an important source of specialized information.

Political scientists are *not in agreement* about the *effectiveness of lobbying*. Much evidence suggests that lobbyists' power over policy is often exaggerated, but plenty of evidence to the contrary suggests that lobbying can sometimes persuade legislators to support a certain policy. It is difficult to evaluate the specific effects of lobbying because it is hard to isolate its effects from other influences. Like campaigning, lobbying is directed primarily toward *activating and reinforcing* one's supporters.

Getting the right people into office or keeping them there is another key strategy of interest groups. Many groups therefore get involved in **electioneering**—aiding candidates financially and getting their members to support them. **Political Action Committees (PACs)** have provided a means for groups to participate in electioneering more than ever before. PACs tend to contribute the most to incumbents, and to the party that holds the majority in Congress. Some PACs are particularly influential—in 2004, one quarter of all PAC money came from about one percent of the largest PACs.

Today, **litigation** is often used if an interest group fails in Congress or gets only a vague piece of legislation. Environmental legislation, such as the Clean Air Act, typically includes written provisions allowing ordinary citizens to sue for enforcement. Possibly the most famous interest group victories in court were by civil rights groups in the 1950s. These groups won major victories in court cases concerning school desegregation, equal housing, and labor market equality. Consumer groups have also used suits against businesses and federal agencies as a means of enforcing consumer regulations.

One tactic that lawyers employ to make the views of interest groups heard by the judiciary is the filing of *amicus curiae* (“friend of the court”) briefs. A more direct judicial strategy employed by interest groups is the filing of class action lawsuits, which enable a group of people in a similar situation to combine their common grievances into a single suit.

The practice of interest groups *appealing to the public for support* has a long tradition in American politics. Public opinion ultimately makes its way to policymakers, so interest groups carefully cultivate their public image.

## TYPES OF INTEREST GROUPS

Political scientists loosely *categorize interest groups* into four main policy areas: some deal primarily with *economic issues*, others with issues of *the environment*, others with *equality* issues, and still others with the interests of all consumers. **Economic groups** are ultimately concerned with wages, prices, and profits. In the American economy, government does not directly determine these factors. More commonly, public policy in America has economic

*effects* through regulations, tax advantages, subsidies and contracts, and international trade policy. Business, labor, and farmers all worry about government regulations. Every economic group wants to get its share of direct aid and government contracts.

**Environmental interests** have exerted a great deal of influence on Congress and state legislatures. Group politics intensifies when two public interests clash, such as environmental protection and an ensured supply of energy.

**Equality interests** are those groups representing minorities and women who make *equal rights* their main policy goal. Equality at the polls, in housing, on the job, in education, and in all other facets of American life has long been the dominant goal of African-American groups, the oldest of which is the National Association for the Advancement of Colored People (NAACP). The Nineteenth Amendment (1920) guaranteed women the right to vote, but other guarantees of equal protection for women remain absent from the Constitution. More recently, women's rights groups, such as the National Organization for Women (NOW), have lobbied for an end to sexual discrimination.

**Consumers and public interest lobbies** (representing groups that champion causes or ideas “in the public interest”) are organizations that seek a “collective good,” by which everyone should be better off—regardless of whether they joined in the lobbying. Consumer groups have won many legislative victories in recent years, including the creation in 1973 of the Consumer Product Safety Commission (authorized to regulate all consumer products and to ban particularly dangerous ones). Other public interest groups include groups that speak for those who cannot speak for themselves, such as children, animals, and the mentally ill; good-government groups such as Common Cause; religious groups; and environmental groups.

## UNDERSTANDING INTEREST GROUPS

The problem of interest groups in America today remains much the same as James Madison defined it over 200 years ago. A free society must allow for the representation of all groups, yet groups are usually more concerned with their own self-interest than with the needs of society as a whole. For democracy to work well, it is important that self-interested groups not be allowed to assume a dominant position.

Madison's solution was to create an open system in which many groups would be able to participate. Groups with opposing interests would *counterbalance* each other. *Pluralist theorists* believe that a rough approximation of the public interest emerges from this competition. *Elite theorists* point to the proliferation of business PACs as evidence of more interest group corruption in American politics than ever. They particularly note that wealthier interests are greatly advantaged by the PAC system. *Hyperpluralist theorists* feel that government attempts to accommodate all major interest groups led to policy gridlock and the inability for government to initiate major policies.

The power of special interest groups through PACs and other means has implications for the *scope of government*. Most special interest groups strive to maintain established programs that benefit them—and thus promote larger government. Conversely, one can make the argument that the growth of the scope of government in recent decades accounts for a good portion of the proliferation of interest groups. As the federal government has become involved in more areas, more interest groups have risen to influence policy.

## CHAPTER OUTLINE

### I. THE ROLE OF INTEREST GROUPS

- A. Although turnout in elections has declined since 1960, participation in interest groups has mushroomed.
- B. The *freedom to organize* (the right “peaceably to assemble, and to petition” guaranteed by the First Amendment) is as fundamental to democratic government as freedom of speech or of the press.
- C. Distinguishing interest groups from political parties.
  - 1. An **interest group** is an organization of people with similar policy goals that tries to influence the political process to try to achieve those goals. In so doing, interest groups try to influence every branch and every level of government.
  - 2. This *multiplicity of policy arenas* helps *distinguish interest groups from political parties*.
  - 3. Interest groups may support candidates for office, but American interest groups *do not run their own slate of candidates*. By contrast, interest groups in many countries with *multiparty systems* often form their own political parties to push for their demands.
  - 4. Interest groups are often *policy specialists*, whereas *parties are policy generalists*.
  - 5. Unlike political parties, interest groups do not face the constraint imposed by trying to appeal to everyone.

### II. THEORIES OF INTEREST GROUP POLITICS

- A. Understanding the debate over whether honest lobbying creates problems requires an examination of three important theories.
  - 1. **Pluralist theory** argues that interest group activity brings representation to all; groups *compete and counterbalance one another*.
  - 2. **Elite theory** argues that *a few groups (mostly the wealthy) have most of the power*.
  - 3. **Hyperpluralist theory** asserts that *too many groups are getting too much of what they want*, resulting in a *government policy that is often contradictory and lacking in direction*.
- B. Pluralism and group theory.
  - 1. In pluralist theory, the extensive organization of competing groups is seen as evidence that influence is widely dispersed among them. *Groups win some and lose some, but no group wins or loses all the time*.
  - 2. A *group theory of politics* contains several essential arguments.
    - a. Groups provide a key link between people and government whereby all legitimate interests in the political system can get a hearing from government.
    - b. Groups compete, and interests constantly make claims on one another.
    - c. No one group is likely to become too dominant. When one group grows too powerful, its opponents are likely to intensify their organization and thus restore balance to the system.
    - d. Groups usually play by the “rules of the game,” with few groups lying, cheating, stealing, or engaging in violence.

- e. Groups weak in one resource can use another. All legitimate groups are able to affect public policy.
- 3. Pluralists do not deny that some groups are stronger than others or that competing interests do not always get an equal hearing, but they argue that *lobbying is open to all and should not be regarded as a problem*.
- C. Elites and the denial of pluralism.
  - 1. Elite theorists maintain that *real power is held by relatively few people, key groups, and institutions*. Government is run by a few big interests looking out for themselves.
  - 2. Elitists point to *interlocking and concentrated power centers*. About one-third of top institutional positions are occupied by people who hold more than one such position.
  - 3. The fact that there are numerous groups proves nothing because *groups are extremely unequal in power*. When confronted with the power of multinational corporations, consumer interests are easily pushed aside.
  - 4. Honest lobbying is a problem because it benefits the few at the expense of the many.
- D. Hyperpluralism and interest group liberalism.
  - 1. Hyperpluralists argue that *the pluralist system is out of control*.
  - 2. Theodore Lowi coined the phrase **interest group liberalism** to refer to the government's *excessive deference to groups*.
  - 3. Interest group liberalism holds that virtually all pressure group demands are legitimate and that the job of the government is to advance them all. In an effort to appease every interest, government agencies proliferate, conflicting regulations expand, programs multiply, and the budget skyrockets.
  - 4. Interest group liberalism is promoted by the network of **subgovernments** (also known as **iron triangles**). These subgovernments are composed of key interest groups interested in a particular policy, the government agency in charge of administering the policy, and the members of congressional committees and subcommittees handling the policy.
  - 5. Relations between groups and the government become too cozy. Hard choices about national policy rarely get made as the government tries to favor all groups, leading to *policy paralysis*. Hyperpluralist theorists often point to the government's contradictory tobacco-related policies as an example of interest group liberalism.
  - 6. Ironically, the recent interest group explosion is seen by some as *weakening the power of subgovernments*. With so many more interest groups to satisfy and with many of them competing against one another, a cozy relationship between groups and the government is more difficult to sustain.

### III. WHAT MAKES AN INTEREST GROUP SUCCESSFUL?

- A. The surprising ineffectiveness of large groups.
  - 1. Many factors affect the success of an interest group, including the *size of the group*, the *intensity*, and its *financial resources*. Small groups actually have *organizational advantages over large groups*.
  - 2. A **potential group** is composed of all people who might be group members because they share some common interest.

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3. An **actual group** is composed of those in the potential group who choose to join. Groups vary enormously in the degree to which they enroll their potential membership.
4. A **collective good** is something of value (such as clean air or a higher minimum wage) that cannot be withheld from a potential group member. Members of the potential group share in benefits that members of the actual group work to secure.
  - a. Economist Mancur Olson points that all groups—as opposed to individuals—are in the business of providing collective goods. The **free-rider problem** occurs when potential members decide not to join, but rather to sit back and let other people do the work (from which they will nevertheless benefit).
  - b. According to **Olson's law of large groups**, *the bigger the group, the more serious the free-rider problem.*
    - (1) It is easier to organize a small group with clear economic goals than it is to organize a large group with broader goals.
    - (2) Small groups have an organizational advantage over large ones because a given member's share of the collective good in a small group may be great enough that he or she will try to secure it; but in the largest groups, each member can only expect to get a tiny share of the policy gains.
  - c. This advantage of small groups helps to explain why public interest groups have a hard time financially. In contrast, the lobbying costs and benefits for business are concentrated. Large corporations also enjoy an inherent size advantage. Small potential groups like businesses have an easier time organizing themselves for political action than large potential groups, such as consumers.
  - d. The primary way for large potential groups to overcome Olson's law is to provide **selective benefits**. These are goods that a group can restrict to those who pay their yearly dues, such as information publications, travel discounts, and group insurance rates.
- B. Intensity.
  1. One way a large potential group may be mobilized is through an issue that *people feel intensely* about, such as abortion.
    - a. Both small and large groups enjoy a psychological advantage when intensity is involved. Politicians are more likely to listen when a group shows that it cares deeply about an issue, and many votes may be won or lost on a single issue.
    - b. A **single-issue group**—which has a narrow interest, dislikes compromise, and single-mindedly pursues its goal—characteristically deals with issues that evoke strong emotions (such as nuclear power plants, gun control, and abortion).
  2. Perhaps the most emotional issue of all in recent years has been that of abortion. Regardless of which side candidates for political office are on, they will be taking heat on the abortion issue for years to come.
- C. Financial resources.
  1. Critics charge that PACs—as the source of so much money in today's expensive high-tech campaigns—distort the governmental process in favor of those that can raise the most money.

2. Conversely, the big interests do not always win, even on some of the most important issues (such as the Tax Reform Act of 1986).

#### **IV. THE INTEREST GROUP EXPLOSION**

- A. One of the major factors in the explosion in the number of interest groups in the United States has been the development of sophisticated technology, such as computerized mail lists.
  1. Over 90 percent of groups have their headquarters in Washington, D.C.
  2. There are an enormous number of highly specialized and seemingly trivial groups.
  3. Almost every group has a staff and publications.
- B. The interests of many groups are primarily economic. Eighty percent of the groups originated from occupational, industrial, or professional memberships.

#### **V. HOW GROUPS TRY TO SHAPE POLICY**

- A. The three *traditional strategies* of interest groups are *lobbying*, *electioneering*, and *litigation*. In addition, groups have recently developed *a variety of sophisticated techniques* to appeal to the public for widespread support.
- B. Lobbying.
  1. **Lobbyists** are political persuaders who are the representatives of organized groups. They normally work in Washington, handling groups' legislative business.
  2. Basically, there are two types of lobbyists: regular, paid employees of a corporation, union, or association, and lobbyists for hire on a temporary basis.
  3. Although lobbyists primarily try to *influence* members of Congress, they can also be of *help* to them. Ornstein and Elder list four ways lobbyists can help a member of Congress:
    - a. They are an important source of information. Lobbyists can confine themselves to a single policy area, and thus can provide specialized expertise.
    - b. They can help a member with political strategy. In effect, they are free consultants.
    - c. They can help formulate campaign strategy and get the group's members behind a politician's reelection campaign.
    - d. They are a source of ideas and innovations.
  4. Political scientists are *not in agreement* about the *effectiveness of lobbying*.
    - a. Much evidence suggests that lobbyists' power over policy is often exaggerated.
    - b. Plenty of evidence to the contrary suggests that lobbying can sometimes persuade legislators to support a certain policy. Examples include opposition to gun control legislation by the National Rifle Association and intensive lobbying against the 1988 Catastrophic Health Care Act conducted by the nation's most wealthy senior citizens.
    - c. It is difficult to evaluate the specific effects of lobbying because it is hard to isolate its effects from other influences. Like campaigning, lobbying is directed primarily toward *activating and reinforcing* one's supporters.
- C. Electioneering.

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1. Getting the right people into office or keeping them there is a key strategy of interest groups. Many groups therefore get involved in **electioneering**—aiding candidates financially and getting their members to support them.
2. **Political Action Committees (PACs)** have provided a means for groups to participate in electioneering more than ever before.
  - a. In recent years, nearly half of the candidates running for reelection to the House of Representatives have received the majority of their campaign funds from PACs.
  - b. Most funds from PACs go to incumbents (\$207 million to House incumbents during the 2003–2004 election cycle, compared to \$15 million to challengers), because incumbents are the most likely to provide a return to the PACs' investment.
  - c. PACs tend to contribute more to the party that holds the majority in Congress, because the majority party is most influential in law-making.
  - d. Some PACs are particularly influential—in 2004, one quarter of all PAC money came from about one percent of the largest PACs.
- D. Litigation.
  1. Today, **litigation** is often used if an interest group fails in Congress or gets only a vague piece of legislation.
    - a. Environmental legislation, such as the Clean Air Act, typically includes written provisions allowing ordinary citizens to sue for enforcement. The constant threat of a lawsuit increases the likelihood that businesses will consider the environmental impact of what they do.
    - b. Possibly the most famous interest group victories in court were by civil rights groups in the 1950s. These groups won major victories in court cases concerning school desegregation, equal housing, and labor market equality.
    - c. Consumer groups have used suits against businesses and federal agencies as a means of enforcing consumer regulations.
  2. Tactics and strategies.
    - a. One tactic that lawyers employ to make the views of interest groups heard by the judiciary is the filing of ***amicus curiae*** (“friend of the court”) **briefs**, which consist of written arguments submitted to the courts in support of one side of a case.
    - b. A more direct judicial strategy employed by interest groups is the filing of **class action lawsuits**, which enables a group of similarly situated plaintiffs to combine similar grievances into a single suit.
- E. Going public.
  1. Many interest groups find it important to shape a good *image*, employing public relations techniques to present themselves in the most favorable manner.
  2. The practice of interest groups appealing to the public for support has a long tradition in American politics.

## VI. TYPES OF INTEREST GROUPS

- A. Political scientists loosely *categorize interest groups* into four main policy areas: some deal primarily with *economic issues*, others with issues of *the environment*, others with *equality* issues, and still others with the interests of all consumers.
- B. Economic groups.
  1. All economic interests are ultimately concerned with wages, prices, and profits.

2. In the American economy, government does not directly determine these factors. More commonly, public policy in America has economic *effects* through regulations, tax advantages, subsidies and contracts, and international trade policy.
    - a. Business, labor, and farmers all worry about government regulations. Every economic group wants to get its share of direct aid and government contracts.
    - b. Business executives, factory workers, and farmers seek to influence government because regulations, taxes, subsidies, and international economic policy affect their economic livelihoods.
  3. Labor.
    - a. Labor has more affiliated members than any other interest group except the American Association for Retired Persons (AARP). The AFL-CIO is itself a union of unions.
    - b. Unions have fought hard to establish the **union shop**, which requires new employees to join the union representing them.
    - c. Business groups have supported **right-to-work laws**, which outlaw union membership as a condition of employment. In 1947, Congress passed the **Taft-Hartley Act**, permitting states to adopt right-to-work laws.
    - d. The American labor movement reached its peak in 1956 when 33 percent of the non-agricultural work force belonged to a union; the percentage has declined since then to about 16 percent.
  4. Business.
    - a. Seventy percent of all interest group organizations having a Washington presence represent business, and business PACs have increased more dramatically than any other category of PACs. Most large firms now have offices in Washington that monitor legislative activity.
    - b. Business interests are generally unified when it comes to promoting greater profits, but are often fragmented when policy choices have to be made. Two umbrella organizations—the National Association of Manufacturers (NAM) and the Chamber of Commerce—include most corporations and business and speak for them when general business interests are at stake.
    - c. The hundreds of trade and product associations fight regulations that would reduce their profits. They seek preferential tax treatment as well as government subsidies and contracts.
    - d. It is not only American trade associations that are concerned with policies such as tariffs and preferential tax treatment; foreign corporations and governments are also concerned.
- C. Environmental interests.
1. Environmentalists have exerted a great deal of influence on Congress and state legislatures. A few environmentalist groups—like the Sierra Club and the Audubon Society—have been around since the nineteenth century, but many others trace their origins to the first *Earth Day* in 1970, when ecology-minded people marched to symbolize their support for environmental protection.
  2. Group politics intensifies when two public interests clash, such as environmental protection and an ensured supply of energy.
    - a. Environmentalists insist that, in the long run, energy supplies can be ensured without harming the environment or risking radiation exposure from nuclear plants.

- b. Energy producers argue that environmentalists oppose nearly all new energy projects. They argue that some limited risks have to be taken to fulfill energy demands.
- D. Equality interests.
  - 1. Interest groups representing women and minorities have made equal rights their main policy goal.
  - 2. Equality at the polls, in housing, on the job, in education, and in all other facets of American life has long been the dominant goal of African-American groups, the oldest of which is the National Association for the Advancement of Colored People (NAACP). Although they have won many victories in principle, *equality in practice* has been much slower in coming.
    - a. Today, civil rights groups continue to push for more effective affirmative action programs to ensure that minority groups are given educational and employment opportunities. In recent years, the NAACP's main vehicle has been the *Fair Share program*, which negotiates agreements with national and regional businesses to increase minority hiring and the use of minority contractors.
  - 3. The Nineteenth Amendment (1920) guaranteed women the right to vote, but other guarantees of equal protection for women remained absent from the Constitution.
    - a. More recently, women's rights groups such as the National Organization for Women (NOW) have lobbied for an end to sexual discrimination.
    - b. Their primary goal has been the passage of the *Equal Rights Amendment (ERA)*. The ERA was approved by Congress in 1972 but fell three states short of the 38 necessary for ratification. Interest groups such as Phyllis Schlafly's Eagle Forum battled NOW and other women's groups over ratification of the ERA.
    - c. NOW remains committed to enacting the protection the ERA would have constitutionally guaranteed by advocating the *enactment of many individual statutes*.
- E. Consumers and public interest lobbies.
  - 1. **Public interest lobbies** (representing groups that champion causes or ideas "in the public interest") are organizations that seek a "collective good," by which everyone should be better off—regardless of whether they joined in the lobbying.
  - 2. Consumer groups.
    - a. The consumer movement was spurred by Ralph Nader, who was propelled to national prominence by his book, *Unsafe at Any Speed*, which attacked the safety of General Motors' Corvair. Nader successfully sued General Motors for invasion of privacy after GM hired a private detective to dig into his background and follow him around. He used the proceeds from the damage settlement to launch the first major consumer group in Washington, D.C.
    - b. Consumer groups have won many legislative victories in recent years, including the creation in 1973 of the Consumer Product Safety Commission (authorized to regulate all consumer products and to ban particularly dangerous ones).
  - 3. Other public interest groups include groups that speak for those who cannot speak for themselves, such as children, animals, and the mentally ill; good-

government groups such as Common Cause; religious groups; and environmental groups.

## VII. UNDERSTANDING INTEREST GROUPS

### A. Interest groups and democracy.

1. The problem of interest groups in America today remains much the same as James Madison defined it over 200 years ago.
  - a. A free society must allow for the *representation of all groups*, yet groups are usually more concerned with their own *self-interest* than with the needs of society as a whole.
  - b. For democracy to work well, it is important that self-interested groups not be allowed to assume a dominant position.
2. Madison's solution was to create an open system in which *many groups would be able to participate*. Groups with opposing interests would *counterbalance* each other.
  - a. *Pluralist theorists* believe that a rough approximation of the public interest emerges from this competition.
  - b. *Elite theorists* point to the proliferation of business PACs as evidence of more interest group corruption in American politics than ever. They particularly note that wealthier interests are greatly advantaged by the PAC system.
  - c. *Hyperpluralist theorists* maintain that whenever a major interest group objects strongly to proposed legislation, policymakers will bend over backwards to try to accommodate it. They argue that this behavior has made it increasingly difficult to accomplish major policy change and has thus led to policy gridlock.

### B. Interest groups and the scope of government.

1. The power of special interest groups through PACs and other means has implications for the *scope of government*.
2. Most special interest groups strive to maintain established programs that benefit them—and thus promote government with a broader scope. Both President Carter and President Reagan remarked at the end of their time in office that their attempts to cut waste in federal spending had been frustrated by interest groups.
3. Conversely, one can make the argument that the growth of the scope of government in recent decades accounts for a good portion of the proliferation of interest groups. As the federal government has become involved in more areas, more interest groups have risen to influence policy.

## KEY TERMS AND CONCEPTS

**Actual group:** a group composed of those in the potential group who are members of the interest group.

**Amicus curiae briefs:** friend of the court briefs filed by interest groups to inform the court of their position and to state how their welfare would be affected by a ruling.

**Class action lawsuits:** a technique used by interest groups which allows groups of people with similar complaints to combine their grievances into a single suit.

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**Collective good:** something of value which cannot be withheld from individuals in the potential group.

**Electioneering:** helping sympathetic candidates get into office.

**Elite theory:** argues that because only a few groups have enough power to influence policy, power is concentrated into a few interlocking power centers.

**Free-rider problem:** a situation where individuals let others work to secure a collective good and then enjoy the benefit without contributing anything to the group effort.

**Hyperpluralist theory:** argues that too many groups are getting what they want at the expense of the unrepresented and that this behavior leads to incoherent public policy.

**Interest groups:** organizations where people with similar policy goals enter the political process to achieve those goals.

**Lobbying:** a communication by someone other than a citizen acting on his or her own behalf, directed to a governmental decision maker with the hope of influencing his or her decision.

**Olson's law of large groups:** suggests that the larger the group, the more difficult it will be to secure enough of the collective good to encourage participation.

**Pluralist theory:** argues that interest group activities provide additional representation and compete against each other to influence political outcomes.

**Political action committees:** a legal means for groups to participate in elections by contributing money.

**Potential group:** a group composed of all people who share some common interest.

**Public interest lobbies:** organizations that seek a collective good which does not only benefit their membership.

**Right-to-work law:** a state law that forbids the requirement of union membership as a condition of employment.

**Selective benefits:** these benefits are goods that a group can restrict to those who are members.

**Single-issue groups:** groups which have very narrow interests, shun compromise, and single-mindedly pursue goals.

**Subgovernments:** exclusive relationships composed of interest groups leaders, government agency personnel, and members of congressional committees who perform mutually beneficial services for each other at the public's expense.

**Union shop:** a rule established to prevent free-riders by requiring new employees to join the union where one has been granted bargaining rights.

## TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS

- Ask your class to distinguish between the problems of *honest lobbying* and *dishonest lobbying*. Suggest that they read the beginning segment of the chapter in preparation for this discussion.
- As a library assignment, have your class look up early news reports detailing Ralph Nader's fight with General Motors. Ask for an assessment of how they think the public (and Congress) would react to a similar situation today, contrasted with the original reaction. If Nader's *Unsafe at Any Speed* is still available in your library, place it on reserve so that interested students can examine it.

- Ask students what groups they belong to. Are any of these interest groups? Have students who belong to an interest group describe what it is, why they joined, and what benefits they receive from group membership. Then assign students to identify what groups represent their interests as students. Does it matter whether they are members of those groups or not? (Alternatively, you might ask students to query their parents about their group memberships.)
- Have the students choose one or two interest groups that have Web sites on the Internet. Over the course of the semester, have them track the messages posted and compare them to how those subjects are covered in the main-stream media. How do the two differ?
- Have students investigate a federal candidate of their choice by using FECA data on PAC contributions available on the Internet. Who contributed to “their” candidate? What is the typical size of contributions? Do these data provide any surprising findings? Students could also be asked to investigate the candidate’s challenger, and compare differences in the sources and levels of funding.

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## **MEDIA SUGGESTIONS**

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Lobbying Congress. Part of the “We the People” series. A 30-minute film on lobbying Congress. Films Incorporated.

Organizing America: The History of Trade Unions. 1994. This film examines the formation of collective action among workers in America as a force of social change. Insight Media.

Religious Fundamentalism. 1996. This film examines the rise of religious fundamentalism as organized interests and analyzes its impact on American political life. Films for the Humanities and Sciences.

The Religious Right. This program analyzes the impact of the conservative religious right on contemporary Republican policies. Films for the Humanities and Sciences.

The Unelected. Part of the “Power Game” series from PBS. This 1990 video examines the influence of power lobbies and the media on Capitol Hill politics.

# CHAPTER TWELVE: CONGRESS

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## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Describe the essential roles and functions of a senator and representative.
- Examine the role of money in congressional elections—where it comes from, how it is used, and what influence or effect it has.
- Summarize both the advantages and disadvantages of the growing influence of PACs.
- Contrast organizational style and procedures in the House of Representatives with those of the Senate.
- Identify the major leadership positions in the House and Senate and summarize the functions of each office.
- Review the four types of congressional committees and explain how they control the congressional agenda and guide legislation.
- Determine the significance of legislative procedures like the *filibuster* and *oversight*.
- Outline the process by which a bill would move through the legislative process, from introduction to the point where it is sent to the president.
- Contrast three theories of the role of a legislator: *trustee*, *instructed delegate*, and *politico*.
- Appraise the influence of lobbyists and interest groups on the legislative process.
- Identify both representative and unrepresentative aspects of Congress.
- Examine the effect that the U.S. Congress has had on the *scope* of government.

## CHAPTER OVERVIEW

### INTRODUCTION

The framers of the Constitution conceived of Congress as the center of policymaking in America. Although the prominence of Congress has fluctuated over time, in recent years Congress has been the true center of power in Washington. In addition to its central role in policymaking, Congress also performs important roles of representation.

Congressional tasks become more difficult each year. At the same time, critics charge Congress with being responsible for enlarging the scope of government, and public opinion is critical of the institution. Why would individuals want to serve in Congress? And are the critics' claims correct?

### THE REPRESENTATIVES AND SENATORS

Despite public perceptions to the contrary, *hard work* is perhaps the most prominent characteristic of a member of Congress' job. The typical representative is a member of about six committees and subcommittees; a senator is a member of about ten. There are also attractions to the job. Most important is *power*: Members of Congress make key decisions about important matters of public policy. They also receive a substantial salary and "perks."

The Constitution specifies only that members of the House must be at least 25 years old, American citizens for seven years, and must be residents of the states from which they are elected. Senators must be at least 30 years old, American citizens for nine years, and must be residents of the states from which they are elected.

Members come mostly from occupations with high status and usually have substantial incomes. Law is the dominant prior occupation, with other elite occupations also well represented. Women and other minorities are substantially underrepresented. Although members of Congress obviously cannot claim **descriptive representation** (representing their constituents by mirroring their personal, politically relevant characteristics), they may engage in **substantive representation** (representing the interests of groups).

### CONGRESSIONAL ELECTIONS

The most important fact about congressional elections is that **incumbents** usually win. Not only do more than 90 percent of the incumbents seeking reelection to the House of Representatives win, but most of them win with more than 60 percent of the vote. Even when challengers' positions on the issues are closer to the voters' positions, incumbents still tend to win. Voters are not very aware of how their senators and representatives actually vote.

Even though senators have a better-than-equal chance of reelection, senators typically win by narrower margins than House members. One reason for the *greater competition in the Senate* is that an entire state is almost always more diverse than a congressional district and thus provides more of a base for opposition to an incumbent.

Despite their success at reelection, incumbents have a strong feeling of vulnerability. They have been raising and spending more campaign funds, sending more mail to their constituents, traveling more to their states and districts, and staffing more local offices than ever before.

Members of Congress engage in three primary activities that increase the probability of their reelections: advertising, credit claiming, and position taking. Most congressional **advertising** takes place between elections and takes the form of *contact with constituents*. New technologies are supplementing traditional contacts with sophisticated database management, e-mails, automated phone calls, etc. **Credit claiming** involves *personal and district service*, notably through **casework** and **pork barrel** spending. Members of Congress must also engage in **position taking** on matters of public policy when they vote on issues and when they respond to constituents' questions about where they stand on issues.

When incumbents do face challengers, they are likely to be *weak opponents*. Seeing the advantages of incumbency, potentially effective opponents often do not want to risk challenging members of the House. However, an incumbent tarnished by scandal or corruption becomes vulnerable. Voters *do* take out their anger at the polls. Redistricting can also have an impact. Congressional membership is reapportioned after each federal census, and incumbents may be redistricted out of their familiar base of support. When an incumbent is not running for reelection and the seat is **open**, there is greater likelihood of competition. Most of the turnover of the membership of Congress is the result of vacated seats, particularly in the House.

Candidates spend enormous sums on campaigns for Congress. In the 2003–2004 election cycle, congressional candidates spent nearly \$1.2 billion dollars to win the election. In the House races in 2004, the typical incumbent outspent the typical challenger by a ratio of 15 to 1. Spending is greatest when there is no incumbent and each party feels it has a chance to win. In open seats, the candidate who spends the most usually wins.

Although most of the money spent in congressional elections comes from individuals, about one-fourth of the funds raised by candidates for Congress come from **Political Action Committees (PACs)**. PACs seek *access* to policymakers. Thus, they give most of their money to incumbents, who are already heavily favored to win. Critics of PACs are convinced that PACs are not trying to elect but to buy influence.

Prolific spending in a campaign is no guarantee of success. Money is important for challengers, however. The more they spend, the more votes they receive. Money buys them name recognition and a chance to be heard. In contests for open seats, the candidate who spends the most usually wins.

At the base of every electoral coalition are the members of the candidate's party in the constituency. Most members of Congress represent constituencies in which their party is in the majority. It is reasonable to ask why anyone challenges incumbents at all. An incumbent tarnished by scandal or corruption becomes instantly vulnerable. Incumbents may also be redistricted out of their familiar turfs.

Finally, major political tidal waves occasionally roll across the country, leaving defeated incumbents in their wake. This is especially likely when national issues dominate the elections, as occurred in 1994 and 2006.

When an incumbent is not running for reelection and the seat is open, there is greater likelihood of competition. Most of the turnover in the membership of Congress results from vacated seats, particularly in the House.

The high reelection rate of incumbents brings stability and policy expertise to Congress. At the same time, it also may insulate them from the winds of political change.

## HOW CONGRESS IS ORGANIZED TO MAKE POLICY

A bicameral legislature is a legislature divided into two houses. The U.S. Congress is bicameral, as is every American state legislature except Nebraska's, which has one house (unicameral).

*Making policy* is the toughest of all the legislative roles. Congress is *a collection of generalists trying to make policy on specialized topics*. The complexity of today's issues requires more specialization. Congress tries to cope with these demands through its elaborate committee system.

The House and Senate each *set their own agenda*. Both use committees to narrow down the thousands of bills introduced. The House is much larger and *more institutionalized* than the Senate. Party loyalty to leadership and party-line voting are more common than in the Senate. One institution unique to the House is the **House Rules Committee**, which reviews most bills coming from a House committee before they go to the full House. Each bill is given a "rule," which schedules the bill on the calendar, allots time for debate, and sometimes even specifies what kind of amendments may be offered. The Senate is *less disciplined* and *less centralized* than the House. Today's senators are more equal in power than representatives are. Party leaders do for Senate scheduling what the Rules Committee does in the House. One activity unique to the Senate is the **filibuster**. This is a tactic by which opponents of a bill use their right to unlimited debate as a way to prevent the Senate from ever voting on a bill.

Much of the leadership in Congress is really *party leadership*. Those who have the real power in the congressional hierarchy are those whose party put them there. Power is no longer in the hands of a few key members of Congress who are insulated from the public. Instead, power is widely dispersed, requiring leaders to appeal broadly for support.

Chief among leadership positions in the House of Representatives is the **Speaker of the House**. This is the only legislative office mandated by the Constitution. Today the Speaker presides over the House when it is in session; plays a major role in making committee assignments, which are coveted by all members to ensure their electoral advantage; appoints or plays a key role in appointing the party's legislative leaders and the party leadership staff; and exercises substantial control over which bills get assigned to which committees. The Speaker's principal partisan ally is the **majority leader**—a job that has been the main stepping stone to the Speaker's role. The majority leader is responsible for scheduling bills in the House. Working with the majority leader are the party's **whips**, who carry the word to party troops, counting votes before they are cast and leaning on waverers whose votes are crucial to a bill. The Constitution makes the vice president of the United States the president of the Senate; this is the vice president's only constitutionally defined job. The Senate majority leader aided by the majority whips is a party's workhorse, corralling votes,

scheduling the floor action, and influencing committee assignments. The majority leader's counterpart in the opposition, the minority leader, has similar responsibilities.

The minority party, led by the minority leader, is also organized, poised to take over the Speakership and other key posts if it should win a majority in the House.

The structure of Congress is so complex that it seems remarkable that legislation gets passed at all. Its bicameral division means that bills have two sets of committee hurdles to clear. Recent reforms have decentralized power, and so the job of leading Congress is more difficult than ever. Congressional leaders are not in the strong positions they occupied in the past. Leaders are elected by their fellow party members and must remain responsive to them.

Most of the real work of Congress goes on in committees and subcommittees. **Committees dominate congressional policymaking** at all stages. They regularly hold hearings to investigate problems and possible wrongdoing, and to investigate the executive branch. Committees can be grouped into four types: **standing committees** (by far the most important), **joint committees**, **conference committees**, and **select committees**.

More than 11,000 bills are submitted by members every two years, which must be sifted through and narrowed down by the committee process. Every bill goes to a standing committee; usually only bills receiving a favorable committee report are considered by the whole House or Senate. New bills sent to a committee typically go directly to **subcommittee**, which can hold **hearings** on the bill. The most important output of committees and subcommittees is the “**marked-up**” (revised and rewritten) bill, submitted to the full House or Senate for consideration. Members of the committee will usually serve as “*floor managers*” of the bill when the bill leaves committee, helping party leaders secure votes for the legislation. They will also be *cue-givers* to whom other members turn for advice. When the two chambers pass different versions of the same bill, some committee members will be appointed to the conference committee.

**Legislative oversight**—the process of *monitoring the bureaucracy and its administration of policy* is one of the checks Congress can exercise on the executive branch. Oversight is handled primarily through hearings. Members of committees constantly monitor how a bill is implemented.

Although every committee includes members from both parties, a majority of each committee's members—as well as its chair—comes from the majority party. **Committee chairs** are the most important influence on the committee agenda. They play dominant—though no longer monopolistic—roles in scheduling hearings, hiring staff, appointing subcommittees, and managing committee bills when they are brought before the full House. Until the 1970s, committee chairs were always selected through the **seniority system**; under this system, the member of the majority party with the longest tenure on the committee would automatically be selected. In the 1970s, Congress faced a revolt of its younger members, and both parties in each house permitted members to *vote* on committee chairs. Today, seniority remains the *general rule* for selecting chairs, but there have been notable exceptions.

The explosion of *informal groups* in Congress has made the representation of interests in Congress a more direct process (cutting out the middleman, the lobbyist). In recent years, a growing number of **caucuses** have dominated these informal groups. Also increasing in

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recent years is the size of, and reliance of members of Congress on, their personal and committee staffs, along with staff agencies such as the *Congressional Research Service*, the *General Accounting Office* and the *Congressional Budget Office*.

### THE CONGRESSIONAL PROCESS

Approximately 5,500 **bills** are introduced annually, or 11,000 in each two-year session of Congress. Most bills are quietly killed off early in the legislative process. In both chambers, party leaders involve themselves in the legislative process on major legislation earlier and more deeply, using special procedures to aid the passage of legislation. In the House, special rules from the Rules Committee have become powerful tools for controlling floor consideration of bills and sometimes for shaping the outcomes of votes. Often party leaders from each chamber negotiate among themselves instead of creating conference committees. Party leaders also use *omnibus* legislation that addresses numerous and perhaps unrelated subjects, issues, and programs to create winning coalitions. In the Senate, leaders have less leverage and *individual* senators have retained great opportunities for influence. As a result, it is often more difficult to pass legislation in the Senate.

Presidents are partners with Congress in the legislative process, but all presidents are also Congress' adversaries in the struggle to control legislative outcomes. Presidents have their own *legislative agenda*, based in part on their party's platform and their electoral coalition. The president's task is to persuade Congress that his agenda should also be Congress' agenda.

Presidential success rates for influencing congressional votes vary widely among presidents and within a president's tenure in office. Presidents are usually most successful early in their tenures and when their party has a majority in one or both houses of Congress. Regardless, in almost any year, the president will lose on many issues.

Parties are most cohesive when Congress is electing its official leaders. For example, a vote for the Speaker of the House is a straight party-line vote. On other issues, the party coalition may not stick together. Votes on issues like civil rights have shown deep divisions within each party. Differences between the parties are sharpest on questions of social welfare and economic policy.

In the last few decades, Congress has become more ideologically polarized and more likely to vote according to the two party lines. There are fewer conservative Democrats (often in the South) who often sided with Republicans, and fewer moderate Republicans (often in the Northeast) who would occasionally side with Democrats. However, compared to multiparty parliamentary systems such as the Israeli Knesset, the majority party has the ability to lead in a stable and consistent fashion—until, at least, the next election.

There are a variety of views concerning how members of Congress should fulfill their function of *representation*. The eighteenth-century English legislator Sir Edmund Burke favored the concept of legislators as *trustees*, using their best judgment to make policy in the interests of the people. The concept of representatives as *instructed delegates* calls for representatives to mirror the preferences of their constituents. Members of Congress are actually *politicos*, combining the trustee and instructed delegate roles as they attempt to be both representatives and policymakers.

The most effective way for constituents to influence congressional voting is to elect candidates who match their policy positions, since winners of congressional elections tend to vote on roll calls pretty much as they said they would. On some controversial issues, it is perilous for a legislator to ignore constituent opinion.

**Lobbyists**—some of them former members of Congress—represent the interests of their organizations. They also can provide legislators with crucial information, and often can give assurances of financial aid in the next campaign. There are more than 35,000 individuals in Washington, representing 12,000 organizations. The bigger the issue, the more lobbyists are involved in it. A 1995 law passed by Congress requires anyone hired to lobby members of Congress, congressional staff members, White House officials, and federal agencies to report what issues they were seeking to influence, how much they were spending on the effort, and the identities of their clients. Congress also placed severe restrictions on the gifts, meals, and expense-paid travel that public officials may accept from lobbyists.

## UNDERSTANDING CONGRESS

The central legislative dilemma for Congress is combining the faithful *representation of constituents* with the making of *effective public policy*. Supporters see Congress as a forum in which many interests compete for a spot on the policy agenda and over the form of a particular policy. Critics wonder if Congress is so responsive to so many interests that policy is too uncoordinated, fragmented, and decentralized. Some observers feel that Congress is so representative that it is incapable of taking decisive action to deal with difficult problems.

In a large democracy, the success of democratic government depends on the quality of representation. Congress clearly has some undemocratic and unrepresentative features: its members are an American elite; its leadership is chosen by its own members; voters have little direct influence over the people who chair key committees or lead congressional parties. There is also evidence to support the view that Congress is representative: Congress does try to listen to the American people; the election does make a difference in how votes turn out; which party is in power affects policies; linkage institutions do link voters to policymakers.

If Congress is responsive to a multitude of interests and those interests desire government policies to aid them in some way, does the nature of Congress predispose it to continually increase the scope of the public sector? Members of Congress vigorously protect the interests of their constituents. At the same time, there are many members who agree with Ronald Reagan that government is not the answer to problems but rather *is* the problem. These individuals make careers out of fighting against government programs (although these same senators and representatives typically support programs aimed at aiding *their* constituents). Congress does not impose programs on a reluctant public; instead, it responds to the public's demands for them.

## **CHAPTER OUTLINE**

### I. INTRODUCTION

- A. The framers of the Constitution conceived of Congress as the *center of policymaking* in America.

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1. Although the prominence of Congress has fluctuated over time, in recent years Congress has been the true center of power in Washington.
2. Congress' tasks become more difficult each year. The movement of legislation through the congressional labyrinth has never been more complicated, and just finding time to debate the issues has become increasingly difficult.
3. Some critics charge Congress with being the source of government expansion.

## II. THE REPRESENTATIVES AND SENATORS

- A. The job.
  1. Despite public perceptions to the contrary, *hard work* is perhaps the most prominent characteristic of a member of Congress' job.
    - a. The typical representative is a member of about six committees and subcommittees; a senator is a member of about ten.
    - b. Members are often scheduled to be in two places at the same time.
  2. There are also *attractions* to the job.
    - a. The most important is *power*. Members of Congress make key decisions about important matters of public policy.
    - b. Members of Congress receive substantial salary and perquisites ("perks").
  3. Despite the salaries, the perks, and the thousands of staff members, Congress is relatively inexpensive. Per citizen, Americans annually spend about the equivalent of the cost of a hamburger, fries, and cola on running the nation's legislature.
- B. The people.
  1. There are 535 members of Congress—100 in the Senate (two from each state) and 435 in the House of Representatives.
  2. The Constitution specifies only that members of the House must be at least 25 years old, American citizens for seven years, and must be residents of the states from which they are elected. Senators must be at least 30 years old, American citizens for nine years, and must be residents of the states from which they are elected.
  3. Members come mostly from occupations with high status and usually have substantial incomes. Law and business are the dominant prior occupations, with other elite occupations also well represented.
  4. Representation of minorities.
    - a. Less than 10 percent of voting members of the House are African American (compared with about 13 percent of the total population), and most of them are elected from overwhelmingly Black constituencies.
    - b. There are 23 Hispanics in the House and three in the Senate.
    - c. Women are the most underrepresented demographic group in Congress; more than half of the population is female, but only 16 senators and 71 voting representatives are female.
  5. Although members of Congress obviously cannot claim **descriptive representation** (representing their constituents by mirroring their personal, politically relevant characteristics), they may engage in **substantive representation** (representing the interests of groups).

### III. CONGRESSIONAL ELECTIONS

#### A. Who wins?

1. **Incumbents** are those already holding office. The most important fact about congressional elections is that *incumbents usually win*.
  - a. Even in a year of great political upheaval such as 1994, in which the Republicans gained eight seats in the Senate and 53 seats in the House, 92 percent of incumbent representatives won their bids for reelection.
  - b. National issues came to fore similarly in 2006, allowing Democrats to regain the majority of both houses, but few incumbents lost their seats.
2. House of Representatives.
  - a. Not only do more than 90 percent of the incumbents seeking reelection to the House of Representatives win, but most of them win with more than 60 percent of the vote.
  - b. Even when challengers' positions on the issues are closer to the voters' positions, incumbents still tend to win.
  - c. Thus, the most important resource to ensure an opponent's defeat is simply to be the incumbent.
3. Senate.
  - a. Even though senators have a better-than-equal chance of reelection, senators typically win by narrower margins than House members.
  - b. One reason for the *greater competition in the Senate* is that an entire state is almost always more diverse than a congressional district and thus provides more of a base for opposition to an incumbent.
  - c. Senators have less personal contact with their constituents and receive more coverage in the media than representatives do (and are therefore more likely to be held accountable on controversial issues).
  - d. Senators tend to draw more visible challengers who are already known to voters and who have substantial financial backing.
4. Despite their success at reelection, incumbents have a strong feeling of vulnerability; thus, they have been raising and spending more campaign funds, sending more mail to their constituents, traveling more to their states and districts, and staffing more local offices than ever before.

#### B. The advantages of incumbents.

1. Voters are not very aware of how their senators and representatives actually vote.
2. Stories of presidential **coattails** (the theory that other candidates could ride into office by clinging to presidential coattails) do not seem to hold up in practice.
3. Members of Congress do not gain or lose very much from the fluctuations of the economy.
4. Members of Congress engage in three primary activities that increase the probability of their reelections: advertising, credit claiming, and position taking.
  - a. Most congressional **advertising** takes place between elections and takes the form of *contact with constituents*: members concentrate on staying visible, and trips to the home district (or state) are frequent. New technologies are supplementing traditional contacts with sophisticated database management, e-mails, automated phone calls, etc.
  - b. **Credit claiming** involves *personal and district service*. There are two ways members of Congress can *service the constituency*: casework and the pork barrel.

- (1) **Casework** is helping constituents as individuals, such as cutting through bureaucratic red tape.
  - (2) The **pork barrel** refers to expenditures on federal projects, grants, and contracts for cities, businesses, colleges, and institutions. Because credit claiming is so important to reelection, members of Congress rarely pass up the opportunity to increase federal spending in their state or district.
  - (3) In recent years, more funds have been “**earmarked**,” or dedicated to a specific district (about 15,000 earmarks in 2005, amounting to \$53 billion).
  - c. Members of Congress must also engage in **position taking** on matters of public policy when they vote on issues and when they respond to constituents’ questions about where they stand on issues. The positions they take may make a difference in the outcome of an election, especially if the issues are on matters salient to voters and their stands are out of line with those of a majority of their constituents (especially in the Senate, where issues are likely to play a greater role than in House elections).
5. Weak opponents.
    - a. Incumbents are likely to face weak opponents.
    - b. Seeing the advantages of incumbency, potentially effective opponents often do not want to risk challenging members of the House.
- C. The role of party identification.
    1. Although party loyalty at the voting booth is not as strong as it was a generation ago, it is still a good predictor of voting behavior.
    2. Most members of Congress represent constituencies in which their party is in the majority.
  - D. Defeating incumbents.
    1. An incumbent tarnished by scandal or corruption becomes vulnerable. Voters *do* take out their anger at the polls.
    2. Congressional membership is reapportioned after each federal census, and incumbents may be redistricted out of their familiar base of support. The majority party in the state legislature is more likely to move two of the opposition party’s representatives into the same district than two of its own.
  - E. Money in congressional elections.
    1. Candidates spend enormous sums on campaigns for Congress. In the 2003–2004 election cycle, congressional candidates spent nearly a \$1.2 billion dollars to win the election. In the House races in 2002, the typical incumbent outspent the typical challenger by a ratio of 15 to one.
    2. Spending is greatest when there is no incumbent and each party feels it has a chance to win.
    3. Critics of **Political Action Committees (PACs)** offer substantive criticism of the present system of campaign finance. (See Chapter 11.)
      - a. Although most of the money spent in congressional elections comes from individuals, about one-fourth of the funds raised by candidates for Congress comes from **Political Action Committees (PACs)**.
      - b. Each PAC is limited to an expenditure of \$5,000 per candidate (most give less), but some organized interests *circumvent the limitations* on contributions by creating or contributing to several PACs.

- c. PACs seek *access* to policymakers. Thus, they give most of their money to incumbents who are already heavily favored to win. Critics of PACs are convinced that PACs are not trying to elect but to buy influence.
  - 4. Spending a lot of money in a campaign is no guarantee of success. In 2004 Tom Daschle spent about than \$20 million to retain his Senate seat in South Dakota and lost.
  - 5. Money is *important for challengers*. Money buys them name recognition and a chance to be heard.
  - 6. When an incumbent is not running for reelection and the seat is **open**, there is greater likelihood of competition.
    - a. Most of the turnover of the membership of Congress is the result of vacated seats, particularly in the House.
    - b. In open seats, the candidate who spends the most usually wins.
- F. Stability and change.
- 1. As a result of incumbents usually winning reelection, there is some stability in the membership of Congress. This provides the opportunity for representatives and senators to *gain some expertise* in dealing with complex questions of public policy. It also *insulates* them from political change and makes it more difficult for citizens to “send a message to Washington” with their votes.
  - 2. Some reformers have proposed *term limitations* laws for senators and representatives.

#### IV. HOW CONGRESS IS ORGANIZED TO MAKE POLICY

- A. Making policy is the toughest of all the legislative roles. Congress is a collection of generalists trying to make policy on specialized topics. The complexity of today’s issues requires more *specialization*. Congress tries to cope with these demands through its elaborate committee system.
- B. American bicameralism.
  - 1. A **bicameral legislature** is one divided into two houses. The U.S. Congress and every American state legislature except Nebraska’s are bicameral. Each state is guaranteed two senators in the U.S. Congress, with representation in the House of Representatives based on population.
  - 2. The framers of the Constitution thought the Senate would protect elite interests. They gave the House (which they expected to be closest to the masses) the power of initiating all revenue bills and of impeaching officials; they gave the Senate the responsibility for ratifying all treaties, for confirming important presidential nominations, and for trying impeached officials.
  - 3. The House and Senate each set their own agenda. Both use committees to narrow down the thousands of bills introduced.
  - 4. House of Representatives
    - a. The House is much larger and *more institutionalized* than the Senate.
    - b. Party loyalty to leadership and party-line voting are more common than in the Senate.
    - c. Debate can be ended by a simple majority vote.
    - d. One institution unique to the House is the **House Rules Committee**, which reviews most bills coming from a House committee before they go to the full House. Each bill is given a “rule,” which schedules the bill on the calendar, allots time for debate, and sometimes even specifies what kind of

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amendments may be offered. Members are appointed by the Speaker of the House.

5. Senate.
  - a. The Senate is *less disciplined* and *less centralized* than the House. Today's senators are more equal in power than representatives are.
  - b. Party leaders do for Senate scheduling what the Rules Committee does in the House.
  - c. The **filibuster** permits *unlimited debate* on a bill. In practice, this sometimes means that opponents of a bill may try to "talk it to death." At the present time, 60 members present and voting can halt a filibuster by invoking **cloture** (closure) on debate.
- C. Congressional leadership.
  1. Much of the leadership in Congress is really *party leadership*. Those who have the real power in the congressional hierarchy are those whose party put them there.
  2. Power is no longer in the hands of a few key members of Congress who are insulated from the public. Instead, power is widely dispersed, requiring leaders to appeal broadly for support.
  3. House leadership.
    - a. The **Speaker of the House** is second (after the vice president) in the line to succeed a president who resigns, dies in office, or is impeached.
      - (1) At one time, the Speaker had almost autocratic powers. Many of the powers were removed from the Speaker's control in 1910 and given to committees; some of the powers were later restored.
      - (2) *Formal powers* of the Speaker today include: presides over the House when it is in session; plays a major role in making committee assignments; appoints or plays a key role in appointing the party's legislative leaders and the party leadership staff; exercises substantial control over which bills get assigned to which committees.
      - (3) The Speaker also has a great deal of *informal power* both inside and outside Congress.
    - b. The Speaker's principal partisan ally is the **majority leader**. The majority leader is responsible for rounding up votes on party legislation and for scheduling bills in the House.
    - c. Party **whips** work with the majority leader to round up votes and to report the views and complaints of the party rank-and-file back to the leadership.
    - d. The *minority party* is also organized (with a **minority leader** and **whips**), and is prepared to take over the key posts if it should win a majority in the House.
  4. Senate leadership.
    - a. The Constitution names the vice president as **president of the Senate**. Vice presidents typically have little power or influence in the Senate, except in the rare case when their vote can break a tie.
    - b. The **Senate majority leader**—aided by the majority whips—is the position of real power and authority in the Senate. He rounds up votes, schedules the floor action, and influences committee assignments.
  5. Congressional leadership in perspective.
    - a. The structure of Congress is so complex that it seems remarkable that legislation gets passed at all. Its *bicameral division* means that bills have

- two sets of committee hurdles to clear. Recent reforms have *decentralized power*, and so the job of leading Congress is more difficult than ever.
- b. Congressional leaders are not in the strong positions they occupied in the past. Leaders are elected by their fellow party members and must remain responsive to them.
  - c. Party leadership—at least in the House—*has* been more effective in recent years. Following the Republican takeover in 1995, Speaker Newt Gingrich began centralizing power and exercising vigorous legislative leadership.
- D. The committees and subcommittees.
- 1. Most of the real work of Congress goes on in committees.
    - a. Committees *dominate congressional policymaking*.
    - b. They regularly hold hearings to investigate problems and possible wrongdoing, and to investigate the executive branch.
    - c. They *control the congressional agenda and guide legislation* from its introduction to its send-off for the president's signature.
  - 2. Committees can be grouped into four types: *standing committees* (by far the most important), *joint committees*, *conference committees*, and *select committees*.
    - a. **Standing committees** are *permanent subject-matter* committees, formed to handle bills in different policy areas. Each chamber has its own committees and subcommittees. In the 103rd Congress, the typical representative served on two committees and four subcommittees, while senators averaged three committees and seven subcommittees each.
    - b. **Joint committees** are study committees that exist in a few policy areas, with membership drawn from both the Senate and the House.
    - c. **Conference committees** are formed to work out the differences when different versions of a bill are passed by the two houses. Membership is drawn from both houses.
    - d. **Select committees** are *temporary* committees appointed for a specific (“select”) purpose, such as the Senate select committee that looked into Watergate.
  - 3. The committees at work: legislation and oversight.
    - a. More than 11,000 bills are submitted by members every two years, which must be sifted through and narrowed down by the committee process. Every bill goes to a standing committee; usually only bills receiving a *favorable committee report* are considered by the whole House or Senate.
    - b. New bills sent to a committee typically go directly to **subcommittee**, which can hold **hearings** on the bill. The most important output of committees and subcommittees is the “**marked-up**” (revised and rewritten) bill, submitted to the full House or Senate for consideration.
    - c. Members of the committee will usually serve as “*floor managers*” of the bill when the bill leaves committee, helping party leaders secure votes for the legislation. They will also be *cue-givers* to whom other members turn for advice. When the two chambers pass different versions of the same bill, some committee members will be appointed to the conference committee.
    - d. **Legislative oversight**—the process of *monitoring the bureaucracy and its administration of policy*—is one of the *checks* Congress can exercise on the executive branch.

- (1) Oversight is handled primarily through hearings. Members of committees constantly monitor how a bill is implemented. The process enables Congress to exert pressure on executive agencies, or even to cut their budgets in order to secure compliance with congressional wishes.
  - (2) Typically, the majority party will determine whether or not to hold hearings, since it controls the majority of committee seats and the majority of votes on the floor.
  - (3) Congressional oversight occasionally captures public attention, such as congressional investigations into the Watergate scandal and the 1987 Iran-Contra affair.
  - (4) Congress keeps tabs on more routine activities of the executive branch through its committee *staff members*, who have *specialized expertise* in the fields and agencies that their committees oversee (and who maintain an extensive network of formal and informal *contacts* with the bureaucracy).
4. Getting on a committee.
    - a. Just after election, new members write to the party's congressional leaders and members of their state delegation, indicating their committee preferences. Each party in each house has a slightly different way of picking its committee members, but party leaders almost always play a key role.
    - b. Members seek committee assignments that will help them achieve three goals: reelection, influence in Congress, and the opportunity to make policy in areas they think are important.
    - c. Although every committee includes members from both parties, *a majority of each committee's members*—as well as its *chair*—come from the majority party.
  5. Getting ahead on the committee: chairs and the seniority system.
    - a. **Committee chairs** are the most important influencers of the committee agenda. They play dominant—though no longer monopolistic—roles in scheduling hearings, hiring staff, appointing subcommittees, and managing committee bills when they are brought before the full House.
    - b. Until the 1970s, committee chairs were always selected through the **seniority system**—the member of the majority party with the longest tenure on the committee would automatically be selected.
      - (1) Chairs were so powerful that they could single-handedly “bottle up” legislation in committee.
      - (2) The system also gave a decisive edge to members from “**safe districts**,” where members were seldom challenged for reelection.
    - c. In the 1970s, Congress faced a revolt of its younger members.
      - (1) Both parties in both houses permitted members to *vote* on committee chairs.
      - (2) Today, seniority remains the *general rule* for selecting chairs, but there have been notable exceptions.
      - (3) These and other reforms have somewhat reduced the clout of the chairs.
- E. The mushrooming caucuses: the informal organization of Congress.

1. The explosion of *informal groups* in Congress has made the representation of interests in Congress a more direct process (cutting out the middleman, the lobbyist).
  2. In recent years, a growing number of caucuses have dominated these traditional informal groups. A **caucus** is a grouping of members of Congress sharing some interest or characteristic, such as the Black Caucus, the Hispanic Caucus, the Congresswomen's Caucus, and the Sunbelt Caucus. Caucuses include regional groupings, ideological groupings, and economic groupings.
  3. The proliferation of congressional caucuses (currently more than 300 of them) gives members of Congress an informal, yet powerful, means of shaping the policy agenda. Composed of legislative insiders who share similar concerns, the caucuses exert a much greater influence on policymaking than most citizen-based interest groups can.
- F. Congressional Staff.
1. Most staff members work in the personal offices of individual members. In total, about 12,000 individuals serve on the personal staffs of members of Congress. Nearly one-half of these House staffers and nearly one-third of the Senate personal staff work in members' offices in their constituencies, not in Washington. This makes it easier for people to make contact with the staff.
  2. The committees of the House and Senate employ another 2,000 staff members. These staff members organize hearings, research legislative options, draft committee reports on bills, write legislation, and keep tabs on the activities of the executive branch.
  3. Congress has three important staff agencies that aid it in its work.
    - a. The first is the *Congressional Research Service* (CRS), administered by the Library of Congress. The CRS uses researchers, many with advanced degrees and highly developed expertise, to respond to more than 250,000 requests yearly for information.
    - b. The *General Accounting Office* (GAO), with more than 3,200 employees, helps Congress perform its oversight functions by reviewing the activities of the executive branch to see if it is following the congressional intent of laws and by investigating the efficiency and effectiveness of policy implementation.
    - c. The *Congressional Budget Office* (CBO) analyzes the president's budget and makes economic projections about the performance of the economy, the costs of proposed policies, and the economic effects of taxing and spending alternatives.

## V. THE CONGRESSIONAL PROCESS

- A. Approximately 5,500 bills are introduced annually. A **bill** is a *proposed law*, drafted in precise, legal language.
1. Anyone can draft a bill, but only members of the House or Senate can formally submit a bill for consideration. The White House and interest groups are common *sources* of bills.
  2. Most bills are quietly killed off early in the legislative process.
  3. Legislators often use **riders** to pass a bill that does not have enough support on its own to pass.
- B. Presidents and Congress: partners and protagonists.

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1. Presidents are *partners* with Congress in the legislative process, but all presidents are also Congress' *adversaries* in the struggle to control legislative outcomes.
  2. Presidents have their own *legislative agenda*, based in part on their party's platform and their electoral coalition. Political scientists sometimes call the president the **chief legislator**; the president's task is to persuade Congress that his agenda should also be Congress' agenda.
  3. Presidents have many resources with which to influence Congress. They may try to influence members directly, but more often will leave White House lobbying to the congressional liaison office and work primarily through regular meetings with the party's leaders in the House and Senate.
  4. Rather than *creating* the conditions for important shifts in public policy, an effective president is a *facilitator*, who works at the margins of coalition building to recognize and exploit opportunities presented by a favorable configuration of political forces.
  5. Presidential success rates for influencing congressional votes vary widely among presidents and within a president's tenure in office. Presidents are usually *most successful early in their tenures* and when their party has a majority in one or both houses of Congress. Regardless, in almost any year, *the president will lose on many issues*.
- C. Party, constituency, and ideology.
1. Party influence.
    - a. Parties are *most cohesive* when Congress is *electing its official leaders*. A vote for the Speaker of the House is a straight party-line vote. On other issues, the party coalition may not stick together. Votes on issues like civil rights have shown deep divisions within each party.
    - b. Differences between the parties are sharpest on questions of social welfare and economic policy.
    - c. Congress has become more ideologically polarized and more likely to vote according to the two party lines. There are fewer conservative Democrats (often in the South) who often sided with Republicans, and fewer moderate Republicans (often in the Northeast) who would occasionally side with Democrats.
    - d. However, compared to multiparty parliamentary systems such as the Israeli Knesset, the majority party has the ability to lead in a stable and consistent fashion—until, at least, the next election.
    - e. Party leaders in Congress are limited in their powers to obtain support from party members. They cannot remove a recalcitrant member from the party, although they do have some influence (such as committee assignments). Recently, the parties—especially the Republicans—have been a growing source of money for congressional campaigns.
  2. Constituency versus ideology.
    - a. There are a variety of views concerning how members of Congress should fulfill their function of *representation*.
      - (1) The eighteenth-century English legislator Sir Edmund Burke favored the concept of legislators as **trustees**, using their *best judgment* to make policy in the interests of the people.
      - (2) The concept of representatives as **instructed delegates** calls for representatives to *mirror the preferences of their constituents*.

- (3) Members of Congress are actually **politicos**, *combining the trustee and instructed delegate roles* as they attempt to be both representatives and policymakers.
  - b. Winners of congressional elections tend to vote on roll calls pretty much as they said they would. The most effective way for constituents to influence congressional voting is to elect candidates who match their policy positions.
  - c. On some controversial issues, it is perilous for a legislator to ignore constituent opinion. Representatives and senators have recently been concerned about the many new *single-issue groups* that will vote exclusively on a candidate's position on a single issue (such as gun control), and not on the member's total record.
  - d. Members of Congress do pay attention to voters, especially on visible issues, but most issues do not interest voters. However, it is difficult for legislators to *know what the people want*. On less visible issues, other factors (such as lobbyists and the member's individual ideologies) influence policy decisions.
- D. Lobbyists and interest groups.
1. **Lobbyists**—some of them former members of Congress—represent the interests of their organization. They also can provide legislators with crucial information, and often can give assurances of financial aid in the next campaign.
  2. There are more than 35,000 individuals in Washington representing 12,000 organizations. The bigger the issue, the more lobbyists are involved in it.
  3. Paid lobbyists whose principal purpose is to influence or defeat legislation must *register and file reports* with the secretary of the Senate and the clerk of the House.
    - a. A 1995 lobbyist regulation law requires anyone hired to lobby members of Congress, congressional staff members, White House officials, and federal agencies to report what issues they were seeking to influence, how much they were spending on the effort, and the identities of their clients.
    - b. In theory, the disclosure requirements would prevent shady deals and curb the influence of special interests.

## VI. UNDERSTANDING CONGRESS

- A. Congress and democracy.
1. In a large democracy, the success of democratic government depends on the quality of representation.
  2. Congress clearly has some undemocratic and unrepresentative features: its members are an American elite; its leadership is chosen by its own members; voters have little direct influence over the people who chair key committees or lead congressional parties.
  3. There is also evidence to support the view that Congress is representative: Congress does try to listen to the American people; the election does make a difference in how votes turn out; which party is in power affects policies; linkage institutions do link voters to policymakers. Members of Congress are responsive to the people, if the people make clear what they want.
- B. Reforming Congress.
1. Reformers have tried to promote a more open, democratic Congress. To a large degree, they have succeeded.

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2. In the 1950s, the real power was at the top. Committee chairs were automatically selected by seniority, and their power on the committee was unquestioned.

### C. Democratization.

1. Lyndon Johnson started the reform process during his tenure as majority leader when he implemented the “*Johnson rule*,” which gave each senator a seat on at least one key committee. This reform allowed junior members more room at the top.
2. By the 1970s, the reform movement tried to create more democracy by spreading power around. Chairs were elected by the majority party (some chairs were replaced), and the power of committee chairs was reduced. Subcommittees became the new centers of power in Congress.
3. The proliferation of informal caucuses has tended to decentralize power in Congress, although recent reforms by the Republicans may change this.

### D. Representativeness versus effectiveness.

1. The central legislative dilemma for Congress is combining the faithful *representation of constituents* with the making of *effective public policy*.
2. Supporters see Congress as a forum in which many interests compete for a spot on the policy agenda and over the form of a particular policy (as the founders intended).
3. Critics wonder if Congress is so responsive to so many interests that policy is too uncoordinated, fragmented, and decentralized. Some observers feel that Congress is so representative that it is *incapable of taking decisive action* to deal with difficult problems.

### E. Congress and the scope of government.

1. Americans have contradictory preferences regarding public policy. They want to balance the budget and pay low taxes, but they also support most government programs. These *contradictory preferences* may help explain the pervasive ticket splitting in national elections, which has frequently led to divided government.
2. Big government helps members of Congress get reelected and even gives them good reason to support making it bigger. However, Congress does not impose programs on a reluctant public; instead, it responds to the public’s demands for them.

## **KEY TERMS AND CONCEPTS**

**Bicameral legislature:** a legislature that is divided into two chambers.

**Bill:** a proposed law, drafted in precise, legal language.

**Casework:** helping constituents as individuals cut through bureaucratic red tape to receive their rightful benefits.

**Caucus:** a grouping of members of Congress sharing some interest or characteristic.

**Committee chairs:** the most important influences on the congressional agenda; they schedule hearings, hire staff, appoint subcommittees, and manage committee bills.

**Conference committee:** a special committee formed when each chamber passes a bill in different forms, composed of members of each chamber who were appointed by each chamber’s leaders to work out a compromise bill.

**Filibuster:** is unlimited debate, is unique to the Senate, and can only be ended by a vote for cloture by 60 members.

**House Rules Committee:** a committee unique to the House, which is appointed by the Speaker of the House, reviews most bills coming from a House committee for a floor vote, and which gives each bill a rule.

**Incumbents:** people who already hold office.

**Joint committees:** special committees composed of members from each chamber.

**Legislative oversight:** the process of monitoring the bureaucracy and its administration of policy.

**Majority leader:** The Speaker's principal partisan ally who is responsible for soliciting support for the party's position on legislation.

**Minority leader:** is the minority party's counterpart to the majority party's leadership.

**Pork barrel:** list of federal projects, grants, and contracts available to cities, businesses, colleges, and institutions.

**Select committees:** appointed for a specific purpose.

**Seniority system:** a system used until the 1970s where majority party members who had served on their committees the longest, regardless of party loyalty, mental state, or competence, were automatically appointed chair of the committee.

**Speaker of the House:** is mandated by the Constitution, is next in line after the vice president to succeed a president who is unable to fulfill his/her term and who presides over the House.

**Standing committees:** committees formed in each chamber to handle bills in different policy areas.

**Whip:** The majority or minority leader's principle tool for securing support for legislation and who lobby partisans for support.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Distribute several copies of the *Congressional Record* in your class. Ask students to look for the main features of the *Record*: the Proceedings of the House and Proceedings of the Senate, which contain an official account of the floor proceedings of each chamber; the "Extension of Remarks," which contains various documents (some of them extraneous) inserted by members; and the "Daily Digest," which contains a list of meetings and hearings of committees and subcommittees and summarizes the day's congressional activities. Point out the black dots known as "bullets" that are used to designate speeches that were not made in person. Solicit views from the class about the practice whereby members may revise or edit speeches that were made from the floor.
- Videotape several short segments of Congress in session and use them in class to discuss congressional functions. For example, you could show advise and consent hearings, a roll call vote, debate, and even a brief procedural segment. Alternatively, assign students to watch C-SPAN3, and discuss the nature of the proceedings.
- Members of Congress can obviously not claim *descriptive representation* since they come primarily from occupations with high status and usually have substantial incomes. Moreover, women and minorities are underrepresented. Ask your class to consider whether the personal characteristics of members of Congress are important. Can

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- members of Congress effectively represent the concerns of their constituents when they do not share their constituents' economic and social backgrounds?
- Surveys consistently show a high level of dissatisfaction with Congress, yet voters continue to reelect members by extraordinary percentages (especially for the House of Representatives). Ask your class to consider possible reasons for what seems to be a contradiction. Is it simply the advantage of incumbency? Is the American public more satisfied with its *own* representatives than with Congress as an institution?
  - As a library assignment or using the Internet, have students locate basic information about the responsibilities of their senator and representative—committee assignments, subcommittees, length of time in office, and major bills he or she has sponsored. In addition, ask them to evaluate their representative's Web site and/or recent copies of constituency newsletters to assess the policy positions taken by their representative. To what extent is there representative/student agreement? Why or why not?
  - Ask your students to debate the relative merits of various roles of legislators—the legislator as *trustee*, as *instructed delegate*, or as *politico*. Does the particular issue under consideration have any effect on their views? How do they perceive the performance of their own representative?
  - Tape some televised coverage of House proceedings off C-SPAN. Then ask a representative (or one of his/her staff) to visit the class to discuss the proceedings. This will provide for an interactive yet unintimidating discussion of House politics, as well as give students insights into the legislative structure.
  - For a reading and writing connection, have students write their members of Congress (both Senate and House) for a copy of their newsletters. Have students write an essay identifying the phrases and terminology used by their members to project the image that they are good representatives. In particular, have students compare and contrast the method of advertising used by senators as compared to House members in the newsletters.
  - To build on the above reading and writing connection, have students examine the most recent voting record of their members of Congress. These records are published by *Congressional Quarterly*. Have students first identify what issues are important to them and then have them examine how their members voted on policies addressing those issues. For an extended exercise, students may examine their members' voting career on those issues by researching past voting records. Further, students could also look at how their fellow members' partisans acted on those issues to get a better sense of where their representative stands.

## **BACKGROUND READING**

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Uslaner, Eric M. The Movers and the Shirkers: Representatives and Ideologues in the Senate. Ann Arbor, MI: The University of Michigan Press, 1999.

## **MEDIA SUGGESTIONS**

The Battle for Congress: From Campaign Headquarters to Capitol Hill. A realistic portrayal of campaigning for Congress, focusing on the 1998 House race between Tom Bordonaro and Lois Capps (D-CA). Films for the Humanities and Sciences.

Congress. Part of the PBS video series, “The Power Game.” An interesting yet critical look at the distribution of power in Congress.

Congress: We the People. A 26-part series by Annenberg/CPB dealing with various aspects of Congressional structure. Numbers 25, “The Power of the Purse,” and 26, “An Assessment of Congress,” are especially good. Each selection lasts 30 minutes.

A Day in the Life of Congress. Part of the Congress series distributed by Insight Media. This 1992 video provides a view of a typical day in the work of a member of Congress.

A Day in the Life of a Representative. This show follows two members of Congress through a typical day, raising questions about how much and what we can expect members of Congress to do. Films for the Humanities and Sciences.

Evolution of the Congress. 1996. This film examines the evolutionary changes in Congress as responses to the challenges of democratic government. Films for the Humanities and Sciences.

Ken Burns’ America: The Congress. The program chronicles the careers of some of Congress’ most notable members.

Political Partisanship vs. Serving the People. 1996. This film explores the problem of congressional gridlock and the role of partisanship in resolving or creating that problem. Films for the Humanities and Sciences.

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Political Partisanship vs. Serving the People. This program examines the extent to which Congress provides representation to diverse interests in society, and also tackles current issues such as legislative gridlock and the role of partisanship in Congress. Films for the Humanities and Sciences.

Politics in Action, Chapter 5: The Legislative Process. Includes a case study on the Brady Bill, as well as an animated film on how a bill becomes law.

# CHAPTER THIRTEEN: THE PRESIDENCY

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## LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Describe the constitutional process of impeachment and explain why it is so difficult to remove a discredited president before the end of his term.
- Outline the procedures established in the Twenty-fifth Amendment to deal with presidential succession and presidential disability.
- Trace the evolution of the presidency from the limited office envisioned by the framers to the more powerful contemporary office.
- Identify the major offices and positions that serve as key aides and advisors to the president.
- Examine the ways in which the American system of separation of powers is actually one of *shared* powers.
- Review methods by which presidents may improve their chances of obtaining party support in Congress.
- Summarize the constitutional powers that are allocated to the president in the realm of national security.

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- Identify and review major roles and functions of the president, such as chief executive, chief legislator, commander in chief, and crisis manager.
- Determine the role that public opinion plays in setting and implementing the president's agenda.
- Describe the methods used by presidents and their advisors to encourage the media to project a positive image of the president's activities and policies.
- Examine the impact that changing world events (such as the transition from the 1950s and 1960s to the era of Vietnam and Watergate) have had on public debate over whether a "strong" president is a threat or a support to democratic government.

# CHAPTER OVERVIEW

## INTRODUCTION

This chapter examines *how presidents exercise leadership* and looks at *limitations* on executive authority. Americans expect a lot from presidents (perhaps too much). The myth of the president as a powerhouse distorts the public's image of presidential reality.

Presidents operate in an environment filled with checks and balances and competing centers of power. Other policymakers with whom they deal have their own agendas, their own interests, and their own sources of power. To be effective, the president must have highly developed political skills to mobilize influence, manage conflict, negotiate, and build compromises. Political scientist Richard Neustadt has argued that presidential power is *the power to persuade*, not to command.

## THE PRESIDENTS

Throughout *Government in America*, the authors have pointed out the American political culture's strong belief in limited government, liberty, individualism, equality, and democracy. These values generate a distrust of strong leadership, authority, and the public sector in general. Americans are of two minds about the presidency. On the one hand, they want to believe in a powerful president, one who can do good. On the other hand, Americans dislike a concentration of power. Although presidential responsibilities have increased substantially in the past few decades, there has been no corresponding increase in presidential authority or administrative resources to meet these new expectations. Americans are basically individualistic and skeptical of authority.

Most presidents reach the White House through the electoral process. About one in five presidents assumed the presidency when the incumbent president either died or (in Nixon's case) resigned. Almost one-third of twentieth-century presidents have been "accidental presidents." Once in office, presidents are guaranteed a four-year term by the Constitution, but the **Twenty-second Amendment**, passed in 1951, limits them to two such terms.

Removing a discredited president before the end of a term is a difficult task. The Constitution prescribes the process through **impeachment**, which is roughly the political equivalent of an indictment in criminal law. (The term "impeachment" refers to the formal accusation, *not* to conviction.) Only two presidents have been impeached. Andrew Johnson narrowly escaped

conviction in 1868 on charges stemming from his disagreement with radical Republicans. In 1998, the House voted two articles of impeachment against President Clinton on party-line votes. The public clearly opposed the idea, however, and the Senate voted to acquit the president on both counts in 1999. In 1974, the House Judiciary Committee voted to recommend the impeachment of Richard Nixon as a result of the **Watergate** scandal. Nixon escaped a certain vote for impeachment by resigning.

The **Twenty-fifth Amendment** clarified some of the Constitution's vagueness about presidential disability and succession. The amendment permits the vice president to become acting president if the vice president and the president's cabinet determine that the president is disabled or if the president declares his own disability, and it outlines how a recuperated president can reclaim the office. Provision is also made for *selecting a new vice president* when the office becomes vacant. In the event of a vacancy in the office of vice president, the president nominates a new vice president, who assumes the office when both houses of Congress approve the nomination.

## PRESIDENTIAL POWERS

The Constitution says remarkably little about presidential power: “The executive power shall be vested in a president of the United States of America.” However, the contemporary presidency differs dramatically from the one the framers of the Constitution designed in 1787. The executive office they conceived of had more limited authority, fewer responsibilities, and much less organizational structure than today’s presidency. There is little that presidents can do on their own, and they share executive, legislative, and judicial power with the other branches of government. *Institutional balance* was essential to delegates at the Constitutional Convention.

Today there is *more to presidential power than the Constitution alone suggests*, and that power is *derived from many sources*. During the 1950s and 1960s it was fashionable for political scientists, historians, and commentators to favor a powerful presidency. Historians rated presidents from strong to weak and there was no question that “strong” meant good and “weak” meant bad. By the 1970s, many felt differently. The Vietnam War was unpopular. Lyndon Johnson and the war made people reassess the role of presidential power. In his book, *The Imperial Presidency*, historian Arthur Schlesinger, an aide of John Kennedy’s, argued that the presidency had become too powerful for the nation’s own good. The role of the president changed as America increased in prominence on the world stage, and technology also helped to reshape the presidency. Presidents themselves have taken the initiative in developing new roles for the office. Various presidents enlarged the power of the presidency by expanding the president’s responsibilities and political resources.

## RUNNING THE GOVERNMENT: THE CHIEF EXECUTIVE

One of the president’s most important roles is *presiding over the administration of government*. The Constitution merely tells the president to “take care that the laws be faithfully executed.” Today, the federal bureaucracy includes more than four million civilian and military employees and spends more than \$2.5 trillion annually.

One of the resources for controlling the bureaucracy is the presidential power to *appoint top-level administrators*. New presidents have about 500 high-level positions available for

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appointment (cabinet and subcabinet jobs, agency heads, and other non-civil service posts), plus 2,500 lesser jobs. In recent years, presidents have paid close attention to appointing officials who will be *responsive to the president's policies*. Presidents also have the power to *recommend agency budgets* to Congress—the result of the Budgeting and Accounting Act of 1921.

Neither politicians nor political scientists have paid much attention to the vice presidency. Once the choice of a party's "second team" was an afterthought; now it is often an effort to placate some important symbolic constituency.

Although the group of presidential advisors known as the **cabinet** is not mentioned in the Constitution, every president has had one. Today, 14 secretaries and the attorney general head executive departments and constitute the cabinet. In addition, individual presidents may designate other officials (such as the ambassador to the United Nations) as cabinet members.

The **Executive Office of the President** (established in 1939) is a loosely grouped collection of offices and organizations. Some of the offices are created by legislation, while others are organized by the president. The Executive Office includes three major policymaking bodies—the **National Security Council**, the **Council of Economic Advisers**, and the **Office of Management and Budget**—plus several other units serving the president.

The **White House staff** includes the key aides the president sees daily—the chief of staff, congressional liaison people, press secretary, national security advisor, and a few other administrative political assistants. Presidents rely heavily on their staffs for information, policy options, and analysis. Each president organizes the White House to serve his own political and policy needs, as well as his decision-making style.

Despite heavy reliance on staff, it is the president who sets the tone for the White House. They all organize the White House to serve their own political and policy needs and their own decision-making style. The First Lady has no official government position, yet she is often at the center of national attention.

### **PRESIDENTIAL LEADERSHIP OF CONGRESS: THE POLITICS OF SHARED POWERS**

The president is *a major shaper of the congressional agenda*, and the term **chief legislator** is frequently used to emphasize the executive's importance in the legislative process. Presidents' most useful resources in passing their own legislation are their party leadership, public support, and their own legislative skills.

The Constitution also gives the president power to **veto** congressional legislation. If Congress adjourns within 10 days after submitting a bill, the president can simply let it die by neither signing nor vetoing it. This process is called a **pocket veto**. The presidential veto is usually effective; only about four percent of all vetoed bills have been overridden by Congress since the nation's founding. Thus, even the threat of a presidential veto can be an effective tool for persuading Congress to give more weight to the president's views.

**Party leadership** in Congress is every president's principal task when countering the *natural tendencies toward conflict* between the executive and legislative branches. The primary

obstacle to party unity is the lack of consensus among party members on policies, especially in the Democratic Party. This diversity of views often reflects the diversity of constituencies represented by party members.

Although party leaders in Congress are predisposed to support presidential policies and typically work closely with the White House, they are free to oppose the president or to lend only symbolic support. Party leaders are not in a position to reward or discipline members of Congress on the basis of presidential support. The *parties are highly decentralized*, and national party leaders do not control nominations and elections.

One way for the president to improve the chances of obtaining support in Congress is to increase the number of fellow party members in the legislature. The phenomenon of **presidential coattails** occurs when voters cast their ballots for congressional candidates of the president's party because those candidates support the president. Most recent studies show a diminishing connection between presidential and congressional voting, however, and few races are determined by presidential coattails.

Presidents who have the *backing of the public* have an easier time influencing Congress. Members of Congress closely watch two indicators of public support for the president—*approval in the polls* and *mandates in presidential elections*.

Public approval is the political resource that has the most potential to turn a situation of stalemate between the president and Congress into one that is supportive of the president's legislative proposals. Widespread support gives the president leeway and weakens resistance to presidential policies, while lack of support strengthens the resolve of those inclined to oppose the president and narrows the range in which presidential policies receive the benefit of the doubt.

An electoral *mandate*—the perception that the voters strongly support the president's character and policies—can be a powerful symbol in American politics. It accords *added legitimacy and credibility* to the newly elected president's proposals. Merely winning an election does not provide presidents with a mandate. It is common after close elections to hear claims—especially from the other party—that there was “no mandate.” Even large electoral victories carry no guarantee that Congress will interpret the results as mandates, especially if the voters also elect majorities in Congress from the other party.

Presidents influence the legislative agenda more than any other political figure. No matter what a president's skills are, however, the “chief legislator” can rarely exercise complete control over the agenda. Presidents are rarely in a position to create—through their own leadership—opportunities for major changes in public policy. They may, however, use their skills to exploit favorable political conditions to bring about policy change. In general, presidential legislative skills must compete with other, more stable factors that affect voting in Congress, such as party, ideology, personal views and commitments on specific policies, and constituency interests.

## **THE PRESIDENT AND NATIONAL SECURITY POLICY**

Constitutionally, the president has the leading role in American defense and foreign policy (often termed *national security*). The Constitution allocates certain powers in the realm of

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national security that are exclusive to the executive. For example, the president alone extends *diplomatic recognition* to foreign governments (and the president can also terminate relations with other nations). The president has the sole power to negotiate *treaties* with other nations, although the Constitution requires the Senate to approve them by a two-thirds vote. Presidents negotiate *executive agreements* with the heads of foreign governments; unlike treaties, executive agreements do not require Senate ratification.

As the leader of the Western world, the president must try to lead America's allies on matters of economics and defense. Presidents usually conduct diplomatic relations through envoys, but occasionally they engage in personal diplomacy. As in domestic policymaking, the president must rely principally on *persuasion* to lead.

Because the Constitution's framers wanted civilian control of the military, they made the president the commander in chief of the armed forces. Although only Congress is constitutionally empowered to declare war and vote on the military budget, Congress long ago became accustomed to presidents making short-term military commitments of troops or naval vessels. In 1973 Congress passed the **War Powers Resolution** (over President Nixon's veto). It required presidents to consult with Congress, whenever possible, before using military force, and it mandated the withdrawal of forces after 60 days unless Congress declared war or granted an extension. Congress could at any time pass a concurrent resolution (which could not be vetoed) ending American participation in hostilities. All presidents serving since 1973 have deemed the law an unconstitutional infringement on their powers, and there is reason to believe the Supreme Court would consider the law's use of the **legislative veto** (the ability of Congress to pass a resolution to override a presidential decision) to be a violation of the doctrine of separation of powers. In recent years, presidents have committed U.S. troops to action without seeking congressional approval.

Questions continue to be raised about the relevance of America's 200-year-old constitutional mechanisms for engaging in war. Some observers are concerned that modern technology allows the president to engage in hostilities so quickly that opposing points of view do not receive proper consideration. Others stress the importance of the commander in chief having the flexibility to meet America's global responsibilities and to combat international terrorism.

As chief diplomat and commander in chief, the president is also the country's *crisis manager*. A **crisis** is a sudden, unpredictable, and potentially dangerous event. Most occur in the realm of foreign policy; quick judgments are often needed despite sketchy information.

With modern communications, the president can instantly monitor events almost anywhere. Because situations develop more rapidly today, there is a premium on rapid action, secrecy, constant management, consistent judgment, and expert advice. Because Congress usually moves slowly, the *president has become more prominent* in handling crises.

Although the president is the dominant force behind national security policy today, Congress also has a central constitutional role in making policy. The allocation of responsibilities for such matters is based upon the founders' apprehensions about the concentration and potential for abuse of power. The founders *divided the powers of supply and command*. Congress can thus refuse to provide the necessary authorizations and appropriations for presidential actions, while the chief executive can refuse to take actions favored by Congress. The role of Congress has typically been *oversight of the executive* rather than initiation of policy.

## POWER FROM THE PEOPLE: THE PUBLIC PRESIDENCY

Perhaps the greatest challenge to any president is *to obtain and maintain the public's support*. Because presidents are rarely in a position to command others to comply with their wishes, they must *rely on persuasion*. The necessity of public support leads the White House to employ *public relations techniques* similar to those used to publicize products. Much of the energy the White House devotes to public relations is aimed at increasing the president's *public approval*. The reason is simple: the higher the president stands in the polls, the easier it is to persuade others to support presidential initiatives. Contrary to the conventional wisdom, citizens seem to focus on the president's efforts and stands on issues rather than on personality ("popularity") or simply how presidential policies affect them (the "pocketbook"). Job-related personal characteristics of the president, such as integrity and leadership skills, also play an important role in influencing presidential approval.

Commentators on the presidency often refer to it as a "bully pulpit," implying that presidents can *persuade or even mobilize the public* to support their policies if they are skilled enough communicators. Presidents frequently do attempt to obtain public support for their policies with speeches over the radio or television or speeches to large groups. All presidents since Truman have had *media advice* from experts on such matters as lighting, makeup, stage settings, camera angles, and even clothing.

*Mobilization of the public* may be the ultimate weapon in the president's arsenal of resources with which to influence Congress. The modern White House makes extraordinary efforts to control the context in which presidents appear in public and the way they are portrayed by the press. The fact that presidents nevertheless are frequently low in the polls is persuasive testimony to the *limits of presidential leadership of the public*.

## THE PRESIDENT AND THE PRESS

The press has become the *principal intermediary between the president and the public*, and relations with the press are an important aspect of the president's efforts to lead public opinion. It is the mass media that provides people with most of what they know about chief executives and their policies.

Presidents and the press tend to come into conflict with each other. Presidents want to control the amount and timing of information about their administration, while the press wants immediate access to all the information that exists. The best known direct interaction between the president and the press is the presidential press conference. Despite their visibility, press conferences are not very useful means of eliciting information. Presidents and their staffs can anticipate most of the questions that will be asked and prepare answers to them ahead of time, reducing the spontaneity of the sessions. Moreover, the large size and public nature of press conferences reduce the candor with which the president responds to questions.

*Bias* is the most politically charged issue in relations between the president and the press. However, a large number of studies have concluded that the news media are not biased *systematically* toward a particular person, party, or ideology. To conclude that the news contains little explicitly partisan or ideological bias is not to argue that the news does not distort reality in its coverage of the president. Some observers believe that news coverage of

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the presidency often tends to emphasize the negative. On the other hand, one could also argue that the press is inherently biased *toward* the White House. A consistent pattern of favorable coverage exists in all major media outlets, and the president is typically portrayed with an aura of dignity and treated with deference. In fact, the White House can largely control the environment in which the president meets the press.

### **UNDERSTANDING THE AMERICAN PRESIDENCY**

Concerns over presidential power are generally closely *related to policy views*. Those who oppose the president's policies are the most likely to be concerned about too much presidential power. Aside from acting outside the law and the Constitution, there is little prospect that the presidency will be a threat to democracy. The Madisonian system of checks and balances remains intact.

This system is especially evident in an era characterized by divided government in which the president is of one party and a majority in each house of Congress is of the other party. In the past generation, the public has chosen a number of presidents who reflected their ideology and congresses that represented their appetite for public service. It has been the president more often than Congress who has objected to government growth.

## **CHAPTER OUTLINE**

### **I. INTRODUCTION**

- A. Americans expect a lot from presidents (perhaps too much). The *myth of the president as a powerhouse* distorts the public's image of presidential reality.
  - 1. To accomplish policy goals, the president must get other people to do things they otherwise would not do.
  - 2. The main reason presidents have trouble getting things done is that other policymakers with whom they deal have their own agendas, their own interests, and their own sources of power.
  - 3. Presidents operate in an environment filled with checks and balances and competing centers of power.
- B. To be effective, the president must have highly developed *political skills* to mobilize influence, manage conflict, negotiate, and build compromises. Political scientist Richard Neustadt has argued that presidential power is *the power to persuade*, not to command.

### **II. THE PRESIDENTS**

- A. The *presidency* is a *highly personal office*: the personality of the individual who serves as president does make a difference.
- B. Americans are of two minds about the presidency.
  - 1. They want to believe in a powerful president—one who can do good.
  - 2. Americans do not like concentrations of power; they are basically individualistic and skeptical of authority.
- C. Characteristics of presidents.
  - 1. The Constitution simply states that the president must be a natural-born citizen at least 35 years old and must have resided in the United States for at least 14 years.

2. All American presidents have been white, male, and (except for John Kennedy) Protestant. In other ways, there has been considerable diversity among recent presidents.
- D. How they got there.
  1. Elections: the normal road to the White House.
    - a. Most presidents reach the White House through the electoral process. (See Chapters 8 and 9.)
    - b. Once in office, presidents are guaranteed a four-year term by the Constitution, but the **Twenty-second Amendment** (ratified in 1951) limits them to a maximum of *two terms or 10 years*.
    - c. Only 11 of the 41 presidents before Bill Clinton have actually served two or more full terms.
  2. The vice presidency: another road to the White House.
    - a. About one in five presidents assumed the presidency when the incumbent president either died or (in Nixon's case) resigned; in the twentieth century, almost one-third have been "accidental presidents."
    - b. At one time, the selection of the vice president was of little importance. Today, the selection is primarily an effort to placate some important symbolic constituency.
    - c. Once in office, vice presidents find that their main job is waiting.
      - (1) Constitutionally, they are assigned the minor task of presiding over the Senate and voting in case of a tie.
      - (2) Recent presidents have involved their vice presidents in policy discussions and important diplomacy.
  3. Impeachment.
    - a. Removing a discredited president before the end of a term is a difficult task. The Constitution prescribes the process through **impeachment**, which is roughly the political equivalent of an indictment in criminal law. (The term "impeachment" refers to the formal accusation, *not* to conviction.)
    - b. The House of Representatives may impeach the president (and other civil officers) for "Treason, Bribery, or other high Crimes and Misdemeanors." Impeachment requires a simple majority vote of the House.
    - c. If the House votes for impeachment, the accused president will be tried by the Senate.
      - (1) The chief justice of the Supreme Court presides when a president is being tried; the vice president (as president of the Senate) will preside if a civil officer other than the president has been impeached.
      - (2) The Senate may convict and remove the president by a two-thirds vote of the senators present.
    - d. Impeachment charges are heard first by the House Judiciary Committee or by a select committee, which makes recommendations to the full House.
      - (1) In 1974, the House Judiciary Committee voted to recommend the impeachment of Richard Nixon as a result of the **Watergate** scandal.
      - (2) Nixon escaped a certain vote for impeachment by resigning.
    - e. Only two presidents have been impeached: Andrew Johnson in 1868 and Bill Clinton in 1998.
  4. Presidential succession.
    - a. The **Twenty-fifth Amendment** clarified some of the Constitution's vagueness about presidential **disability** and **succession**.

- b. The Amendment permits the vice president to become acting president if the vice president and the president's cabinet determine that the president is disabled or if the president declares his own disability, and it outlines how a recuperated president can reclaim the office.
- c. Provision is also made for *selecting a new vice president* when the office becomes vacant.
  - (1) The president nominates a new vice president, who assumes the office when both houses of Congress approve the nomination.
  - (2) This provision has been used twice: President Nixon named Gerald Ford as the new vice president after Spiro Agnew resigned in 1973, then President Ford named Nelson Rockefeller after Richard Nixon resigned in 1974.
- d. *Statutes* specify the *order of succession* following the president and vice president—from vice president, to the Speaker of the House, to the president *pro tempore* of the Senate, through the cabinet in chronological order according to when the department was created.

### **III. PRESIDENTIAL POWERS**

- A. The contemporary presidency differs dramatically from the one the framers of the Constitution designed in 1787. The executive office they conceived of had more limited authority, fewer responsibilities, and much less organizational structure than today's presidency.
- B. Constitutional powers.
  - 1. The constitutional discussion of the presidency begins with these general words: "The executive power shall be vested in a president of the United States of America."
  - 2. The Constitution says little else about presidential authority, going on to list only a few powers.
  - 3. *Institutional balance* was essential to delegates at the Constitutional Convention.
    - a. There is little that presidents can do on their own.
    - b. They share executive, legislative, and judicial power with the other branches of government.
  - 4. Powers derived from the Constitution.
    - a. National security powers:
      - (1) Commander in chief of the armed forces;
      - (2) Make treaties with other nations, subject to the agreement of two-thirds of the Senate;
      - (3) Nominate ambassadors, with the agreement of a majority of the Senate; and
      - (4) Receive ambassadors of other nations, thereby conferring diplomatic recognition on other governments.
    - b. Legislative powers:
      - (1) Present information on the state of the union to Congress;
      - (2) Recommend legislation to Congress;
      - (3) Convene both houses of Congress on extraordinary occasions;
      - (4) Adjourn Congress if the House and Senate cannot agree on adjournment; and
      - (5) Veto legislation (Congress may overrule with a two-thirds vote of each house).

- c. Administrative powers:
    - (1) “Take care that the laws be faithfully executed”;
    - (2) Appoint officials as provided for by Congress and with the agreement of a majority of the Senate;
    - (3) Request written opinions of administrative officials; and
    - (4) Fill administrative vacancies during congressional recesses.
  - d. Judicial powers:
    - (1) Grant reprieves and pardons for federal offenses (except impeachment); and
    - (2) Appoint federal judges with the agreement of a majority of the Senate.
- C. The expansion of power.
1. Today there is more to presidential power than the Constitution alone suggests, and that power is derived from many sources.
  2. The role of the president changed as America increased in prominence on the world stage, and technology also helped to reshape the presidency. (See Chapter 3.)
  3. Presidents themselves have taken the initiative in developing new roles for the office. Various presidents enlarged the power of the presidency by expanding the president’s responsibilities and political resources.

#### **IV. RUNNING THE GOVERNMENT: THE CHIEF EXECUTIVE**

- A. One of the president’s most important roles is *presiding over the administration of government*.
  1. The Constitution merely tells the president to “take care that the laws be faithfully executed.”
  2. Today, the federal bureaucracy includes more than four million civilian and military employees and spends more than \$2.5 trillion annually.
  3. One of the resources for controlling the bureaucracy is the presidential power to *appoint top-level administrators*.
    - a. New presidents have about 500 high-level positions available for appointment (cabinet and subcabinet jobs, agency heads, and other non-civil service posts), plus 2,500 lesser jobs.
    - b. In recent years, presidents have paid close attention to appointing officials who will be responsive to the president’s policies.
    - c. Presidents have also taken more interest in the regulations issued by agencies.
  4. Presidents have the power to recommend agency budgets to Congress—the result of the Budgeting and Accounting Act of 1921.
- B. The vice president.
  1. Usually chosen to symbolically reward an important constituency.
  2. Main job is to wait for “better” political opportunities.
- C. The cabinet.
  1. Although the group of presidential advisors known as the **cabinet** is not mentioned in the Constitution, every president has had one.
  2. George Washington’s cabinet consisted of just three secretaries (state, treasury, and war) and the attorney general. Presidents since Washington have increased the size of the cabinet by asking Congress to create new **executive departments**.

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3. Today, 13 secretaries and the attorney general head executive departments (and constitute the cabinet). In addition, individual presidents may designate other officials (such as the ambassador to the United Nations) as cabinet members.

### D. The executive office.

1. The **Executive Office of the President** (established in 1939) is a loosely grouped collection of offices and organizations.
  - a. Some of the offices are created by legislation (such as the Council of Economic Advisors), while others are organized by the president.
  - b. The Executive Office includes three major policymaking bodies—the National Security Council, the Council of Economic Advisors, and the Office of Management and Budget—plus several other units serving the president.
2. The **National Security Council (NSC)** is the committee that *links the president's key foreign and military policy advisors*. The president's special assistant for national security affairs and his staff provide the president with information and policy recommendations on national security, aid the president in national security crisis management, coordinate agency and departmental activities bearing on national security, and monitor the implementation of national security policy.
3. The **Council of Economic Advisers (CEA)** has three members, each appointed by the president, who advise the president on economic policy. They prepare the *Annual Report of the Council of Economic Advisors* and help the president make policy on inflation, unemployment, and other economic matters.
4. The **Office of Management and Budget (OMB)**, which is the successor to the Bureau of the Budget (BOB), has responsibility for *preparing the president's budget*. (See Chapter 14.)
  - a. Presidents use the OMB to *review legislative proposals* from the cabinet and other executive agencies so they can determine whether or not they want an agency to propose them to Congress.
  - b. The OMB assesses the proposals' budgetary implications and advises the president on the proposals' consistency with the administration's overall program.

### E. The White House staff.

1. The **White House staff** includes the *key aides* the president sees daily—the chief of staff, congressional liaison people, press secretary, national security advisor, and a few other administrative political assistants.
2. The full **White House Office**, an agency of the Executive Office of the President, (many of whom the president rarely sees) provides the president with a wide variety of services, ranging from advance travel preparations to answering the thousands of letters received each year.
3. Presidents rely heavily on their staffs for *information, policy options, and analysis*.
4. Each president organizes the White House to serve his own political and policy needs, as well as his decision-making style.
5. Despite heavy reliance on staff, it is *the president who sets the tone* for the White House. It is the president's responsibility to demand that staff members analyze a full range of options (and their likely consequences) before they offer the president their advice.

- F. The First Lady.
1. Not an official government position.
  2. Historically, First Ladies have received a lot of attention and occasionally been active in politics.
  3. More recently, First Ladies have been at the center of attention in policymaking matters and played important roles as advisors to their husbands.

## V. PRESIDENTIAL LEADERSHIP OF CONGRESS: THE POLITICS OF SHARED POWERS

- A. Chief legislator.
1. The president is *a major shaper of the congressional agenda*, and the term **chief legislator** is frequently used to emphasize the executive's importance in the legislative process.
  2. The Constitution requires the president to report to Congress on the State of the Union and instructs the president to bring other matters to Congress' attention "from time to time."
  3. The Constitution gives the president the power to sign or to **veto** congressional legislation (a veto may be overridden by two-thirds of each house).
    - a. He may also decide not to take any action at all.
    - b. If Congress is still in session after 10 working days, the bill will become law without his signature; if Congress adjourns within 10 days after submitting a bill, taking no action will permit the bill to die without his signature (known as a **pocket veto**).
  4. The presidential veto is usually effective; only about *four percent* of all vetoed bills have been overridden by Congress. Even the *threat* of a presidential veto can be an effective tool for persuading Congress.
  5. In 1996 Congress passed a law granting the president authority to propose rescinding funds in appropriations bills and tax provisions that apply to only a few people.
    - a. The president has five days following his signing of tax or spending bills to propose rescissions, and the only way such provisions can become law is for Congress to pass them as separate bills, which would then be subject to a presidential veto.
    - b. The Supreme Court overturned the law as an unconstitutional grant of power to the president in *Clinton v. City of New York* (1998).
- B. Party leadership.
1. Presidents' most useful resources in passing their own legislation are their *party leadership, public support*, and their own *legislative skills*.
  2. **Party leadership** in Congress is every president's principal task when countering the *natural tendencies toward conflict* between the executive and legislative branches.
  3. The bonds of party.
    - a. For most senators and representatives, being in the same political party as the president creates a *psychological bond*.
    - b. Presidents remain highly dependent upon their party to move their legislative programs.
    - c. Representatives and senators of the president's party usually form the nucleus of coalitions supporting presidential proposals.
  4. Slippage in party support.

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- a. Presidents are forced to be active in party leadership and to devote their efforts to *conversion* as much as to *mobilization of members of their own party*: presidents can count on their own party members for support *no more than two-thirds of the time*, even on key votes.
- b. The primary obstacle to party unity is the lack of consensus among party members on policies, especially in the Democratic party. This diversity of views often reflects the diversity of constituencies represented by party members (illustrated by the frequent defection of Southern Democrats known as “boll weevils”).
5. Leading the party.
  - a. Although party leaders in Congress are *predisposed to support* presidential policies and typically work closely with the White House, they are free to oppose the president or lend only symbolic support.
    - (1) Party leaders are not in a position to reward or discipline members of Congress on the basis of presidential support.
    - (2) The White House provides many amenities to congressional party members in an attempt to create goodwill (such as “photo opportunities”), but there is little the president can do if party members wish to oppose the administration.
    - (3) The *parties are highly decentralized*, and national party leaders do not control nominations and elections. (See Chapter 8.)
  - b. One way for the president to improve the chances of obtaining support in Congress is to increase the number of party members in the legislature.
    - (1) The term **presidential coattails** refers to voters casting their ballots for congressional candidates of the president’s party because those candidates support the president. Thus, the symbolism was that the candidates would “ride into office on the president’s coattails.”
    - (2) However, most recent studies show a *diminishing connection* between presidential and congressional voting.
    - (3) In **mid-term elections**—those held between presidential elections—the president’s party *typically* loses seats; however, recent years (1994, 1998, 2002) have been exceptional.
  - c. A major impediment to party leadership is the fact that the president’s party often lacks a majority in one or both houses of Congress.
    - (1) The president usually has to solicit help from the opposition party.
    - (2) Although only a few votes may be obtained, that may be enough to bring the president the required majority.
- C. Public support.
  1. Presidents who have the backing of the public have an easier time influencing Congress. Members of Congress closely watch two indicators of public support for the president—*approval in the polls* and *mandates in presidential elections*.
  2. Public approval.
    - a. Public approval is *the political resource that has the most potential* to turn a situation of stalemate between the president and Congress into one that is supportive of the president’s legislative proposals.
      - (1) Widespread support gives the president leeway and weakens resistance to presidential policies.

- (2) Lack of support strengthens the resolve of those inclined to oppose the president and narrows the range in which presidential policies receive the benefit of the doubt.
- (3) Low ratings in the polls may create incentives to attack the president, further eroding an already weakened position.
- b. Public approval gives the president leverage, not control; presidents' leadership resources do not allow them to dominate Congress.
- 3. Mandates.
  - a. An electoral **mandate**—the perception that the voters strongly support the president's character and policies—can be a powerful symbol in American politics. It accords *added legitimacy and credibility* to the newly elected president's proposals.
  - b. Merely winning an election does not provide presidents with a mandate.
    - (1) It is common after close elections to hear claims—especially from the other party—that there was “no mandate” (as with Bill Clinton's election in 1992).
    - (2) Even large electoral victories (such as Richard Nixon's in 1972 and Ronald Reagan's in 1984) carry no guarantee that Congress will interpret the results as mandates, especially if the voters also elect majorities in Congress from the other party.
- D. Legislative skills.
  - 1. Presidents influence the legislative agenda more than any other political figure.
    - a. No matter what a president's skills are, however, the “chief legislator” can rarely exercise complete control over the agenda.
    - b. Presidents are rarely in a position to create—through their own leadership—opportunities for major changes in public policy. They may, however, use their skills to exploit favorable political conditions to bring about policy change.
  - 2. Presidential leadership skills include *bargaining, making personal appeals, consulting with Congress, setting priorities, exploiting “honeymoon” periods, and structuring congressional votes*.
    - a. Bargaining—in the form of trading support on two or more policies or providing specific benefits for representatives and senators—occurs less often and plays a less critical role in the creation of presidential coalitions in Congress than is often implied.
    - b. Presidents may improve their chances of success in Congress by making certain strategic moves.
      - (1) It is wise for a new president to be ready to send legislation to the Hill during the first year in office in order to exploit the “honeymoon” atmosphere that typically characterizes this period.
      - (2) It is important to establish *priorities* among legislative proposals.
  - 3. In general, presidential legislative skills must compete with other, more stable factors that affect voting in Congress, such as party, ideology, personal views and commitments on specific policies, and constituency interests.

## **VI. THE PRESIDENT AND NATIONAL SECURITY POLICY**

- A. Constitutionally, the president has the leading role in American defense and foreign policy (often termed **national security**).
- B. Chief diplomat.

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1. The Constitution allocates certain powers in the realm of national security that are exclusive to the executive.
  - a. The president alone extends *diplomatic recognition* to foreign governments (and the president can also terminate relations with other nations).
  - b. The president has the sole power to negotiate **treaties** with other nations, although the Constitution requires the Senate to approve them by a two-thirds vote.
  - c. Presidents negotiate *executive agreements* with the heads of foreign governments; unlike treaties, executive agreements do not require Senate ratification.
2. As the leader of the Western world, the president must try to lead America's allies on matters of economics and defense.
  - a. Presidents usually conduct diplomatic relations through envoys, but occasionally they engage in personal diplomacy.
  - b. As in domestic policymaking, the president must rely principally on *persuasion* to lead.
- C. Commander in chief.
  1. Because the Constitution's framers wanted *civilian control of the military*, they made the president the commander in chief of the armed forces.
  2. Today the president is commander in chief of about 1.4 million uniformed men and women, with commitments to defend nations around the globe.
  3. The president commands a vast nuclear arsenal; *the football*—a briefcase that contains the codes to unleash our nuclear capabilities—is never more than a few steps from the president.
- D. War powers.
  1. Although only Congress is constitutionally empowered to declare war and vote on the military budget, Congress long ago became accustomed to presidents making short-term military commitments of troops or naval vessels.
  2. In recent years, presidents have committed U.S. troops to action without seeking congressional approval (as in Korea and Vietnam).
  3. As a reaction to disillusionment about American fighting in Vietnam and Cambodia, Congress passed the **War Powers Resolution** (1973) over President Nixon's veto.
    - a. It required presidents to *consult with Congress*, whenever possible, *prior to using military force*, and it mandated the *withdrawal of forces after 60 days unless Congress declared war or granted an extension*. Congress could at any time pass a *concurrent resolution* (which cannot be vetoed), ending American participation in hostilities.
    - b. All presidents serving since 1973 have deemed the law an unconstitutional infringement on their powers, and there is reason to believe the Supreme Court would consider the law's use of the **legislative veto** to end American involvement a *violation of the doctrine of separation of powers*.
    - c. Presidents have largely ignored the law and sent troops into hostilities.
  4. Questions continue to be raised about the relevance of America's 200-year old constitutional mechanisms for engaging in war.
    - a. Some observers are concerned that modern technology allows the president to engage in hostilities so quickly that opposing points of view do not receive proper consideration.

- b. Others stress the importance of the commander in chief having the flexibility to meet America's global responsibilities and to combat international terrorism.
- c. There has been much controversy over the issue of who should be able to commit the United States to war, but the public has overwhelmingly indicated a desire for Congress to be involved in the decision.
- E. Crisis manager.
  - 1. As chief diplomat and commander in chief, the president is also the country's *crisis manager*.
  - 2. A **crisis** is a *sudden, unpredictable, and potentially dangerous event*.
    - a. Most occur in the realm of foreign policy; quick judgments are often needed despite sketchy information.
    - b. Crises are rarely the president's doing, but they can be the president's undoing if badly handled.
  - 3. Early in American history, there were fewer immediate crises.
    - a. Communications could take weeks, or even months, to reach Washington.
    - b. Likewise, officials' decisions often took weeks or months to reach those who were to implement them.
  - 4. With *modern communications*, the president can *instantly monitor events* almost anywhere.
    - a. Because situations develop more rapidly today, there is a *premium on rapid action*, secrecy, constant management, consistent judgment, and expert advice.
    - b. Since *Congress usually moves slowly*, the *president has become more prominent* in handling crises.
- F. Working with Congress.
  - 1. Congress has a central constitutional role in making national security policy.
    - a. The allocation of responsibilities for such matters is based upon the founders' apprehensions about the concentration and potential for abuse of power.
    - b. The founders *divided the powers of supply and command*: Congress can thus refuse to provide the necessary authorizations and appropriations for presidential actions, while the chief executive can refuse to act (for example, by *not* sending troops into battle).
  - 2. Despite the constitutional role of Congress, the president is the dominant force behind national security policy.
    - a. The role of Congress has typically been *oversight of the executive* rather than initiation of policy.
    - b. Commentators on the presidency often refer to the *two presidencies*—one for domestic policy and the other for national security policy. By this they mean the president has more success in leading Congress on matters of national security than on matters of domestic policy.

## VII. POWER FROM THE PEOPLE: THE PUBLIC PRESIDENCY

- A. Perhaps the greatest challenge to any president is *to obtain and maintain the public's support*. Because presidents are *rarely in a position to command* others to comply with their wishes, they must *rely on persuasion*.
- B. Going public.
  - 1. Public opinion can be an important resource for presidential persuasion.

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2. The necessity of public support leads the White House to employ *public relations techniques* similar to those used to publicize products.
    - a. John Kennedy was the first president to regularly use public appearances to seek popular backing for his policies.
    - b. Kennedy's successors (with the exception of Richard Nixon) have been even more active in making public appearances.
    - c. Bill Clinton and George W. Bush have spent enormous time and energy in selling their programs to the public.
  3. In America, the jobs of **head of state** (ceremonial) and **head of government** (executive authority) are combined.
    - a. As head of state, the president is America's *ceremonial leader and symbol of government*.
    - b. Ceremonial activities give presidents an important symbolic aura and a great deal of favorable press coverage, contributing to their efforts to build public support.
- C. Presidential approval.
1. The president's standing in the polls is monitored closely by the press, members of Congress, and others in the Washington political community: the higher the president stands in the polls, the easier it is to persuade others to support presidential initiatives.
  2. Presidents frequently do not have widespread public support, often failing to win even majority approval.
  3. Presidential approval is the product of many factors.
    - a. Many people are predisposed to support the president.
      - (1) Political *party identification* provides the basic underpinning of approval or disapproval.
      - (2) Presidents usually benefit from a "honeymoon" with the American people after taking office.
    - b. Changes in approval levels appear to be due primarily to the public's evaluation of how the president is handling policy.
      - (1) Contrary to conventional wisdom, citizens seem to focus on the president's efforts and stands on *issues* rather than on personality or simply how presidential policies affect them.
      - (2) Job-related personal characteristics of the president—such as integrity and leadership skills—also play an important role.
      - (3) Sometimes public approval of the president takes sudden jumps, often stimulated by "rally events" that relate to international relations (illustrated by President Bush's 18-percentage-point rise immediately after the fighting began in the Persian Gulf War in 1991 and George W. Bush's 39-percentage-point jump in 2001). Such occurrences usually have little enduring impact on a president's public approval.
  4. The modern White House makes extraordinary efforts to control the context in which presidents appear in public and the way they are portrayed by the press. The fact that presidents nevertheless are frequently low in the polls is persuasive testimony to the limits of presidential leadership of the public.
- D. Policy support.

1. Commentators on the presidency often refer to it as a “bully pulpit,” implying that presidents can *persuade or even mobilize the public* to support their policies if they are skilled-enough communicators.
    - a. Presidents frequently do attempt to obtain public support for their policies with speeches over the radio or television or speeches to large groups.
    - b. All presidents since Truman have had *media advice* from experts on such matters as lighting, makeup, stage settings, camera angles, and even clothing.
  2. Despite these efforts, presidential speeches designed to lead public opinion have typically been rather unimpressive.
  3. The public is not always receptive to the president’s message, and the public may misunderstand or ignore even the most basic facts regarding presidential policy.
- E. Mobilizing the public.
1. Mobilization of the public may be the ultimate weapon in the president’s arsenal of resources with which to influence Congress.
    - a. Mobilizing the public entails the double burden of obtaining both opinion *support* and political *action* from a generally inattentive and apathetic public.
    - b. There are certain *risks* involved: if the president attempts to mobilize the public and fails, the lack of response speaks clearly to members of Congress.
  2. Perhaps the most notable recent example of the president mobilizing public opinion to put pressure on Congress was Ronald Reagan’s televised plea for support of his tax-cut proposals, which resulted in a massive outpouring of phone calls, letters, and telegrams.
    - a. Reagan’s success appears to be a deviant case (even for Ronald Reagan).
    - b. Despite high levels of approval for much of his presidency, Reagan was never again able to arouse many in his audience to communicate their support of his policies to Congress.

## VIII. THE PRESIDENT AND THE PRESS

- A. The press has become the principal intermediary between the president and the public, and relations with the press are an important aspect of the president’s efforts to lead public opinion.
1. It is the mass media that provides people with most of what they know about chief executives and their policies.
  2. The media also interpret and analyze presidential activities, even the president’s direct appeals to the public.
- B. Presidents and the press *tend to conflict*.
1. Presidents want to control the amount and timing of information about their administration.
  2. The press wants all the information that exists, without delay.
- C. Because of the importance of the press to the president, the White House goes to great lengths to encourage the media to project a positive image of the president’s activities and policies.
1. The White House monitors the media closely.

2. The president's *press secretary* conducts daily press briefings, giving prepared announcements and answering questions.
3. Press secretaries and their staffs arrange private interviews with White House officials, photo opportunities, and travel arrangements for reporters when the president leaves Washington.
4. The best-known direct interaction between the president and the press is the presidential *press conference*.
  - a. Despite their high visibility, press conferences are *not* very useful means of eliciting information.
  - b. Although press conferences may appear spontaneous, presidents and their staffs can anticipate most of the questions that will be asked and prepare answers to them ahead of time.
- D. Most of the news coverage of the White House comes under the heading of "*body watch*," which means that reporters focus on the most visible layer of presidents' personal and official activities rather than on the substance of policies or the fundamental processes operating in the executive branch.
- E. *Bias* is the most politically charged issue in relations between the president and the press.
  1. A large number of studies have concluded that the news media is not biased *systematically* toward a particular person, party, or ideology.
  2. Some observers believe that news coverage of the presidency often tends to emphasize the negative; George H.W. Bush's handling of the economy during the 1992 election campaign is an example.
- F. One could also argue that the press is inherently biased *toward* the White House.
  1. A consistent pattern of favorable coverage exists in all major media outlets, and the president is typically portrayed with an aura of dignity and treated with deference.
  2. The White House can largely control the environment in which the president meets the press (as when Marine helicopters revved as President Reagan approached them so that he "could not hear" reporters' questions).

## IX. UNDERSTANDING THE AMERICAN PRESIDENCY

- A. The presidency and democracy.
  1. Because the presidency is the single most important office in American politics, there has always been concern about *whether the president is a threat to democracy*.
  2. Concerns over presidential power are generally closely *related to policy views*: those who oppose the president's policies are the most likely to be concerned about too much presidential power.
  3. In an era of divided government, some observers are concerned that there is *too much checking and balancing* and *too little capacity to act* to meet pressing national challenges. However, the best evidence indicates that major policy change is *not* hindered by divided government—that it is as likely to occur when the parties share control as when party control of the executive and legislative branches is divided.
- B. The presidency and the scope of government.
  1. Supporting an increased role for government is not inherent in the presidency; leadership can move in many directions.

2. In the past generation, the public has chosen a number of presidents who reflected their ideology and congresses that represented their appetite for public service.
3. It has been the president more often than Congress who has objected to government growth.

## **KEY TERMS AND CONCEPTS**

**Cabinet:** the group of presidential advisors who head the executive departments.

**Council of Economic Advisers (CEA):** members advise the president on economic policy and prepare the Annual Report of the CEA.

**Crisis:** a sudden, unpredictable, and potentially dangerous event.

**Impeachment:** the political equivalent of an indictment for removing a discredited president.

**Legislative veto:** a clause which allows Congress to override the action of the executive.

**National Security Council (NSC):** a committee that links the president's key foreign and military advisors.

**Office of Management and Budget (OMB):** responsible for preparing the president's budget and assessing the budgetary implications of legislative proposals.

**Pocket veto:** this occurs when Congress adjourns within 10 days after submitting a bill and the president takes no action to sign it or veto it.

**Presidential coattails:** where voters cast their ballots for congressional candidates of the president's party because those candidates support the president.

**Twenty-fifth Amendment:** passed in 1967, permits the vice president to become acting president in the event that the president is temporarily disabled.

**Twenty-second Amendment:** passed in 1951, limits presidents to two terms.

**Veto:** sending the legislation back to Congress with reasons for rejecting it.

**War Powers Resolution:** passed in 1973, requires presidents to consult with Congress prior to using military force and mandates the withdrawal of forces after sixty days unless Congress declares war or grants an extension.

**Watergate:** a political scandal involving President Nixon's abuse of his powers.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Commentators on the presidency often refer to it as a “*bully pulpit*,” implying that presidents can persuade or even mobilize the public to support their policies if only they are skilled enough communicators. Ask your class to try to determine the skills that are needed to make a president an *effective communicator*. How has the concept of the “bully pulpit” changed since Theodore Roosevelt referred to the idea?
- How has the public changed? The office of the president? Have your class write short essays in which students explain why voters choose presidents and congresses that appear to reflect different policy positions. Is this a negative or a positive factor of the American form of government?

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- Ask students to use the Internet to locate a recent presidential speech. Describe the speech's main points and its intended audience. Discuss whether the speech is consistent with the broad policies and values espoused by the president.
- For a class discussion, have students debate the different ways vice presidents can be used to enhance the president's opportunities for advancing his agenda in Congress. In particular, have them examine the concept of a co-presidency or the abolition of the vice presidency position. What would be the consequences?
- For a reading and writing connection, have students keep a clipping file of newspaper coverage of the president for at least one week. Have them categorize the articles into stories about the president's (domestic and international) roles and personality. Then have them assess the tone and nature of the coverage. Once they have analyzed their clippings, have them write an analytical essay concerning the presidential news coverage and bias in the media.
- Have students choose the State of the Union address delivered by one president, and determine the extent to which the president's speech successfully set the congressional agenda. What factors enhanced the president's ability to lead Congress? What factors hampered his ability to lead?

## **BACKGROUND READING**

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Eisinger, Robert M. The Evolution of Presidential Polling. New York: Cambridge University Press, 2003.

## **MEDIA SUGGESTIONS**

American President. PBS Video which depicts 41 of our nation's leaders and how they left indelible marks on our nation.

Executive Privilege and the Delegation of Power. Part of "The Constitution: That Delicate Balance" series from Films Incorporated, examining the powers of the president.

Modern Presidency. A five-part video series distributed by Enterprise Media, examining the problems and issues of the past five presidential administrations from Nixon to Bush.

Powers of the President: The Constitution and Congress. This show focuses on various issues relating to the constitutional relationship between the president and Congress, and includes interviews with former presidents Carter, Nixon, and Ford. Films for the Humanities and Sciences.

The President vs. The Press. Hosted by Hedrick Smith, this program features interviews with editors, news correspondents, press secretaries, and presidential advisors on the relationship between the president and the press. Includes some discussion of presidential character, as well as the effect that the press has on public opinion. Films for the Humanities and Sciences.

The Press Secretary—A Fascinating All-Access Look Inside Clinton's White House Press Office. 2001. It's September 2000, and Bill Clinton is in the final months of his presidency. You're there for three unprecedented, uncensored days as high-definition cameras capture the fascinating, enlightening, and at times, tense scenes swirling around White House Press Secretary Joe Lockhart. For this remarkable special, Emmy-nominated documentarian Ted Bogosian enjoyed White House access not allowed since the Kennedy administration.

Role of the Chief Executive. 1994. This program examines the various roles of the president and analyzes the factors that have contributed to changes in presidential power and influence over time. Insight Media.

Role of the First Lady. A new program distributed by Films for the Humanities and Sciences, which examines the traditional and perceived role of the First Lady.

War Powers and Covert Action. Part of "The Constitution: That Delicate Balance" series from Films Incorporated, examining the war powers and foreign policy role of the president.

## CHAPTER FOURTEEN: THE CONGRESS, THE PRESIDENT, AND THE BUDGET: THE POLITICS OF TAXING AND SPENDING

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### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Identify the major sources of federal revenue and the major recipients of federal tax expenditures.
- Determine how *tax expenditures* benefit middle- and upper-income taxpayers and corporations.
- Discuss how the *rise of the national security state* and the *rise of the social service state* are associated with government growth in America.
- Explain the term *incrementalism* and how it describes the spending and appropriations process.
- Explain the impact that “uncontrollable” expenditures and entitlements have on the federal budget.
- Identify the key players and decision makers in the budgetary process.
- Outline the steps involved in developing the president’s budget.
- Outline the steps in developing the congressional budget process.
- Understand the importance of budget resolution, reconciliation, authorization, and appropriation stages in the budget process.
- Evaluate the ways in which the budget affects the scope of government.

# CHAPTER OVERVIEW

## INTRODUCTION

The central political issue for many years has been how to pay for policies that most people support. A **budget** is a policy document allocating burdens (taxes) and benefits (expenditures). Over the past 30 years, the national government has run up large annual budget deficits. A budget **deficit** occurs when expenditures exceed revenues in a fiscal year.

The president and Congress have been caught in a *budgetary squeeze*: Americans want them to balance the budget, maintain or increase the level of government spending on most policies, and still keep taxes low. Thus, two questions become central to public policy: Who bears the burdens of paying for government? Who receives the benefits?

## THE GOVERNMENT'S SOURCES OF REVENUE

Probably no government policy affects as many Americans as tax policy. In addition to raising revenues to finance its services, the government can use taxes to make citizens' incomes more or less equal, to encourage or discourage growth in the economy, and to promote specific interests.

This section looks at the substance of the budget to see how the American government raises money and where that money is spent. The three major sources of federal revenues are the *personal* and *corporate income tax*, *social insurance taxes*, and *borrowing*. In 1913, the **Sixteenth Amendment** was added to the Constitution, explicitly permitting Congress to levy an income tax. Although corporate taxes once yielded more revenues than individual income taxes, today corporate taxes yield only about ten cents of every federal revenue dollar, compared with 49 cents coming from individual income taxes.

Today the **federal debt**—all of the money borrowed over the years and still outstanding—exceeds **\$9 trillion**. Nine percent of all federal expenditures goes to paying *just the interest* on this debt. When the federal government wants to borrow money, the Treasury Department sells bonds, guaranteeing to pay interest to the bondholder. Citizens, corporations, mutual funds, and other financial institutions purchase the bonds. Many economists and policymakers are concerned about the “crowding out” effect the national debt is having on available investment capital. Some have called for a *balanced budget amendment*.

A *tax loophole* is a tax break or tax benefit. The IRS Code is riddled with exemptions, deductions, and special cases. For example, H. Ross Perot (1992 presidential candidate) hired a former Internal Revenue Service commissioner in 1975 to aid him in having the tax code changed to benefit him to the tune of approximately \$15 million. The bill was killed on the House floor when the press reported that *only Perot* would benefit from the provision. Tax loopholes may offend Americans' sense of fair play, but they cost the treasury relatively little because they apply to only a few people.

Loopholes are really a type of **tax expenditure**, which represents *the difference between what the government actually collects in taxes and what it would have collected without special*

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*exemptions.* Tax expenditures are essentially monies that government could collect but does not because they are *exempted* from taxation.

Early in his administration, President Reagan proposed a massive tax-cut bill, which was passed by Congress in July 1981. Families with high incomes received significant income tax reductions with the 1981 bill, but those at the lower end of the income ladder did not notice much change in their tax burden because social insurance and excise taxes (which fall disproportionately on the poor) *rose* during the same period. Many blamed the massive deficits of the 1980s and 1990s at least partially on the *1981 tax cuts*, as government continued to spend more but reduced its revenues.

The *Tax Reform Act of 1986* was one of the most sweeping alterations in federal tax policy in history. It eliminated or reduced the value of many tax deductions, removed several million low-income individuals from the tax rolls, and greatly reduced the number of tax brackets.

In 1993, President Clinton proposed, and Congress approved, a plan to raise the income tax rate for families in the highest income bracket. Spending cuts were also enacted. By the end of the Clinton administration, the yearly deficit had been reversed into surpluses. This helped make cutting taxes once again a popular rallying cry for some politicians, including George W. Bush. In 2001, Congress enacted a tax cut that gradually lowered tax rates over the next ten years. When deficits immediately reappeared, critics charged that the president was fiscally irresponsible.

## FEDERAL EXPENDITURES

Among the most important changes of the twentieth century is *the rise of large governments*. American governments—national, state, and local—spend an amount equal to one-third of the Gross Domestic Product (GDP). Expenditures of the national government alone equal over 20 percent of the GDP. Nevertheless, the United States actually has one of the *smallest* public sectors among Western nations relative to the size of the Gross Domestic Product (GDP).

Two conditions associated with government growth in America are the *rise of the national security state* and the *rise of the social service state*. After World War II, the “**cold war**” with the Soviet Union resulted in a permanent military establishment and expensive military technology. President Eisenhower coined the phrase **military-industrial complex** to characterize the close relationship between the military hierarchy and the defense industry that supplies its hardware needs. The Pentagon wants weapons systems and arms makers want contracts, so they tend to be mutually *supportive*. In the 1990s, *defense expenditures have decreased* in response to the lessening of tensions in Europe. The budget of the Department of Defense now constitutes only about one-sixth of all federal expenditures.

The **Social Security Act** (passed in 1935) was originally intended to provide a minimal level of sustenance to older Americans. In the mid-1960s, America’s social services network greatly expanded by adding to the Social Security system and creating many new programs designed to aid the poor and the elderly. In 1965, Medicare, which provides both hospital and physician coverage to the elderly, was added to the system. Today, about 45 million Americans receive payments from the Social Security system. Social Security is not the only social policy of the federal government that is costly. The rise of the social service state has

contributed to America’s growing budget in health, education, job training, and scores of other areas.

The picture of the federal budget is one of constant, slow growth. Expenditures mandated by an existing law or obligation (such as Social Security) are particularly likely to follow a pattern of **incrementalism**, which means that the best predictor of this year’s budget is *last year’s budget plus a little bit more*—that is, an increment. More and more of federal spending has become “uncontrollable.” An **uncontrollable expenditure** is one that is *mandated* under current law or by a previous obligation. About *two-thirds of the federal budget is uncontrollable*—based on expenditures that are determined not by how much Congress appropriates to an agency but by *how many eligible beneficiaries* there are for a particular program. Many expenditures are uncontrollable because Congress has in effect obligated itself to pay *X* level of benefits to *Y* number of recipients. Such policies are called **entitlements**.

## THE BUDGETARY PROCESS

Public budgets are the supreme example of Harold Lasswell’s definition of politics as “who gets what, when, and how.” Budget battles are fought over contending interests, ideologies, programs, and agencies.

The distribution of the government’s budget is the outcome of a very complex budgetary process involving thousands of policy choices and prompting a great deal of politics. Every political actor has a stake in the budget. The main actors in the budgetary process include interest groups, agencies, the Office of Management and Budget, congressional tax committees and budget committees, congressional subject-matter committees and appropriations committees, the General Accounting Office, and of course the president.

According to the Constitution, *all federal appropriations must be authorized by Congress*—a control sometimes called the **“power of the purse.”** Two key players in this process are the **House Ways and Means Committee** and the **Senate Finance Committee**. In 1921, Congress passed the *Budget and Accounting Act*, requiring presidents to propose an executive budget to Congress and creating the *Bureau of the Budget* to help them. In the 1970s, President Nixon reorganized the Bureau of the Budget and renamed it the **Office of Management and Budget (OMB)**. The OMB now supervises preparation of the federal budget and advises the president on budgetary matters.

The **Congressional Budget and Impoundment Act of 1974** was designed to reform the congressional budgetary process. The act established *a fixed budget calendar* in which a timetable mandated by law was set for each step in the budgetary process. The **Congressional Budget Office (CBO)** advises Congress on the probable consequences of its budget decisions, forecasts revenues, and is a counterweight to the president’s OMB. In April of each year, both houses of Congress are expected to agree upon a **budget resolution** which binds Congress to a total expenditure level that should form the bottom line of all federal spending for all programs.

The congressional budget resolution often requests that certain changes be made in law, primarily to achieve savings incorporated into the spending totals and thus meet the budget resolution. First is budget **reconciliation**, a process by which program authorizations are

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revised to achieve required savings; it frequently also includes tax or other revenue adjustments. The second way that laws are changed to meet the budget resolution (or to create or change programs for other reasons) involves more narrowly drawn legislation. An **authorization bill** is an act of Congress that establishes a discretionary government program or an entitlement, or that continues or changes such programs. An additional measure, termed an **appropriations bill**, must be passed to fund programs established by authorization bills.

The new system was supposed to force Congress to consider the budget (both projected expenditures and projected revenues) as a whole. However, Congress has often failed to meet its own budgetary timetable, and presidents have made matters worse by submitting budget proposals containing large deficits. Moreover, in many instances Congress has not been able to reach agreement and pass appropriations bills at all and has instead resorted to **continuing resolutions**—laws that allow agencies to spend at the previous year’s level.

In response to growing frustration at its inability to substantially reduce annual budget deficits, Congress enacted the Balanced Budget and Emergency Deficit Control Act (1985), better known as the *Gramm-Rudman-Hollings Act*. As amended in 1987, the act mandated maximum allowable deficit levels for each year until 1993—at which point the budget was supposed to be in balance. If Congress failed to meet the deficit goals, automatic across-the-board spending cuts (called *sequestrations*) were to be ordered by the president, although a number of programs were exempt from the process.

In 1990, Congress decided to shift the focus from controlling the size of the deficit (which was the trigger for sequestration) to controlling increases in spending (under which the sheer size of the deficit would not matter). While Congress shifted to keeping a lid on expenditures, it allowed events beyond its control—such as war or a recession—to increase the size of the deficit without penalty. The bottom line was a bigger deficit; yearly deficits continued to climb until the Clinton administration.

The results of the 1994 congressional elections once again altered the budgetary game. In 1995, the new Republican majorities in each house, determined to balance the budget within seven years, argued for substantial cuts in the rate of growth of popular entitlement programs. The president agreed with the goal of balancing the budget but on his terms and took his case to the voters in 1996. The outcome, as we have seen, was divided government. In 1997, the president and Congress agreed to a budget that was to be in balance by 2002. However, decreased tax revenues resulting from the economic downturn in 2000–2001 and the income tax cut of 2001 sent the budget into deficit again.

## UNDERSTANDING BUDGETING

Almost all democracies have seen a substantial growth in government in the twentieth century. Economists Allen Meltzer and Scott Richard argue that *government grows in a democracy* because of the *equality of suffrage*. Poorer voters will always use their votes to support public policies that redistribute benefits from the rich to the poor. Indeed, the most rapidly growing expenditures are items like Social Security, Medicaid, Medicare, and social welfare programs (all of which benefit the poor more than the rich).

One often thinks of elites—particularly corporate elites—as being opposed to big government. However, Lockheed and Chrysler corporations have appealed to the government

for large bailouts when times got rough. Corporations support a big government that offers them contracts, subsidies, and other benefits. Poor and rich voters alike have voted for parties and politicians who promised them benefits. Government often grows by responding to groups and their demands.

Conversely, some politicians compete for votes by promising *not* to spend money (such as Ronald Reagan). In contrast with other nations, Americans have chosen to tax less and spend less on public services than almost all other democracies with developed economies. Paradoxically, Americans want to spend but they do not want to pay taxes. Being a democracy, that is exactly what the government does—and the inevitable result is red ink. America's large budget deficits have been as much a constraint on government as they have been evidence of a burgeoning public sector.

## **CHAPTER OUTLINE**

### **I. INTRODUCTION**

- A. The president and Congress have been caught in a *budgetary squeeze*: Americans want them to balance the budget, maintain or increase the level of government spending on most policies, and still keep taxes low.
  - 1. Because budgets are so important to almost all other policies, *the budgetary process is the center of political battles* in Washington and involves nearly everyone in government.
  - 2. The central political issue for many years has been how to *pay* for policies that most people support.
    - a. Resources have been scarce because the national government has run up large annual budget deficits over the past 30 years. A budget **deficit** occurs when **expenditures exceed revenues**.
    - b. The total national **debt** rose sharply during the 1980s, increasing from less than one trillion dollars to \$9 trillion dollars by 2007.

### **II. THE GOVERNMENT'S SOURCES OF REVENUE**

- A. Where it comes from.
  - 1. The three major sources of federal revenues are the *personal* and *corporate income tax*, *social insurance taxes*, and *borrowing*. Only a small portion comes from *excise taxes* (such as tax on gasoline) and other sources.
  - 2. Income tax.
    - a. The first peacetime **income tax** was enacted in 1894.
      - (1) The tax was declared unconstitutional in *Pollock v. Farmer's Loan and Trust Co.* (1895).
      - (2) The **Sixteenth Amendment** was added to the Constitution in 1913, explicitly permitting Congress to levy an income tax. Congress had already started one before the amendment was ratified, and the **Internal Revenue Service (IRS)** was established to collect it.
    - b. Corporations also pay income taxes. Although corporate taxes once yielded more revenues than individual income taxes, today corporate taxes yield only about 13 cents of every federal revenue dollar, compared with 43 cents coming from individual income taxes.
  - 3. Social insurance taxes.

- a. *Social Security taxes* come from both employers and employees.
- b. Unlike other taxes, these payments do not go into the government's general money fund; they are specifically earmarked for the **Social Security Trust Fund** to pay benefits.
- c. Social Security taxes have *grown faster than any other source* of federal revenue.
- 4. Borrowing.
  - a. When the federal government wants to borrow money, the Treasury Department sells bonds, guaranteeing to pay interest to the bondholder.
  - b. Today the **federal debt**—all of the money borrowed over the years and still outstanding—exceeds \$9 trillion.
  - c. Nine percent of all federal expenditures goes to paying off the debt.
  - d. Government borrowing crowds out private borrowers.
  - e. Concerns about the national debt have led to some calls for a **balanced budget amendment**.
  - f. Unlike state and local governments and private businesses, the federal government does not have a *capital budget*, a budget for items that will serve for the long-term. These purchases are counted as current expenditures and run up the deficit.
- B. Taxes and public policy.
  - 1. Tax loopholes.
    - a. A **tax loophole** is presumably some tax break or tax benefit.
      - (1) The **IRS Code** is riddled with exemptions, deductions, and special cases.
      - (2) In 1975, H. Ross Perot (1992 and 1996 presidential candidate) hired a former Internal Revenue Service commissioner to aid him in having the tax code changed to benefit him to the tune of approximately \$15 million. (The bill was killed on the House floor when the press reported that *only Perot* would benefit from the provision.)
  - 2. Tax expenditures.
    - a. What *does* cost the federal budget a substantial sum is the system of **tax expenditures**, which represent the difference between what the government actually collects in taxes and what it would have collected without special exemptions.
      - (1) Tax expenditures are essentially monies that government could collect but does not because they are *exempted* from taxation.
      - (2) The Office of Management and Budget estimated that the total tax expenditures in the 2007 would be about \$870 billion—more than a third of the total federal receipts.
      - (3) Individuals receive most of the tax expenditures, and corporations get the rest.
    - b. Tax expenditures amount to subsidies for some activity, such as deductions for contributions to charities, deductions by homeowners for mortgage interest, and business deductions of investment in new plants and equipment at a more rapid rate than they can deduct other expenses.
    - c. On the whole, tax expenditures benefit middle- and upper-income taxpayers and corporations. Poor people (who tend not to own homes) cannot take advantage of most such provisions.
  - 3. Tax reduction.

- a. Early in his administration, President Reagan proposed a massive tax-cut bill, which was passed by Congress in July 1981.
  - (1) Over a three-year period, Americans would have their federal tax bills reduced 25 percent, corporate income taxes were also reduced, new tax incentives were provided for personal savings and corporate investment, and taxes were *indexed* to the cost of living.
  - (2) Families with high incomes received significant tax reductions with the 1981 bill, but those at the lower end of the income ladder did not notice much change in their tax burden because social insurance and excise taxes (which fall disproportionately on the poor) *rose* during the same period.
- b. Many blamed the massive deficits of the 1980s and 1990s at least partially on the *1981 tax cuts*, as government continued to spend but reduced its revenues.
4. Tax reform.
  - a. When President Reagan first revealed his massive tax simplification plan in 1986, the president actually had more problems obtaining the support of his own party than from the Democrats.
  - b. The **Tax Reform Act of 1986** was one of the most sweeping alterations in federal tax policy in history.
    - (1) It eliminated or reduced the value of many tax deductions, removed several million low-income individuals from the tax rolls, and changed the system of 15 separate brackets to just two generally lower rates (28 percent and 15 percent).
    - c. In 1990, a third bracket of 31 percent was added for those with higher incomes.
    - d. In 1993, Congress agreed to President Clinton's proposal to raise the income tax rate to those in the top two percent of income. Congress also increased the top corporate income tax and an energy tax.
    - e. When budget surpluses materialized (briefly) in the late 1990s, cutting taxes was once again a popular rallying cry for some politicians, including George W. Bush. In 2001, Congress enacted a tax cut that gradually lowered tax rates over the next ten years. When deficits immediately reappeared, critics charged that the president was fiscally irresponsible.

### III. FEDERAL EXPENDITURES: WHERE REVENUES GO

- A. Federal expenditures.
  1. Comparisons over time are somewhat misleading because they do not take into account changes in the value of the dollar.
- B. Among the most important changes of the twentieth century is *the rise of large governments*.
  1. The United States actually has one of the *smallest* public sectors among Western nations relative to the size of the Gross Domestic Product (GDP). **Gross Domestic Product** is Gross National Product minus the value of goods and services produced outside the country.
  2. American governments—national, state, and local—spend an amount equal to one-third of the Gross Domestic Product (GDP).
  3. Expenditures of the national government alone equal over 20 percent of the GNP.

## Chapter 14

4. Two conditions associated with government growth in America are the *rise of the national security state* and the *rise of the social service state*.
- C. The rise of the national security state.
  1. President Eisenhower coined the phrase **military industrial complex** to characterize the close relationship between the military hierarchy and the defense industry that supplies its hardware needs. The Pentagon wants weapons systems and arms makers want contracts, so they tend to be mutually supportive.
  2. After World War II, the “**cold war**” with the Soviet Union resulted in a permanent military establishment and expensive military technology.
    - a. In the 1990s, defense expenditures decreased in response to the lessening of tensions in Europe. (See Chapter 20.)
    - b. The budget of the Department of Defense now constitutes about one-fifth of all federal expenditures.
    - c. Payrolls and pensions constitute a large component of the defense budget, as does research, development, and **procurement** (purchasing) of military hardware.
  3. The *cost of advanced technology* makes any weapon, fighter plane, or component more expensive than its predecessors, and **cost overruns** are common.
- D. The rise of the social service state.
  1. The **Social Security Act** (passed in 1935) was originally intended to provide a minimal level of sustenance to older Americans.
  2. In 1965, **Medicare** was added to the Social Security system, providing hospital and physician coverage to the elderly.
  3. Today, more than 53 million Americans receive payments from the Social Security system.
    - a. The typical retired worker received nearly \$1,044 a month in 2007.
    - b. Disability insurance was added in the 1950s, which included workers who had not retired but were disabled.
  4. Essentially, money is taken from working members of the population and spent on retired members; but *demographic and economic realities* now threaten to dilute this intergenerational agreement.
    - a. In 1945, 50 workers paid taxes to support each Social Security beneficiary.
    - b. In 1990, about three workers supported each beneficiary.
    - c. By the year 2025, fewer than two workers will be supporting each beneficiary.
  5. Social Security is not the only social policy of the federal government that is costly. The rise of the social service state has contributed to America’s growing budget in health, education, job training, and scores of other areas.
    - a. *Liberals* often favor these programs to assist individuals and groups in society.
    - b. *Conservatives* see them as a drain on the federal treasury.
- E. The rise of the social service state and the national security state together are linked with much of American governmental growth since the end of World War II.
- F. Why the increasing federal budget is so difficult to control.
  1. Incrementalism.
    - a. **Incrementalism** means that the best predictor of this year’s budget is *last year’s budget plus a little bit more* (an increment).
    - b. Causes of incrementalism.

- (1) The support of relevant interests for spending programs makes it difficult to pare the budget.
- (2) The budget is too big to review from scratch each year.
- (3) More and more of federal spending has become “uncontrollable.”
- 2. “Uncontrollable” expenditures.
  - a. An **uncontrollable expenditure** is one that is *mandated* under current law or by a previous obligation.
    - (1) Uncontrollable expenditures result from policies that make some group automatically eligible for some benefit.
    - (2) Congress has in effect obligated itself to pay a certain level of benefits to a particular number of recipients. Such policies are called **entitlements**.
  - b. About *two-thirds* of the federal budget is uncontrollable—based on expenditures that are determined not by how much Congress appropriates to an agency but by *how many eligible beneficiaries* there are for a particular program.
  - c. Although Congress *legally can* control such expenditures, it could do so only by changing a law or existing benefit levels.
    - (1) Cutting benefits or tightening eligibility restrictions would provoke a monumental outcry from millions of older voters.
  - d. The biggest uncontrollable expenditure is the *Social Security system, including Medicare*, which costs more than \$700 billion; other uncontrollable expenditures include veterans aid, agricultural subsidies, military pensions, civil service workers’ retirement benefits, and interest on the national debt.
  - e. In 1999, President Clinton made financing Social Security his highest priority. He proposed allocating much of the new budget surplus to Social Security and investing some of it in the stock market. Everyone agreed that saving Social Security was a high priority, but not everyone agreed with the president’s solutions. As a result, no major changes occurred.

#### IV. THE BUDGETARY PROCESS

##### A. Budgetary politics.

- 1. The main actors in the budgetary process are:
  - a. *Interest groups* - lobbying for a group’s needs takes place in the agencies, with presidents, and before congressional committees;
  - b. *Agencies* - the heads of agencies almost always push for higher budget requests, sending their requests to the Office of Management and Budget and presenting themselves before congressional committees;
  - c. *Office of Management and Budget (OMB)* - the OMB is responsible to the president, but the director and staff of the OMB have considerable independence, making them major actors in the annual budget process;
  - d. *The president* - the president makes the final decisions on what to propose to Congress; the president unveils the proposed budget in early February and then tries to ensure that Congress will stick close to the recommendations;
  - e. *The Tax Committees in Congress* - the **House Ways and Means Committee** and the **Senate Finance Committee** write the tax codes, subject to the approval of Congress as a whole;

- f. *The Budget Committees* and the *Congressional Budget Office (CBO)* - the CBO is the congressional equivalent of the OMB; the CBO and its parent committees—the Senate and House Budget committees—examine revenues and expenditures and propose resolutions to bind Congress within certain limits;
  - g. *The subject-matter committees* - congressional committees write new laws, which require new expenditures; committee members may use hearings to support larger budgets for them, or to question agency heads about waste or overspending;
  - h. *The Appropriations Committees* and their *subcommittees* - these committees take policies coming from the subject-matter committees and decide how much to spend; their subcommittees hold hearings on specific agency requests;
  - i. *The Congress as a whole* - Congress as a whole approves taxes and appropriations; members have a strong interest in delivering federal dollars to their constituents; and
  - j. *The General Accounting Office (GAO)* - the GAO audits, monitors, and evaluates what agencies are doing with their budgets.
- B. The president's budget.
- 1. Office of Management and Budget.
    - a. In 1921, Congress passed the **Budget and Accounting Act**, requiring presidents to propose an executive budget to Congress and creating the *Bureau of the Budget* to help them.
    - b. In the 1970s, President Nixon reorganized the Bureau of the Budget and renamed it the **Office of Management and Budget (OMB)**.
    - c. The OMB now supervises preparation of the federal budget and advises the president on budgetary matters.
    - d. The director of the OMB is a presidential appointee requiring Senate approval.
  - 2. Preparation of the budget: by law, the president must submit a budget by the first Monday in February.
    - a. The process begins almost a year before, when the OMB communicates with each agency, sounding out its requests and tentatively issuing guidelines.
      - (1) The OMB presents an analysis of the economic situation to the president, and they discuss the budgetary outlook and policies.
      - (2) The OMB gives guidelines to the agencies, which in turn review current programs and submit to the OMB their projections of budgetary needs for the coming year.
      - (3) The OMB reviews these projections and prepares recommendations to the president.
      - (4) The president establishes guidelines and targets.
    - b. By summer, the president has decided on overall policies and priorities and has established general targets for the budget.
      - (1) The OMB conveys the president's decisions to the agencies.
      - (2) The OMB advises and assists agencies in preparing their budgets.
    - c. During the fall, the agencies submit formal, detailed estimates for their budgets.

- (1) Budget analysts at the OMB pore, investigate, weigh, and meet to consider agency requests.
  - (2) The OMB holds hearings, reviews its assessment of the economy, and prepares budget recommendations for the president.
  - (3) The president revises and approves the budget message and transmits the budget document to Congress.
- d. In the winter, the budget document is readied for final presidential approval.
    - (1) Agencies revise their estimates to conform with the president's decisions.
    - (2) The OMB again reviews the economy and then drafts the president's budget message and prepares the budget document.
    - (3) The president revises and approves the budget message and transmits the budget document to Congress.
- C. Congress and the budget.
1. According to the Constitution, all federal appropriations must be authorized by Congress—a control sometimes called the “power of the purse.”
  2. Reforming the process: the **Congressional Budget and Impoundment Act of 1974** was designed to reform the congressional budgetary process.
    - a. The act established *a fixed budget calendar*: a timetable mandated by law was set for each step in the budgetary process.
    - b. The *Budget Committees* in each house are supposed to recommend target figures to Congress for the total budget size by April 1 of each year. By April 15, Congress is to agree on the total size of the budget, which guides the *Appropriations Committees* in juggling figures for individual agencies.
    - c. The **Congressional Budget Office (CBO)** advises Congress on the likely consequences of its budget decisions, *forecasts* revenues, and is a counterweight to the president's OMB.
  3. Provisions of the 1974 act:
    - a. In April of each year, both houses are expected to agree upon a **budget resolution** which would bind Congress to a total expenditure level that should form the bottom line of all federal spending for all programs.
    - b. The congressional budget resolution often requests that certain changes be made in law. These changes are legislated in two separate ways:
      - (1) Budget **reconciliation** *revises program authorizations* to achieve required savings.
        - (a) It usually also includes tax or other revenue adjustments.
        - (b) Reconciliation usually comes near the end of the budgetary process.
      - (2) An **authorization bill** is an act of Congress that *establishes a discretionary government program or an entitlement*, or that *continues or changes* such programs.
        - (a) Authorizations specify program goals, and set the maximum amount that discretionary programs may spend.
        - (b) For entitlement programs, an authorization sets or changes eligibility standards and benefits.
        - (c) An additional measure, termed an **appropriations bill**, must be passed to *actually fund* programs established by authorizations bills. The appropriations bills cannot exceed the amount of money

authorized for a program, but they may appropriate less than was authorized.

4. Results of the 1974 reforms.
  - a. The new system was supposed to force Congress to consider the budget (both projected expenditures and projected revenues) as a whole.
  - b. Congressional budgets have been in the red every year since the 1974 amendments, and the red ink has grown worse (not better). Presidents have made matters worse by submitting budget proposals containing large deficits.
  - c. Congress has often failed to meet its own budgetary timetable.
  - d. In many instances, Congress has not been able to reach agreement and pass appropriations bills at all. Instead of an appropriations bill, Congress has sometimes passed **continuing resolutions**—laws that allow agencies to spend at the previous year’s level.
  - e. On some occasions, appropriations bills have been lumped together in one enormous and complex bill (known as **omnibus bills**), which precludes adequate review by individual members of Congress and forces the president to either accept unwanted provisions or veto the funding for the entire government.
  - f. The 1974 reforms have helped Congress view the entire budget early in the process.
  - g. The problem is not so much the procedure as agreement over how scarce resources should be spent.
5. More reforms.
  - a. Yearly deficits mushroomed during the Reagan administration (1981–1988).
  - b. By 1985, Congress was desperate—President Reagan refused to consider tax increases to pay for federal spending and continued to submit budgets that contained huge deficits.
  - c. In response to growing frustration at its inability to substantially reduce annual budget deficits, Congress enacted the *Balanced Budget and Emergency Deficit Control Act* (1985), better known as the **Gramm-Rudman-Hollings Act**.
  - d. As amended in 1987, the act mandated maximum allowable deficit levels for each year until 1993—at which point the budget was supposed to be in balance. If Congress failed to meet the deficit goals, automatic across-the-board spending cuts (called **sequestrations**) were to be ordered by the president, although a number of programs were exempt from the process.
  - e. In 1990, Congress decided to shift the focus from controlling the size of the deficit (which was the trigger for sequestration) to controlling increases in spending (under which the sheer size of the deficit would not matter).
  - f. Yearly deficits continued to climb until the Clinton administration.
  - g. In 1995, the new Republican majorities in each house were determined to balance the budget within seven years, arguing for substantial cuts in the rate of growth of such popular entitlements programs as Medicaid and the outright elimination of many other programs. The president agreed with the goal—but on his terms.
  - h. However, decreased tax revenues resulting from the economic downturn in 2000–2001 and the income tax cut of 2001 sent the budget into deficit again.

## V. UNDERSTANDING BUDGETING

### A. Democracy and budgeting.

1. Almost all democracies have seen a substantial growth in government in the twentieth century.
  2. Economists Allen Meltzer and Scott Richard argue that *government grows in a democracy* because of the *equality of suffrage*.
    - a. Poorer voters will always use their votes to support public policies that redistribute benefits from the rich to the poor.
    - b. The most rapidly growing expenditures are items like Social Security, Medicaid, Medicare, and social welfare programs (all of which benefit the poor more than the rich).
  3. One often thinks of elites—particularly corporate elites—as being opposed to big government.
    - a. However, Lockheed and Chrysler corporations have appealed to the government for large bailouts when times got rough.
    - b. Corporations support a big government that offers them contracts, subsidies, and other benefits.
  4. Poor and rich voters alike have voted for parties and politicians who promised them benefits.
    - a. Policymakers spend money for things voters like (and will remember on election day).
    - b. Citizens are not the unwilling victims of big government and its big taxes; they are at least co-conspirators.
  5. Government also grows by responding to groups and their demands.
  6. Some politicians compete for votes by promising *not* to spend money (such as Ronald Reagan).
  7. Americans have chosen to tax less and spend less on public services than almost all other democracies with developed economies. (See Chapter 1.)
    - a. Americans want to spend but not pay taxes.
    - b. Being a democracy, that is exactly what the government does—and the inevitable result is red ink.
- B. The budget and the scope of government.
1. In many ways, the budget *is* the scope of government—the bigger the budget, the bigger the government.
  2. The budget can be a force for reining in the government as well as for expanding its role.
  3. One could accurately characterize policymaking in the American government since 1980 as the “*politics of scarcity*”—scarcity of funds for programs like healthcare reform and education.
  4. America’s large budget deficit is as much a constraint on government as it is evidence of a burgeoning public sector.

## **KEY TERMS AND CONCEPTS**

**Appropriations bill:** bill passed annually to fund an authorized program.

**Authorization bill:** an act of Congress that establishes a discretionary government program or an entitlement, or that continues or changes such programs.

**Budget:** a policy document that allocates burdens (taxes) and benefits (expenditures).

**Budget resolution:** a bill setting limits on expenditures based on revenue projections, agreed to by both houses of Congress in April each year.

**Congressional Budget and Impoundment Control Act of 1974:** an act designed to reform the budgeting process by making Congress less dependent on the president's budget; established a fixed budget calendar and a budget committee in each house.

**Congressional Budget Office (CBO):** research agency of Congress, responsible to it for providing analyses of budget proposals, revenue forecasts, and related information.

**Continuing resolutions:** laws that allow agencies to spend at the previous year's level.

**Deficit:** occurs when government spends more money than it receives in taxes in the fiscal year.

**Entitlements:** expenditures for which the total amount spent is not by congressional appropriation, but rather by rules of eligibility established by Congress.

**Expenditures:** money spent by the government in any one year.

**Federal debt:** all of the money borrowed by the government over the years that is still outstanding.

**House Ways and Means Committee:** responsible for originating all revenue bills.

**Income tax:** the portion of money individuals are required to pay to the government from the money they earned.

**Incrementalism:** the best predictor of this year's budget is last year's budget plus a little bit more.

**Medicare:** in 1965, this program was added to Social Security to provide hospital and physician coverage to the elderly.

**Reconciliation:** revisions of program authorizations to make the final budget meet the limits of the budget resolution, usually occurring toward the end of the budgetary process.

**Revenues:** money received by the government in any given year.

**Senate Finance Committee:** responsible for writing the tax code.

**Sixteenth Amendment:** passed in 1913, permits Congress to levy an income tax.

**Social Security Act:** passed to provide a minimal level of sustenance to older Americans.

**Tax expenditures:** revenue losses due to special exemptions, exclusions, and deductions.

**Uncontrollable expenditures:** result from policies that make some group automatically eligible for benefits.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- For class discussion, have students debate the value of a balanced budget amendment. In particular, have them examine the costs and benefits of balancing the budget given that most of the budget expenditures are mandated. Insist that students identify which benefits and which obligations should be the first to go.
- For a reading and writing connection, have students identify and investigate the number of federal agencies they and their families received benefits from within the last five years. Then have them evaluate the importance of these services to their and their families' standard of living. Finally, have them identify what they would have to do if these services were no longer available to them.
- If teaching at a state institution, have students investigate the sources of funding of higher education in the state. What proportion of costs does their student tuition cover? Who pays for the rest? What justification is there for state subsidies of higher education, i.e., who benefits?
- Have students locate public opinion data on public support for government programs (i.e., spending questions), using data sources such as the National Elections Studies or General Social Survey, available on the Internet. Have students assess the extent to which the public supports reducing expenditures in various areas, as well as the extent to which the level of support depends on the exact question wording used. Based on these aggregate patterns, do students believe that support for reductions in spending generally applies to all government spending—or only spending on programs that benefit others?
- Have students access a Web site that provides simulation of the federal budget or provides students with other budgetary tradeoff or analysis games. (An Internet search will reveal many.) Develop a current “balanced” budget. Have students compare their decisions in class, debating the value of their expenditure and revenue choices.
- Invite a staff member from a representative’s office to brief the class about the current status of the federal budget. Who’s involved? Who wants what out of the budget? If a representative or their staffer is not available, consider inviting a state senator or representative to discuss the same questions, as well as differences between the federal and state budgetary process.
- Have the students write an essay on how the War on Terrorism has influenced the National Budget. Require that the students take a side as to the costs and benefits. What has it done to the national debt? Where is the majority of the money being spent?

## **BACKGROUND READING**

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Tomkin, Shelley Lynne. Inside OMB: Politics and Process in the President's Budget Office. Armonk, NY: M.E. Sharpe, 1998.

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## **MEDIA SUGGESTIONS**

Getting Out of Business: Privatization and the Modern State. A video program distributed by Films for the Humanities and Sciences which examines government benefits to industry through providing employment and infrastructure.

# CHAPTER FIFTEEN: THE FEDERAL BUREAUCRACY

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## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Understand why many things that Americans think about bureaucracy are myths.
- Describe in what ways the permanent bureaucracy is broadly representative of the American people.
- Trace the development of the American bureaucracy from the “spoils system” to the “merit system.”
- Identify and describe several theories of the functions and organization of bureaucracies.
- Distinguish among the four basic types of federal agencies: cabinet departments, regulatory agencies, government corporations, and independent executive agencies.
- Explain why implementation of policy can break down.
- Describe the importance of *administrative routine* and *administrative discretion*.
- Evaluate the effects that the movement toward *deregulation* has had on the American economy.
- Determine how presidents try to control the bureaucracy and how Congress tries to control the bureaucracy.
- Investigate the importance of *iron triangles* and *issue networks*.
- Explain the relationship between democratic theory and the operations of bureaucracies.

## CHAPTER OVERVIEW

### INTRODUCTION

Once Congress, the president, or the Supreme Court makes a policy decision, it is most likely that bureaucrats must step in to implement those decisions. Since bureaucrats are typically less visible and are not elected to their positions, their actions and power are often subjects of considerable debate.

The classic conception of bureaucracy was advanced by the German sociologist, **Max Weber**, who stressed that the bureaucracy was a “*rational*” way for a modern society to conduct its business. To Weber, a **bureaucracy** depends upon certain elements, including a hierarchical authority structure, task specialization, and extensive rules, which allow similar cases to be handled in similar ways.

### THE BUREAUCRATS

Bureaucrats are typically much less visible than the president or members of Congress. Bureaucrat baiting is a popular American pastime, and spawns plenty of myths. The following are some of the most prevalent myths about bureaucracy and bureaucrats: Americans dislike bureaucrats; bureaucracies are growing bigger each year; most federal bureaucrats work in Washington, D.C.; and bureaucracies are ineffective, inefficient, and always mired in red tape.

There are approximately four million civilian and military federal bureaucrats, compared to about 19 million state and local public employees. Although Congress has ordered federal agencies to make special efforts to recruit and promote previously disadvantaged groups, *women and nonwhites are still clustered in the lower ranks*. As a whole, however, the permanent bureaucracy is more broadly representative of the American people than legislators, judges, or presidential appointees in the executive branch.

Until approximately 100 years ago, a person got a job with the government through the **patronage** system (a hiring and promotion system based on knowing the right people). Under this “**spoils system**,” nineteenth-century presidents staffed the government with their friends and allies. Today, most federal agencies are covered by some sort of **civil service** system. The rationale for all civil service systems rests on the *merit principle* and the desire to create a nonpartisan government service. The **Office of Personnel Management (OPM)** is in charge of hiring for most agencies of the federal government.

After serving a probationary period, civil servants are protected. It is difficult to fire a civil service employee after the probationary period: an employee can appeal his or her dismissal, which can consume weeks, months, or even years. Ensuring a nonpartisan civil service requires that workers have protection from dismissals that are politically motivated. At the very top of the civil service system are about 9,000 members of the **Senior Executive Service**. These executives earn high salaries and may be moved from one agency to another as leadership needs change.

The other route to federal jobs involves recruiting from the *plum book*, which lists top federal jobs available for direct presidential appointment (often with Senate confirmation). Every incoming president launches a nationwide talent search to fill these positions (approximately 3,000 of them). Most will be “in-and-outers” who stay for a while and leave; they soon learn that senior civil servants know more, have been there longer, and will outlast them.

## HOW BUREAUCRACIES ARE ORGANIZED

In general, there are four types of bureaucracies: cabinet departments, regulatory agencies, government corporations, and independent executive agencies. Each of the 15 **cabinet departments** is headed by a secretary (except the Department of Justice, which is headed by the attorney general); all are chosen by the president and approved by the Senate. Beneath the secretary are undersecretaries, deputy undersecretaries, and assistant secretaries. Each department manages specific policy areas, and each has its own budget and staff.

Each of the **independent regulatory agencies** has responsibility for some sector of the economy. Regulatory agencies make and enforce rules designed to protect the public interest; they also judge disputes over those rules.

**Government corporations** provide a service that could be handled by the private sector. They typically charge for their services, though often at cheaper rates than the consumer would pay a private sector producer.

The **independent executive agencies** are not part of the cabinet departments and generally do not have regulatory functions. They usually perform specialized functions.

## BUREAUCRACIES AS IMPLEMENTORS

As policymakers, bureaucrats play three key roles: they are policy *implementers*; they *administer* public policy; and they are *regulators*. **Policy implementation** occurs when the bureaucracy carries out decisions of Congress, the president, and even the courts. Public policies are rarely self-executing: bureaucrats translate legislative policy goals into programs.

Policy implementation does not always work well, and bureaucrats usually take the blame when it does not. Reasons why implementation may break down include faulty program design, lack of clarity in the laws bureaucrats administer, lack of resources, the following of *standard operating procedures*, administrative discretion, and dispersal of policy responsibility among several units of the bureaucracy (i.e., *fragmentation*).

**Administrative discretion** is the authority of administrative actors to select among various responses to a given problem. Discretion is greatest when rules do not fit a case; but even in agencies with elaborate rules and regulations—especially when more than one rule fits—there is still room for discretion. Michael Lipsky coined the phrase **street-level bureaucrats** to refer to those bureaucrats who are in constant contact with the public and have considerable discretion (including police officers, welfare workers, and lower court judges).

Implementation can be effective if goals are clear and the means to achieve the goals are unambiguous. The **Voting Rights Act of 1965** illustrates a program that was successfully implemented because its goal was clear: to register African Americans to vote in southern

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counties where their voting rights had been denied for years. The means to achieve the goals were also clear: the act singled out six states in the Deep South in which the number of African-American registered voters was minuscule. The Justice Department was ordered to send federal registrars to each county in those states to register qualified voters. Implementation of this act helped bring the vote to some 300,000 African Americans in less than a year.

### BUREAUCRACIES AS REGULATORS

Government **regulation** is the use of governmental authority to control or change some practice in the private sector. This is the most controversial role of the bureaucracies, yet Congress gives them broad mandates to regulate activates as diverse as interest rates, the location of nuclear power plants, and food additives.

Until 1887, the federal government made almost no regulatory policies. Even the minimum regulatory powers of state and local governments were disputed. In 1887, Congress created the first regulatory agency, the Interstate Commerce Commission (ICC), charged with regulating the railroads, their prices, and their services to farmers.

Most agencies charged with regulation first have to develop a set of rules (often called *guidelines*); guidelines are developed in consultation with (and sometimes with the agreement of) the people or industries being regulated. The agency must then apply and enforce its rules and guidelines, either in court or through its own administrative procedures.

Almost every regulatory policy was created to achieve some desirable social goal. Charles L. Schultze (chairman of President Carter's Council of Economic Advisors) is a critic of the current state of federal regulation, which he described as **command-and-control policy**: the government tells business how to reach certain goals, checks that these commands are followed, and punishes offenders. Schultze prefers an **incentive system**. Defenders of the command-and-control system of regulation compare it to preventive medicine; it is designed to minimize problems such as pollution or workplace accidents before they become too severe.

Government regulation of the American economy and society has grown in recent decades. The budgets of regulatory agencies, their level of employment, and the number of rules they issue are all increasing. Opponents of government regulation contend that the rapid increase in the number and scope of environmental regulations during the past two decades has stifled economic growth. Supporters of government regulation argue that such regulations are essential to protect the nation's air, land, and water (and the people who use it).

The idea behind **deregulation**, the lifting of government restrictions on business, industry, and professional activities, is that the number and complexity of regulatory policies have made regulation too complicated and burdensome. To critics, the problem with regulation is that it raises prices, distorts market forces, and worst of all it does not work. Not everyone, however, believes that deregulation is in the nation's best interest. Many regulations have proved beneficial to Americans. As a result of government regulations, we breathe cleaner air, we have lower levels of lead in our blood, miners are safer at work, seacoasts have been preserved, and children are more likely to survive infancy.

## UNDERSTANDING BUREAUCRACIES

In democratic theory, popular control of government depends on elections, but we could not possibly elect the more than four million federal civilian and military employees (or even the few thousand top men and women). However, the fact that voters do not elect civil servants does not mean that bureaucracies cannot respond to and *represent* the public's interests. Much depends on *whether bureaucracies are effectively controlled by the policymakers* that citizens do elect—the president and Congress.

Some presidential methods of exercising control over bureaucracies include:

- Appointing the right people to head the agency.
- Issuing executive orders.
- Tinkering with an agency's budget.
- Reorganizing an agency.

There are several measures Congress can take to oversee the bureaucracy:

- Influencing the appointment of agency heads.
- Tinkering with an agency's budget.
- Holding hearings.
- Rewriting the legislation or making it more detailed.

One crucial explanation for the difficulty presidents and Congress face in controlling bureaucracies relates to the role of iron triangles and issue networks. When agencies, groups, and committees all depend on one another and are in close, frequent contact, they form **iron triangles** (or *subgovernments*). Iron triangles have dominated some areas of domestic policymaking by combining internal consensus with a virtual monopoly on information in their area. Iron triangles are characterized by *mutual dependency*, in which each element provides key services, information, or policy for the others (illustrated by the *tobacco triangle*). These subgovernments can add a strong decentralizing and fragmenting element to the policymaking process.

Hugh Heclio points out that the system of subgovernments is now overlaid with an amorphous system of issue networks, which means that there is more widespread participation in bureaucratic policymaking, and many of the participants have technical policy expertise and are drawn to issues because of intellectual or emotional commitments rather than material interests. This opening of the policymaking process complicates the calculations and decreases the predictability of those involved in the stable and relatively narrow relationships of subgovernments. Despite the fact that subgovernments often are able to dominate policymaking for decades, they are not indestructible; policies of the tobacco triangle, for one, have increasingly come under fire from health authorities.

The federal bureaucracy *has not grown over the past two generations*; in fact, the bureaucracy has *shrunk* in size relative to the population it serves. Originally, the federal bureaucracy had a modest role; but as the economy and the society of the United States changed, additional demands were made on government. Considering the more active role the bureaucracy is expected to play in dealing with social and economic problems, a good case can be made that the bureaucracy is actually too *small* for many of the tasks currently assigned to it (such as the control of illicit drugs or the protection of the environment).

## CHAPTER OUTLINE

### I. THE WEBERIAN MODEL OF BUREAUCRACIES

- A. The classic conception of bureaucracy was advanced by the German sociologist, Max Weber, who stressed that the bureaucracy was a “*rational*” way for a modern society to conduct its business.
- B. To Weber, a **bureaucracy** depends upon certain elements.
  - 1. It has a *hierarchical authority structure*, in which power flows from the top down and responsibility from the bottom up.
  - 2. It uses *task specialization*, so that experts instead of amateurs perform technical jobs.
  - 3. It develops extensive *rules*, which allow similar cases to be handled in similar ways.
- C. Bureaucrats work on the *merit principle*, in which entrance and promotion are on the basis of demonstrated abilities.
- D. Bureaucracies behave with *impersonality* so that all clients are treated impartially.

### II. THE BUREAUCRATS

- A. Bureaucratic agencies.
  - 1. Each bureaucratic agency is created by Congress, which sets its budget and writes the policies it administers.
  - 2. Most agencies are responsible to the president, whose administrative responsibilities are only vaguely hinted at in the constitutional obligation “to take care that the laws shall be faithfully executed.”
  - 3. How to manage and control bureaucracies is a central problem of democratic government.
- B. Bureaucrats have been the scapegoats of American politics. Following are some of the most prevalent *myths* (and responses):
  - 1. *Americans dislike bureaucrats.* Despite the rhetoric about bureaucracies, Americans are generally satisfied with bureaucrats and the treatment they get from them.
  - 2. *Most federal bureaucrats work in Washington, D.C.* Only about 12 percent of federal civilian employees work in Washington.
  - 3. *Bureaucracies are growing bigger each year.* Almost all the growth in the number of public employees has occurred in *state and local* governments. As a percentage of America’s total work force, *federal* government employment has actually been shrinking and now amounts to about three percent of all civilian jobs.
  - 4. *Bureaucracies are ineffective, inefficient, and always mired in red tape.* Bureaucracy is simply a way of organizing people to perform work. Bureaucracies may be inefficient at times, but no one has yet demonstrated that government bureaucracies are more or less inefficient, ineffective, or mired in red tape than private bureaucracies.
- C. Bureaucrats do much more than simply follow orders.
  - 1. Bureaucrats possess crucial information and expertise that make them partners with the president and Congress in making decisions about public policy.
  - 2. Those that compose the bureaucracy perform most of the vital services provided by the federal government.

3. Despite all the complaints about bureaucracies, the vast majority of tasks carried out by governments at all levels are noncontroversial.
  4. Bureaucrats perform a wide variety of routine governmental tasks in a perfectly acceptable manner.
  5. Because of their expertise, they inevitably have some discretion in carrying out policy decisions.
- D. Federal employment.
1. The *Department of Defense (DOD)* employs about one-fourth of federal *civilian* workers in addition to the 1.4 million men and women in uniform. Altogether, the DOD makes up more than half of the federal bureaucracy.
  2. The *Postal Service* accounts for an additional 30 percent of federal civilian employees.
  3. The *Department of Veterans Affairs* (clearly related to national defense) has more than 223,000 employees; and *all other functions of government* are handled by the remaining *25 percent* of federal employees.
- E. Who they are and how they got there.
1. There are approximately 2.7 million civil bureaucrats (more than 21 million if state and local public employees are included).
  2. Although Congress has ordered federal agencies to make special efforts to recruit and promote previously disadvantaged groups, *women and nonwhites are still clustered in the lower ranks*.
  3. As a whole, the permanent bureaucracy is more broadly representative of the American people than legislators, judges, or presidential appointees in the executive branch.
  4. The diversity of employees in bureaucratic jobs mirrors the diversity of private sector jobs.
- F. Civil Service: from patronage to protection.
1. Until approximately 100 years ago, a person got a job with the government through the **patronage** system (a hiring and promotion system based on knowing the right people).
    - a. Under this “**spoils system**,” nineteenth-century presidents staffed the government with their friends and allies.
    - b. In a tragic irony of history, Charles Guiteau (a disappointed office seeker) actually helped end this system of federal appointments: frustrated because President James A. Garfield would not give him a job, Guiteau shot and killed the president.
    - c. Vice President Chester A. Arthur (who then became president) surprised his critics by pushing for passage of the **Pendleton Civil Service Act** (1883), which created the federal Civil Service.
  2. Today, most federal agencies are covered by some sort of civil service system.
  3. The rationale for all **civil service** systems rests on the idea of *merit* and the desire to create a *nonpartisan* government service.
    - a. The **merit principle** (using examinations and promotion ratings) is intended to produce administration by people with talent and skill.
    - b. Creating a nonpartisan civil service means insulating government workers from the risk of being fired when a new party comes to power.
    - c. The **Hatch Act** (1939, amended 1993) also prohibits those employees from *active participation* in partisan politics.

4. The **Office of Personnel Management (OPM)** is in charge of hiring for most agencies of the federal government.
  - a. For each position that is open, the OPM will send three names to the agency (known as the *rule of three*).
  - b. Once hired, a person is assigned a **GS (General Schedule) rating**, ranging from GS 1 to GS 18.
  - c. After a probationary period, civil servants are *protected*; it is difficult to fire a civil service employee after the probationary period. An employee can appeal his or her dismissal, which can consume weeks, months, or even years. (The right of appeal must be exhausted before one's paycheck stops.)
    - (1) Ensuring a nonpartisan civil service requires that workers have protection from dismissals that are politically motivated.
    - (2) Protecting all workers against political firings may also protect a few from dismissal for good cause.
5. At the very top of the civil service system are about 9,000 members of the **Senior Executive Service**. These executives earn high salaries and may be moved from one agency to another as leadership needs change.
6. The other route to federal jobs: recruiting from the *plum book*.
  - a. Congress publishes the *plum book*, which lists top federal jobs available for direct presidential appointment (often with Senate confirmation).
  - b. Every incoming president launches a nationwide talent search to fill these positions (approximately 3,000 of them).
  - c. Presidents look for individuals who combine executive talent, political skills, and policy views similar to those of the president.
  - d. Some positions—especially ambassadorships—go to large campaign contributors.
  - e. Most will be political appointees, “in-and-outers,” who stay for a while and then leave; they soon learn that senior civil servants know more, have been there longer, and will outlast them.
  - f. Most find it difficult to exercise real control over much of what their subordinates do: the security of the civil servants’ jobs combined with the transience (and even ignorance) of their superiors contribute to the bureaucracy’s resistance to change.

### III. HOW BUREAUCRACIES ARE ORGANIZED

- A. In general, there are four types of bureaucracies: *cabinet departments, regulatory agencies, government corporations, and independent executive agencies*.
- B. The cabinet departments.
  1. Each of the 15 **cabinet departments** is headed by a secretary (except the Department of Justice, which is headed by the attorney general); all are chosen by the president and approved by the Senate.
    - a. Beneath the secretary are undersecretaries, deputy undersecretaries, and assistant secretaries.
    - b. Each department manages specific policy areas, and each has its own budget and staff.
  2. The real work of a department is done in the **bureaus** (sometimes designated by other names such as *service, office, or administration*).
  3. From the 1970s until 1995, the Department of Health and Human Services was the largest federal department in dollars spent (although the Department of

Defense still had more employees). The Social Security Administration became an independent agency in 1995, spending one-third of the federal budget on the massive programs of Social Security and Medicare.

- C. The regulatory agencies.
  - 1. Each of the **independent regulatory agencies** has responsibility for some sector of the economy, making and enforcing rules designed to protect the public interest; they also judge disputes over those rules.
  - 2. They are sometimes called the “alphabet soup” of American government because most such agencies are known by their initials: ICC (Interstate Commission), FRB (Federal Reserve Board), NLRB (National Labor Relations Board), FCC (Federal Communications Commission), FTC (Federal Trade Commission), SEC (Securities and Exchange Commission).
  - 3. Each of the agencies is governed by a small commission, appointed by the president for fixed terms of office and confirmed by the Senate; regulatory commission members cannot be fired by the president.
  - 4. Critics claim that the close connection between the regulators and the industries they regulate has meant that the agencies have become the “captives” of industry.
- D. The government corporations.
  - 1. **Government corporations** provide a service that could be handled by the private sector.
  - 2. They typically charge for their services, though often at cheaper rates than the consumer would pay a private sector producer.
  - 3. Examples include the Tennessee Valley Authority (TVA), Amtrak, and the Federal Deposit Insurance Corporation (FDIC); the U.S. Postal Service is the largest of the government corporations.
- E. The independent executive agencies.
  - 1. The **independent executive agencies** are not part of the cabinet departments and generally do not have regulatory functions; they usually perform specialized functions.
  - 2. Their administrators are typically appointed by the president and serve at his pleasure.
  - 3. Examples include the General Services Administration (GSA), National Science Foundation (NSF), and National Aeronautics and Space Administration (NASA).

#### **IV. BUREAUCRACIES AS IMPLEMENTORS**

- A. As policymakers, bureaucrats play three key roles: they are policy *implementors*; they *administer* public policy; and they are *regulators*.
- B. Policy **implementation** occurs when the bureaucracy carries out decisions of Congress, the president, and even the courts.
  - 1. Public policies are *rarely self-executing*: bureaucrats translate legislative policy goals into programs.
  - 2. Congress typically announces the goals of a policy in broad terms, sets up an administrative apparatus, and leaves the bureaucracy the task of working out the details of the program.
- C. Three elements of implementation:
  - 1. Creation of a new agency or assignment of responsibility to an old one;

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2. Translation of policy goals into operational rules of thumb and development of guidelines;
3. Coordination of resources and personnel to achieve the intended goals.
- D. Reasons why implementation may break down (policy implementation does not always work well, and bureaucrats usually take the blame when it does not):
  1. *Faulty program design* - a policy or program may be defective in its basic theoretical conception.
  2. *Lack of clarity* - bureaucracies are often asked to implement unclear laws; members of Congress can thus escape the messy details, and blame for the implementation decisions can be placed elsewhere. Title IX of the Education Act of 1972 is a good example of how implementation becomes complex if the original legislation is unclear.
  3. *Lack of resources* - as big as bureaucracy may appear, it frequently lacks the staff (along with the necessary training, funding, supplies, and equipment) to carry out the tasks it has been assigned to do; agencies may also lack the authority to meet their responsibilities.
  4. *Administrative routine* - much of administration involves a routine in which bureaucrats follow **standard operating procedures (SOPs)** to help them make numerous everyday decisions.
    - a. SOPs bring uniformity to complex organizations.
    - b. Justice is better served if rules are applied uniformly.
    - c. Uniformity also makes personnel interchangeable.
    - d. Routines are essential to bureaucracy (but they also become frustrating to citizens, who term them “red tape” when they do not appear to appropriately address a situation, and may become obstacles to action).
  5. *Administrators' dispositions* - paradoxically, bureaucrats operate not only within the confines of routines but often with considerable *discretion to behave independently*.
    - a. **Administrative discretion** is the authority of administrative actors to select among various responses to a given problem.
    - b. Discretion is greatest when rules do not fit a case; but even in agencies with elaborate rules and regulations—especially when more than one rule fits—there is still room for discretion.
    - c. Michael Lipsky coined the phrase **street-level bureaucrats** to refer to those bureaucrats who are in constant contact with the public and have considerable discretion (including police officers, welfare workers, and lower court judges).
    - d. How bureaucrats exercise discretion depends on their dispositions about the policies and rules they administer; although bureaucrats may be indifferent to the implementation of many policies, others will be in conflict with their policy views or personal or organizational interests.
    - e. Controlling the exercise of discretion is a difficult task: it is not easy to fire bureaucrats in the Civil Service, and removing appointed officials may be politically embarrassing to the president.
  6. *Fragmentation* - responsibility for a policy is sometimes dispersed among several units within the bureaucracy.
    - a. This diffusion of responsibility makes the coordination of policies both time-consuming and difficult.

- b. Sometimes those who are supposed to administer a law receive contradictory signals from different agencies.
  - c. President George W. Bush's creation of the Office of Homeland Security in 2001 involved directing the counterterrorism efforts of 46 federal agencies, encompassing much of the federal government.
  - d. Hyperpluralism and the decentralization of power make it difficult to reorganize government.
- E. A case study: the Voting Rights Act of 1965.
- 1. Implementation can be effective if goals are clear and the means to achieve the goals are unambiguous.
  - 2. The **Voting Rights Act of 1965** was successfully implemented because its goal was clear: to register African Americans to vote in southern counties where their voting rights had been denied for years.
    - a. The act singled out six states in the Deep South in which the number of African-American registered voters was minuscule.
    - b. The Justice Department was ordered to send federal registrars to each county in those states to register qualified voters.
    - c. Congress outlawed literacy tests and other tests previously used to discriminate against African-American registrants.
  - 3. Implementation of this act helped bring the vote to some 300,000 African Americans in less than a year.

## V. BUREAUCRACIES AS REGULATORS

- A. Regulation in the economy and in everyday life.
- 1. Government **regulation** is the use of governmental authority to control or change some practice in the private sector.
  - 2. This is the most controversial role of the bureaucracies, yet Congress gives them broad mandates to regulate activities as diverse as interest rates, the location of nuclear power plants, and food additives.
  - 3. Everyday life itself is the subject of bureaucratic regulation; almost all bureaucratic agencies—not merely the ones called independent regulatory agencies—are in the regulatory business.
  - 4. Most government regulation is clearly in the public interest. For example, the U.S. Department of Agriculture is charged with regulating the quality of meat products.
- B. Regulation: how it grew, how it works.
- 1. Until 1887, the federal government made almost no regulatory policies.
    - a. Even the minimum regulatory powers of state and local governments were disputed.
    - b. In 1877, the Supreme Court upheld the right of government to regulate the business operations of a firm (*Munn v. Illinois*).
    - c. In 1887, Congress created the first regulatory agency, the **Interstate Commerce Commission (ICC)**, charged with regulating the railroads, their prices, and their services to farmers.
  - 2. Most agencies charged with regulation first have to *develop a set of rules* (often called *guidelines*); guidelines are developed in consultation with (and sometimes with the agreement of) the people or industries being regulated.
  - 3. The agency must then apply and enforce its rules and guidelines, either in court or through its own administrative procedures.

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- a. Sometimes it waits for complaints to come to it (as the Equal Employment Opportunity Commission does).
- b. Sometimes it sends inspectors into the field (as the Occupational Safety and Health Administration does).
- c. Sometimes it requires applicants for a permit or license to demonstrate performance consistent with congressional goals and agency rules (as the Federal Communications Commission does).
- 4. All regulation contains these elements:
  - a. A grant of power and set of directions from Congress;
  - b. A set of rules and guidelines by the regulatory agency itself; and
  - c. Some means of enforcing compliance with congressional goals and agency regulations.
- C. How should we regulate?
- D. Government regulation of the American economy and society has grown in recent decades.
  - 1. The budgets of regulatory agencies, their level of employment, and the number of rules they issue are all increasing—and did so even during the Reagan administration.
- E. Toward deregulation.
  - 1. The idea behind **deregulation** is that the number and complexity of regulatory policies have made regulation too complex and burdensome.
  - 2. Critics of regulation have a number of accusations against the regulatory system.
    - a. It raises prices.
    - b. It hurts America's competitive position abroad.
    - c. It does not always work well.
- F. Critics of deregulation
  - 1. Critics of deregulation point to severe environmental damage resulting from lax enforcement of environmental protection standards during the Reagan administration.
  - 2. Many observers attribute at least a substantial portion of the blame for the enormously expensive bailout of the savings and loan industry to the deregulation of it in the 1980s.

## VI. UNDERSTANDING BUREAUCRACIES

- A. Bureaucracy and democracy.
  - 1. In democratic theory, popular control of government depends on elections, but we could not possibly elect the 4.1 million federal civilian and military employees (or even the few thousand top men and women).
  - 2. The fact that voters do not elect civil servants does not mean that bureaucracies cannot respond to and *represent* the public's interests.
  - 3. Much depends on *whether bureaucracies are effectively controlled by the policymakers* that citizens do elect—the president and Congress.
    - a. Presidents try to impose their policy preferences on agencies, using some of the following methods:
      - (1) Appoint the right people to head the agency: putting their people in charge is one good way for presidents to influence agency policy.
      - (2) Issue orders: Presidents can issue **executive orders** to agencies; or presidential aides can pass the word that “the president was wondering if . . .”

- (3) Tinker with an agency's budget: the Office of Management and Budget is the president's own final authority on any agency's budget (but each agency has its own constituents within and outside of Congress, and it is *Congress* that appropriates funds).
  - (4) Reorganize an agency: although President Reagan promised to abolish the Department of Energy and the Department of Education, he never succeeded—largely because each was in the hands of an entrenched bureaucracy, backed by elements in Congress and strong constituent groups.
- b. Congress exhibits an ambivalent relationship with the bureaucracies:
    - (1) On the one hand, members of Congress may find a big bureaucracy congenial (big government provides services to constituents).
    - (2) On the other hand, Congress has found it hard to control the government it helped create.
  - c. Measures Congress can take to oversee the bureaucracy:
    - (1) Influence the appointment of agency heads: even when senatorial approval of a presidential appointment is not required, members of Congress may be influential.
    - (2) Tinker with an agency's budget: the congressional *power of the purse* is a powerful weapon for controlling bureaucratic behavior.
    - (3) Hold hearings: committees and subcommittees can hold periodic hearings as part of their oversight job.
    - (4) Rewrite the legislation or make it more detailed: Congress can write new or more detailed legislation to limit bureaucratic discretion and make its instructions clearer.
- 4. There is one other crucial explanation for the difficulty presidents and Congress face in controlling bureaucracies: iron triangles and issue networks.
    - a. When agencies, groups, and committees all depend on one another and are in close, frequent contact, they form **iron triangles** (or *subgovernments*). (See Chapter 10.)
    - b. Iron triangles have dominated some areas of domestic policymaking by combining internal consensus with a virtual monopoly on information in their area.
    - c. Iron triangles are characterized by *mutual dependency*, in which each element provides key services, information, or policy for the others (illustrated by the *tobacco triangle*).
    - d. These subgovernments can add a strong decentralizing and fragmenting element to the policymaking process.
    - e. Hecho points out that the system of subgovernments is now overlaid with a system of issue networks, with more widespread participation in bureaucratic policymaking, and many of the participants have technical policy expertise and are drawn to issues because of intellectual or emotional commitments rather than material interests. This opening of the policymaking process decreases the predictability of those involved in the stable and relatively narrow relationships of subgovernments.
    - f. Despite the fact that subgovernments often are able to dominate policymaking for decades, they are not indestructible; policies of the tobacco triangle, for one, have increasingly come under fire from health authorities.
- B. Bureaucracy and the scope of government.

1. The federal bureaucracy has not grown over the past two generations; in fact, the bureaucracy has *shrunk* in size relative to the population it serves.
2. Originally, the federal bureaucracy had a modest role; but as the economy and the society of the United States changed, additional demands were made on government. (See Chapter 3.)
3. Considering the more active role the bureaucracy is expected to play in dealing with social and economic problems, a good case can be made that the bureaucracy is actually too *small* for many of the tasks currently assigned to it (such as the control of illicit drugs or the protection of the environment).

## **KEY TERMS AND CONCEPTS**

**Administrative discretion:** authority of administrative actors to select among various responses to a given problem, especially when rules do not fit or more than one rule applies.

**Bureaucracy:** implementers of policy.

**Civil service:** promotes hiring on the basis of merit and establishes a nonpartisan government service.

**Command-and-control policy:** regulatory strategy where government sets a requirement and then enforces individual and corporate actions to be consistent with meeting the requirement.

**Deregulation:** the withdrawal of the use of governmental authority to control or change some practice in the private sector.

**Executive orders:** regulations originating in the executive branch.

**Governmental corporations:** provide services that could be handled by the private sector and generally charge cheaper rates than a private sector producer.

**GS (General Service) rating:** assigned to each job in federal agencies, this rating helps to determine the salary associated with the position.

**Hatch Act:** passed in 1940, prohibits government workers from active participation in partisan politics.

**Incentive system:** regulatory strategy that rewards individuals or corporations for desired types of behavior, usually through the tax code.

**Independent executive agencies:** executive agencies that are not cabinet departments, not regulatory commissions, and not government corporations.

**Independent regulatory agency:** has responsibility for a sector of the economy to protect the public interest.

**Iron triangles:** refers to the strong ties among government agencies, interest groups, and congressional committees and subcommittees.

**Merit principle:** using entrance exams and promotion ratings for hiring workers.

**Office of Personnel Management (OPM):** responsible for hiring for most agencies.

**Patronage:** a hiring and promotion system based on knowing the right people.

**Pendleton Civil Service Act:** passed in 1883, it created the federal Civil Service.

**Policy implementation:** the stage of policymaking between the establishment of a policy and the results of the policy for individuals.

**Regulation:** the use of governmental authority to control or change some practice in the private sector.

**Senior Executive Service:** the very top level of the bureaucracy.

**Standard operating procedures:** detailed rules written to cover as many particular situations as officials can anticipate to help bureaucrats implement policies uniformly.

**Street-level bureaucrats:** bureaucrats who are in constant contact with the public.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Have each student select one of the independent regulatory agencies and write a brief essay on the history and powers of the agency. Ask students to focus on the “capture” theory and try to determine how well—or how poorly—the theory fits the agency the student selected.
- Ask students to research current law and policies regarding the relationships between former government officials and government bureaucrats. Should these now-private citizens be able to use their former positions in order to obtain access for lobbying activities? Have your class propose changes to current federal policies on such lobbying activities.
- If yours is a fairly small community, have each student prepare a “service directory” of local government agencies. They will probably be surprised to find how many government offices and services are available even in small-town areas.
- For class discussion, have students debate the value of a professional bureaucracy. In particular, have them examine the costs and benefits of the patronage system as compared to those of the merit system in terms of responsibility and accountability to the people bureaucrats serve.
- For a reading and writing connection, have students conduct interviews with civil service employees at three different local bureaucratic agencies, preferably at the same levels. Have the student design a set of survey questions about the qualifications of the job and what kind of preparation a person would need to secure that kind of job. Encourage students to explore the popular myths about bureaucrats. In addition, have students ask questions about how much discretion each respondent has and how much interest groups and political appointees place on them. Then have students write an essay comparing and contrasting the respondents’ answers with the material in the text as well as with each other.
- Have students investigate the qualifications for a job in a federal agency of their choice using the government documents section of the library or government agency Web sites. Starting with the top appointed position to the street-level civil service positions, have them detail the qualifications stated in the government literature. Then have them examine, from biographical resources, who fills those positions now. Have students write an essay comparing the standards set with the qualifications of those in office. In particular, ask them whether they think merit standards have been met, at least in the civil service positions.
- Ask students to evaluate the organization and efficiency of your university. How is it organized? Who is employed in what types of positions? Who are the bureaucrats and how efficiently do they perform their jobs? Do these bureaucrats have the same challenges in implementing policy that federal bureaucrats face? Have students prepare brief reports or presentations on their findings.
- Ask students to investigate the creation of the Department of Homeland Security in 2002. For a reading and writing connection, ask students to write an essay applying the principles

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of this chapter to this new department. How does this department (its mission and creation) illustrate fundamental issues regarding bureaucratic organization, efficiency, and effectiveness? What is the likely success of the agency in meeting its goals?

## **BACKGROUND READING**

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Wood, B. Dan, and Richard W. Waterman. Bureaucratic Dynamics: The Role of Bureaucracy in a Democracy. Boulder, CO: Westview Press, 1994.

## **MEDIA SUGGESTIONS**

Bureaucracy of Government. A video distributed by Films for the Humanities and Sciences, examining the liberal and conservative commentary concerning the value and problems of bureaucracy.

Congress and the Bureaucracy. From the “Congress: We the People” series distributed by Films Incorporated. This program examines the symbiotic relationships that evolve between Congress and bureaucratic agencies.

# CHAPTER SIXTEEN: THE FEDERAL COURTS

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## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Explain why the American judicial system is called an *adversarial* system.
- Identify the major actors in the judicial system and explain their functions and responsibilities.
- Describe the functions of federal district courts, courts of appeals, and the U.S. Supreme Court.
- Summarize judicial selection procedures for federal judges and justices.
- Discuss the backgrounds of judges and justices.
- Describe the role of the courts as *policymakers*.
- Summarize procedure in the U.S. Supreme Court, including the “discuss list,” oral argument, the conference, and opinion writing.
- Explain the importance of opinion writing at the Supreme Court level and describe the different types of opinions.
- Identify factors used by the Supreme Court in deciding which cases to accept for review.
- Analyze the contrasting positions of *judicial restraint* and *judicial activism*.

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- Trace the historical evolution of the policy agenda of the Supreme Court.
- Examine the ways in which American courts are both democratic and undemocratic institutions.

# **CHAPTER OVERVIEW**

## **INTRODUCTION**

Although the scope of the Supreme Court's decisions is broad, the actual number of cases tried in our legal system is tiny, compared to lower federal courts and state and local courts. This means that a great deal of judicial policymaking occurs in courts other than the Supreme Court. This chapter describes how the court systems are structured, how judges are selected, and the influence of the courts on the policy agenda in the United States.

## **THE NATURE OF THE JUDICIAL SYSTEM**

The judicial system in the United States is an **adversarial** one in which the courts provide an arena for two parties to bring their conflict before an impartial arbiter (a judge). The system is based on the theory that justice will emerge out of the struggle between two contending points of view.

There are two basic kinds of cases, criminal and civil. In *criminal law*, an individual is charged with violating a specific law; criminal law provides punishment for crimes against society (or public order). *Civil law* does not involve a charge of criminality; instead, it concerns a dispute between two parties and defines relationships between them. The vast majority of cases (both civil and criminal) involve state law and they are tried in state courts.

Every case is a dispute between a *plaintiff* and a *defendant*—the former bringing some charge against the latter. The task of the judge or judges is to apply the law to the case; in some cases, a **jury** is responsible for determining the outcome of a lawsuit. **Litigants** (the plaintiff and the defendant) must have **standing to sue**, which means they must have a serious interest in the case. **Class action suits** permit a small number of people to sue on behalf of all other people similarly situated. Because they recognize the courts' ability to shape policy, interest groups often seek out litigants whose cases seem particularly strong. At other times groups do not directly argue the case for litigants, but support them instead with **amicus curiae** ("friend of the court") **briefs** that attempt to influence the Court's decision, raise additional points of view, and present information not contained in the briefs of the attorneys for the official parties to the case.

There are a number of limitations on cases that federal courts will hear. Federal judges are restricted by the Constitution to deciding "**cases or controversies**." Two parties must bring a case to them (a case involving an actual dispute rather than a hypothetical question). Courts may decide only **justiciable disputes**, which means that conflicts must be capable of being settled *by legal methods*.

## **THE STRUCTURE OF THE FEDERAL JUDICIAL SYSTEM**

The Constitution is vague about the federal court system. Aside from specifying that there will be a Supreme Court, the Constitution left it to Congress' discretion to establish lower

federal courts of general jurisdiction. In the Judiciary Act of 1789, Congress created a system of *constitutional courts* on the basis of this constitutional provision.

The basic judicial structure has been modified several times. At the present time, there are 12 federal courts of appeal, 91 federal district courts, and thousands of state and local courts (in addition to the Supreme Court).

Congress has also established some *legislative courts* (such as the Court of Military Appeals, the Court of Claims, and the Tax Court) for specialized purposes, based on Article I of the Constitution. These **Article I courts** are staffed by judges who have fixed terms of office and who lack the protections of judges on constitutional courts against removal or salary reductions.

Courts of **original jurisdiction** are those where a case is first heard, usually in which trials are held. Courts with **appellate jurisdiction** hear cases brought to them on appeal from a lower court. Appellate courts do not review the factual record, only the legal issues involved.

The entry point for most litigation in the federal courts is one of the 91 district courts. The 680 district court judges usually preside over cases alone, but certain rare cases require that three judges constitute the court. Jurisdiction of the district courts extends to federal crimes; civil suits under federal law; diversity of citizenship cases where the amount exceeds \$75,000; supervision of bankruptcy proceedings; review of the actions of some federal administrative agencies; admiralty and maritime law cases; and supervision of the naturalization of aliens.

However, approximately 98 percent of all criminal cases in the United States are heard in state and local court systems, not in federal courts. Even so, only a small percentage of the persons convicted in district courts actually have a trial. Most charged with federal crimes enter guilty pleas as part of a bargain to receive lighter punishment ("plea bargaining"). Most *civil suits* are also handled in *state and local* courts; the vast majority of suits are *settled out of court* without a trial.

U.S. courts of appeal are *appellate* courts empowered to review final decisions of district courts; they also have the authority to review and enforce orders of many federal regulatory agencies. The United States is divided into *12 judicial circuits*, including one for the District of Columbia. There is also a special appeals court called the **U.S. Court of Appeals for the Federal Circuit** (established in 1982), which hears appeals in *specialized cases*, such as those regarding patents, copyrights and trademarks, claims against the United States, and international trade.

About 75 percent of the more than 63,000 cases heard in the courts of appeal come from the district courts. Each court of appeals normally hears cases in panels consisting of three judges, but each may sit *en banc* (with all judges present) in particularly important cases. Decisions are made by *majority vote* of the participating judges.

The U.S. **Supreme Court** is the only court specifically established within Article III of the Constitution. The size of the Court is not set in the Constitution, and it was altered many times between 1801 and 1869; the number has remained stable at nine justices since that time. All nine justices sit together to hear cases and make decisions.

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The Supreme Court has *both original and appellate jurisdiction*. Very few cases arise under original jurisdiction, which is defined in *Article III* of the Constitution. Almost all the cases come from the appeals process; appellate jurisdiction of the Court is set by *statute*. Cases may be appealed from both federal and state courts. The great majority of cases come from the lower federal courts. Unlike other federal courts, it controls its own agenda.

### THE POLITICS OF JUDICIAL SELECTION

Federal judges are constitutionally guaranteed the right to serve for life “during good behavior.” Federal judges may be removed only by *impeachment*, which has occurred only seven times in two centuries. No Supreme Court justice has ever been removed from office, although Samuel Chase was tried (but not convicted by the Senate) in 1805.

Although the *president nominates* persons to fill judicial posts, the *Senate must confirm* each by majority vote. The customary manner in which the Senate disposes of state-level federal judicial nominations is through **senatorial courtesy**. Because of the strength of this informal practice, presidents usually check carefully with the relevant senator or senators ahead of time. The president usually has more influence in the selection of judges to the federal courts of appeal than to federal district courts. Individual senators are in a weaker position to determine who the nominee will be because the jurisdiction of an appeals court encompasses several states. Even here, however, senators of the president’s party from the state in which the candidate resides may be able to veto a nomination.

Although on the average there has been an opening on the Supreme Court every two years, there is a substantial variance around this mean. Presidents have failed 20 percent of the time to get Senate confirmation of their nominees to the Supreme Court—a percentage much higher than that for any other federal position. When the **chief justice’s** position is vacant, presidents usually nominate someone from outside the Court; but if they decide to elevate a sitting associate justice, he or she must go through a new confirmation hearing. Nominations are most likely to run into trouble under certain conditions. Presidents whose parties are in the minority in the Senate or who make a nomination at the end of their terms face a greatly increased probability of substantial opposition. Equally important, opponents of a nomination usually must be able to question a nominee’s competence or ethics in order to defeat a nomination.

### THE BACKGROUNDS OF JUDGES AND JUSTICES

Judges serving on federal district and circuit courts are not a representative sample of the American people. They are all lawyers, and they are overwhelmingly white males. Federal judges have typically held office as a judge or prosecutor, and often they have been involved in partisan politics.

Like their colleagues on the lower federal courts, Supreme Court justices share characteristics that qualify them as an elite group. All have been lawyers, and all but four have been white males. Typically, justices have held high administrative or judicial positions; most have had some experience as a judge, often at the appellate level; many have worked for the Department of Justice; and some have held elective office. A few have had *no* government service. The fact that many justices (including some of the most distinguished ones) *have not had any previous judicial experience* may seem surprising, but the unique work of the

Supreme Court renders this background much less important than it might be for other appellate courts.

*Partisanship* is an important influence on the selection of judges and justices: only 13 of 110 members of the Supreme Court have been nominated by presidents of a different party. *Ideology* is as important as partisanship; presidents want to appoint to the federal bench people who share their views. Presidential aides survey candidates' decisions (if they have served on a lower court), speeches, political stands, writings, and other expressions of opinion. They also turn for information to people who know the candidates well. Presidents are typically pleased with the performance of their nominees to the Supreme Court and through them have slowed or reversed trends in the Court's decisions. Nevertheless, it is not always easy to predict the policy inclinations of candidates, and presidents have been disappointed in their nominees about one-fourth of the time.

## THE COURTS AS POLICYMAKERS

The first decision the Supreme Court must make is *which cases to decide*: unlike other federal courts, the Supreme Court *controls its own agenda*. Approximately 8,000 cases are submitted annually to the U.S. Supreme Court (but only about one percent are accepted for review).

The nine justices meet in *conference* at least once each week. The first task in conference is for the justices to consider the chief justice's *discuss list* and decide which cases they want to hear. Most of the justices rely heavily on their *law clerks* to screen cases. If four justices agree to grant review of a case (the "rule of four"), it can be scheduled for oral argument or decided on the basis of the written record already on file with the Court. The most common way for the Court to put a case on its docket is by issuing a **writ of certiorari** to a lower federal or state court—a formal document that orders the lower court to send up a record of the case for review.

An important influence on the Supreme Court is the **solicitor general**. As a presidential appointee and the third-ranking official in the Department of Justice, the solicitor general is in charge of the appellate court litigation of the federal government. By avoiding frivolous appeals and displaying a high degree of competence, they typically earn the confidence of the Court, which in turn grants review of a large percentage of the cases they submit.

The Supreme Court decides *very few cases*. In a typical year, the Court issues fewer than 100 (recently about 80) *formal written opinions* that could serve as precedent. In a few dozen additional cases, the Court reaches a *per curiam decision*—a decision without explanation (usually unsigned); such decisions involve only the immediate case and have no value as precedent because the Court does not offer reasoning that would guide lower courts in future decisions.

The second task of the weekly conferences is to *discuss cases* that have been accepted and argued before the Court. Beginning the first Monday in October and lasting until June, the Court hears **oral arguments** in two-week cycles. Unlike a trial court, justices are familiar with the case before they ever enter the courtroom. The Court will have received written **briefs** from each party. They may also have received briefs from parties who are interested in

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the outcome of the case but are not formal litigants (known as *amicus curiae*—or “friend of the court”—briefs).

The chief justice presides in conference. The chief justice calls first on the senior associate justice for discussion and then the other justices in order of seniority. If the votes are not clear from the individual discussions, the chief justice may ask each justice to vote. Once a *tentative vote* has been reached (votes are not final until the opinion is released), an *opinion* may be written.

The written **opinion** is the legal reasoning behind the decision. The *content of an opinion may be as important as the decision itself*. Tradition requires that the chief justice—if he voted with the majority—assign the **majority opinion** to himself or another justice in the majority; otherwise, the opinion is assigned by the senior associate justice in the majority.

**Concurring opinions** are those written to support a majority decision but also to stress a different constitutional or legal basis for the judgment. **Dissenting opinions** are those written by justices opposed to all or part of the majority’s decision. Justices are free to write their own opinions, to join in other opinions, or to associate themselves with part of one opinion and part of another.

The vast majority of cases are settled on the principle of *stare decisis* (“let the decision stand”), meaning that an earlier decision should hold for the case being considered. Lower courts are expected to follow the **precedents** of higher courts in their decision making. The Supreme Court may overrule its own precedents, as it did in *Brown v. Board of Education* (1954) when it overruled *Plessy v. Ferguson* (1896) and found that segregation in the public schools violated the Constitution.

Policy preferences do matter in judicial decision making, especially on the nation’s highest court. When precedent is not clear, the law is less firmly established. In such cases, there is more leeway and judges become more purely political players with room for their values to influence their judgment.

The most contentious issue involving the courts is the role of *judicial discretion*; the Constitution itself does not specify any rules for interpretation. Some have argued for a jurisprudence of **original intent** (sometimes referred to as **strict constructionism**). This view, which is popular with conservatives, holds that judges and justices should determine the intent of the framers of the Constitution and decide cases in line with that intent. Advocates of strict constructionism view it as a means of constraining the exercise of judicial discretion, which they see as the *foundation of the liberal decisions* of the past four decades. Others assert that the Constitution is subject to multiple meanings; they maintain that what appears to be deference to the intentions of the framers is simply *a cover for making conservative decisions*.

**Judicial implementation** refers to how and whether court decisions are translated into actual policy, thereby affecting the behavior of others. The implementation of any Court decision involves many actors besides the justices, and the justices have no way of ensuring that their decisions and policies will be implemented.

## THE COURTS AND THE POLICY AGENDA

The courts both *reflect* and *help to determine* the national *policy agenda*. Until the Civil War, the dominant questions before the Court regarded the strength and legitimacy of the federal government and slavery. From the Civil War until 1937, questions of the relationship between the federal government and the economy predominated; the courts traditionally favored corporations, especially when government tried to regulate them. From 1938 to the present, the paramount issues before the Court have concerned personal liberty and social and political equality. In this era, the Court has enlarged the scope of personal freedom and civil rights, and has removed many of the constitutional restraints on the regulation of the economy. Most recently, environmental groups have used the courts to achieve their policy goals.

John Marshall, chief justice from 1801 to 1835, established the Supreme Court's power of **judicial review** in the 1803 case of *Marbury v. Madison* (the so-called "midnight judges" case). In a shrewd solution to a political controversy, Marshall asserted for the courts *the power to determine what is and is not constitutional* and thereby established the power of judicial review. By in effect reducing its own power—the authority to hear cases such as Marbury's under its original jurisdiction—the Court was able to assert the right of judicial review in a fashion that the other branches could not easily rebuke.

Few eras of the Supreme Court have been as active in shaping public policy as that of the Warren Court. The Court's decisions on desegregation, criminal defendants' rights, and voting reapportionment reshaped public policy and also led to calls from right-wing groups for Chief Justice Earl Warren's impeachment. His critics argued that the unelected justices were making policy decisions that were the responsibility of elected officials.

The Burger Court—which followed the Warren Court—was more conservative than the liberal Warren Court, but did not overturn the due process protections of the Warren era. The Court narrowed defendants' rights, but did not overturn the fundamental contours of the *Miranda* decision. It was also the Burger Court that wrote the abortion decision in *Roe v. Wade* (1973), required school busing in certain cases to eliminate historic segregation, and upheld affirmative action programs in the *Weber* case. When the Supreme Court was called upon to rule on whether President Nixon's White House (Watergate) tapes had to be turned over to the courts, it unanimously ordered him to do so (*United States v. Nixon*, 1974), and thus hastened his resignation.

The Rehnquist Court has not created a "revolution" in constitutional law. Instead, it has been slowly chipping away at liberal decisions such as those regarding defendants' rights, abortion, and affirmative action. The Court no longer sees itself as the special protector of individual liberties and civil rights for minorities; it has typically deferred to the will of the majority and the rules of the government.

## UNDERSTANDING THE COURTS

Powerful courts are unusual; very few nations have them. The power of American judges raises questions about the compatibility of unelected courts with a democracy and about the appropriate role for the judiciary in policymaking.

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In some ways, the courts are not a very democratic institution. Federal judges are not elected and are almost impossible to remove. Their social backgrounds probably make the courts the most elite-dominated policymaking institution. However, the courts are not entirely independent of popular preferences. Even when the Court seems out of step with other policymakers, it eventually swings around to join the policy consensus (as it did in the New Deal era).

There are strong disagreements concerning the appropriateness of allowing the courts to have a policymaking role. Many scholars and judges favor a policy of **judicial restraint** (sometimes called *judicial self-restraint*), in which judges play minimal policymaking roles, leaving policy decisions to the legislatures. Advocates of judicial restraint believe that decisions such as those on abortion and school prayer go well beyond the “referee” role they feel is appropriate for courts in a democracy. On the other side are proponents of **judicial activism**, in which judges make bolder policy decisions, even breaking new constitutional ground with a particular decision. Advocates of judicial activism emphasize that the courts may alleviate pressing needs, especially of those who are weak politically or economically.

*Judicial activism or restraint* should not be confused with *liberalism or conservatism*. In the early years of the New Deal, judicial activists were conservatives. During the tenure of Earl Warren, activists made liberal decisions. The tenure of the conservative Chief Justice Warren Burger and several conservative nominees of Republican presidents marked the most active use of judicial review in the nation’s history. The problem remains of reconciling the American democratic heritage with an active policymaking role for the judiciary. The federal courts have developed a doctrine of **political questions** as a means to avoid deciding some cases, principally those that involve conflicts between the president and Congress.

One factor that increases the acceptability of activist courts is *the ability to overturn their decisions*. The president and the Senate determine who sits on the federal bench (a process that has sometimes been used to reshape the philosophy of the Court). Congress can begin the process of amending the Constitution to overcome a constitutional decision of the Supreme Court, and Congress could even alter the appellate jurisdiction of the Supreme Court to prevent it from hearing certain types of cases. If the issue is one of **statutory construction** (in which a court interprets an act of Congress), the legislature routinely passes legislation that *clarifies existing laws*—and, in effect, overturns the courts.

# CHAPTER OUTLINE

## I. THE NATURE OF THE JUDICIAL SYSTEM

- A. The judicial system in the United States is an **adversarial** one in which the courts provide an arena for two parties to bring their conflict before an impartial arbiter (a judge).
  - 1. The system is based on the theory that justice will emerge out of the struggle between two contending points of view.
  - 2. In reality, most cases never reach trial because they are settled by agreements reached out of court.
  - 3. There are two basic kinds of cases, *criminal law* and *civil law*.

- a. In criminal law, an individual is charged with violating a specific law; criminal law provides punishment for crimes against society (or public order).
  - b. Civil law does not involve a charge of criminality; instead, it concerns a dispute between two parties and defines relationships between them.
  - c. The vast majority of cases (both civil and criminal) involve state law and are tried in state courts.
- B. Participants in the judicial system.
1. Federal judges are restricted by the Constitution to deciding *cases or controversies*.
  2. Courts may decide only **justiciable disputes**, which means that conflicts must be capable of being settled *by legal methods*.
  3. Every case is a dispute between a **plaintiff** and a **defendant**—the former bringing some charge against the latter.
  4. **Litigants** (the plaintiff and the defendant) must have **standing to sue**, which means they must have a serious interest in a case (typically determined by whether or not they have sustained or are in immediate danger of sustaining a direct and substantial injury from another party or from an action of government).
    - a. In recent years, there has been some broadening of the concept of standing to sue.
    - b. **Class action suits** permit a small number of people to sue on behalf of all other people similarly situated (for example, a suit on behalf of all credit card holders of an oil company).

## II. THE STRUCTURE OF THE FEDERAL JUDICIAL SYSTEM

- A. The Constitution is vague about the federal court system: aside from specifying that there will be a Supreme Court, the Constitution left it to Congress' discretion to establish lower federal courts of general jurisdiction.
1. In the **Judiciary Act of 1789**, Congress created a system of **constitutional courts** (also called **Article III courts**) on the basis of this constitutional provision. In addition to the Supreme Court, there are 12 federal courts of appeal, 91 federal district courts, and thousands of state and local courts.
  2. Congress has also established some **legislative courts** (such as the Court of Military Appeals, the Court of Claims, and the Tax Court) for specialized purposes, based on Article I of the Constitution. These **Article I courts** are staffed by judges who have fixed terms of office and who lack the protections of judges on constitutional courts against removal or salary reductions.
- B. District courts.
1. **District courts** are courts of *original jurisdiction*.
  2. They are *trial courts*—the only federal courts in which trials are held and in which juries may be impaneled.
    - a. Approximately 98 percent of all criminal cases in the United States are heard in state and local court systems, not in federal courts.
  3. The 680 district court judges usually preside over cases alone, but certain rare cases require that three judges constitute the court.
  4. Jurisdiction of the district courts extends to federal crimes; civil suits under federal law; diversity of citizenship cases where the amount exceeds \$75,000; supervision of bankruptcy proceedings; review of the actions of some federal

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administrative agencies; admiralty and maritime law cases; supervision of the naturalization of aliens.

### C. Courts of appeal.

1. U.S. courts of appeal have **appellate jurisdiction**; *they are* empowered to *review final decisions of district courts*; they also have the authority to *review and enforce orders of many federal regulatory agencies*.
2. The United States is divided into *12 judicial circuits*, including one for the District of Columbia.
  - a. About 75 percent of the more than 63,000 cases heard in the courts of appeal come from the district courts.
  - b. Each court of appeals normally hears cases in panels consisting of three judges, but each may sit *en banc* (with all judges present) in particularly important cases.
  - c. Decisions are made by *majority vote* of the participating judges.
3. There is also a special appeals court called the **U.S. Court of Appeals for the Federal Circuit** (established in 1982), which hears appeals in *specialized cases*, such as those regarding patents, copyrights and trademarks, claims against the United States, and international trade.

### D. The Supreme Court.

1. The highest court in the federal system, the U.S. **Supreme Court** is also the only court specifically established within Article III of the Constitution.
  - a. There are nine justices on the Court: eight associates and one chief justice.
  - b. The size of the Court is not set in the Constitution, and it was altered many times between 1801 and 1869; the number has remained stable at nine justices since that time.
2. Important functions include:
  - a. Resolving conflicts among the states;
  - b. Maintaining national supremacy in the law; and
  - c. Playing an important role in ensuring uniformity in the interpretation of national laws.
3. All nine justices sit together to hear cases and make decisions (*en banc*). The first decision the Court must make is *which cases to decide*: unlike other federal courts, the Supreme Court *controls its own agenda*.
4. The Supreme Court has *both original and appellate jurisdiction*.
  - a. Very few cases arise under original jurisdiction, which is defined in *Article III*.
  - b. Almost all the cases come from the appeals process; appellate jurisdiction is set by *statute*.
  - c. Cases may be *appealed* from *both federal and state courts*.
  - d. The great majority of cases come from the lower federal courts.
5. Cases appealed from state courts:
  - a. Cases appealed from state courts must involve "*a substantial federal question*."
  - b. Cases from state courts are heard only in the Supreme Court (not in the courts of appeal) and then only after the petitioner has exhausted all the potential remedies in the state court system.
  - c. The Court will not try to settle matters of state law or determine guilt or innocence in state criminal proceedings.

### III. THE POLITICS OF JUDICIAL SELECTION

- A. Although the *president nominates* persons to fill judicial posts, the *Senate must confirm* each by majority vote.
- B. Federal judges are constitutionally guaranteed the right to serve for life “during good behavior.”
  - 1. Federal judges may be removed only by *impeachment*, which has occurred only seven times in two centuries.
  - 2. No Supreme Court justice has ever been removed from office, although Samuel Chase was tried but not convicted by the Senate in 1805.
  - 3. Salaries of federal judges cannot be reduced (a stipulation that further insulates them from political pressures).
- C. The lower courts: judicial selection procedures.
  - 1. The customary manner in which the Senate disposes of state-level federal judicial nominations is through **senatorial courtesy**.
    - a. Under this unwritten tradition (which began under George Washington in 1789), nominations for these positions are not confirmed when opposed by a senator of the president’s party from the state in which the nominee is to serve.
    - b. In the case of courts of appeal judges, nominees are not confirmed if opposed by a senator of the president’s party from the state of the nominee’s residence.
    - c. Because of the strength of this informal practice, presidents usually check carefully with the relevant senator or senators ahead of time.
    - d. Typically, when there is a vacancy for a federal district judgeship, the one or two senators of the president’s party from the state where the judge will serve suggest one or more names to the attorney general and the president; if neither senator is of the president’s party, the party’s state congresspersons or the other party leaders may make suggestions.
    - e. The Department of Justice and the Federal Bureau of Investigation then conduct competency and background checks on these persons, and the president usually selects a nominee from those who survive the screening process.
- D. The Supreme Court.
  - 1. Although on the average there has been an opening on the Supreme Court every two years, there is a substantial variance around this mean.
  - 2. When the **chief justice’s** position is vacant, presidents usually nominate someone from outside the Court; but if they decide to elevate a sitting associate justice (as President Reagan did with William Rehnquist in 1986), he or she must go through a new confirmation hearing.
  - 3. Selection process.
    - a. The president usually relies on the attorney general and the Department of Justice to identify and screen candidates for the Supreme Court.
    - b. Sitting justices often try to influence the nominations of their future colleagues, but presidents feel no obligation to follow their advice.
    - c. Senators play a much less prominent role in the recruitment of Supreme Court justices than in the selection of lower court judges.
    - d. The ABA’s Standing Committee on the Federal Judiciary has played a varied but typically modest role at the Supreme Court level; presidents have not generally been willing to allow the committee to prescreen candidates.

- e. Candidates for nomination usually keep a low profile.
4. Failure to confirm.
  - a. Presidents have failed 20 percent of the time to get Senate confirmation of their nominees to the Supreme Court—a percentage much higher than that for any other federal position.
    - (1) Thus, although home-state senators do not play prominent roles in the selection process, the Senate as a whole does.
    - (2) Through its **Judiciary Committee**, it may probe a nominee's background and judicial philosophy in great detail.
  - b. Nominations are most likely to run into trouble under certain conditions.
    - (1) Presidents whose parties are in the minority in the Senate or who make a nomination at the end of their terms face an increased probability of substantial opposition.
    - (2) Opponents of a nomination usually must be able to question a nominee's competence or ethics in order to defeat a nomination.
    - (3) Opposition based on a nominee's ideology is generally not considered a valid reason to vote against confirmation (illustrated by the confirmation of Chief Justice William Rehnquist, who was strongly opposed by liberals).

#### IV. THE BACKGROUNDS OF JUDGES AND JUSTICES

- A. Characteristics of district and circuit court judges.
  1. Judges serving on federal district and circuit courts are not a representative sample of the American people.
  2. They are all lawyers, and they are overwhelmingly white males.
  3. Federal judges have typically held office as a judge or prosecutor, and often they have been involved in partisan politics.
- B. Characteristics of Supreme Court justices.
  1. Like their colleagues on the lower federal courts, Supreme Court justices share characteristics that qualify them as an elite group.
  2. All have been lawyers, and all but four (Thurgood Marshall, nominated in 1967, Sandra Day O'Connor, nominated in 1981, Clarence Thomas, nominated in 1991, and Ruth Bader Ginsburg, nominated in 1993) have been white males.
  3. Most have been in their fifties and sixties when they took office, from the upper-middle to upper class, and Protestants.
  4. Race and sex have become more salient criteria in recent years.
  5. Geography was once a prominent criterion for selection to the court, but it is no longer very important.
  6. At various times, there have been what some have termed a “Jewish seat” and a “Catholic seat” on the Court, but these guidelines are not binding on the president (and are not always followed).
  7. Typically, justices have held high administrative or judicial positions.
    - a. Most have had some experience as a judge, often at the appellate level.
    - b. Many have worked for the Department of Justice, and some have held elective office.
    - c. A few have had *no* government service.
    - d. The fact that many justices (including some of the most distinguished ones) have not had *any* previous judicial experience may seem surprising, but the

unique work of the court renders this background much less important than it might be for other appellate courts.

C. “Politics” and the selection process.

1. *Partisanship* is an important influence on the selection of judges and justices: only 13 of 110 members of the Supreme Court have been nominated by presidents of a different party.
2. Judgeships are considered very prestigious patronage plums; the decisions of Congress to create new judgeships are closely related to whether or not the majority party in Congress is the same as the party of the president.
3. *Ideology* is as important as partisanship; presidents want to appoint to the federal bench people who share their views.
  - a. Presidential aides survey candidates’ decisions (if they have served on a lower court), speeches, political stands, writings, and other expressions of opinion.
  - b. They also turn for information to people who know the candidates well.
  - c. Members of the federal bench also play the game of politics, and may try to time their retirements so that a president with compatible views will choose their successors.
4. Thus, presidents influence policy through the values of their judicial nominees, but this impact is limited by numerous legal and “extra-legal” factors beyond the chief executive’s control.
  - a. Presidents are typically pleased with their nominees to the Supreme Court, and through them have slowed or reversed trends in the Court’s decisions. (Franklin D. Roosevelt’s nominees substantially liberalized the Court, whereas Richard Nixon’s made it more conservative.)
  - b. Nevertheless, it is not always easy to predict the policy inclinations of candidates, and presidents have been disappointed in their nominees about one-fourth of the time. (President Eisenhower was displeased with the liberal decisions of both Earl Warren and William Brennan, and Richard Nixon was disappointed when Warren Burger wrote the Court’s decision calling for immediate desegregation of the nation’s schools.)

## V. THE COURTS AS POLICYMAKERS

A. *Deciding which cases to accept* is the first step in policymaking.

1. Courts of original jurisdiction cannot very easily decide not to consider a case.
2. The Supreme Court has control over its own docket.
3. Approximately 8,000 cases are submitted annually to the U.S. Supreme Court.

B. Functions of weekly conferences:

1. Establish an agenda.
  - a. The nine justices meet in **conference** at least once a week.
  - b. Conferences operate under the strictest secrecy, with only the justices in attendance.
  - c. The justices consider the chief justice’s *discuss list* and decide which cases they want to hear.
  - d. Most of the justices rely heavily on their *law clerks* to screen cases.

- e. If four justices agree to grant review of a case (the “*rule of four*”), it can be scheduled for *oral argument* or decided *on the basis of the written record already* on file with the Court.
  - f. The most common way for the Court to put a case on its docket is by issuing a **writ of certiorari** to a lower federal or state court—a formal document that orders the lower court to send up a record of the case for review.
  - g. The **solicitor general** has an important influence on the Court.
    - (1) As a presidential appointee and the third-ranking official in the Department of Justice, the solicitor general is in charge of the appellate court litigation of the federal government.
    - (2) By avoiding frivolous appeals and displaying a high degree of competence, the solicitor general and a staff of about two dozen experienced attorneys typically have the confidence of the Court—which, in turn, grants review of a large percentage of the cases for which they seek it.
2. Making decisions.
    - a. The second task of the weekly conferences is to *discuss cases* that have been accepted and argued before the Court.
    - b. Beginning the first Monday in October and lasting until June, the Court hears **oral arguments** in two-week cycles.
    - c. Unlike a trial court, justices are familiar with the case before they ever enter the courtroom.
      - (1) The Court will have received written **briefs** from each party.
      - (2) They may also have received briefs from parties who are interested in the outcome of the case but are not formal litigants (known as *amicus curiae*—or “friend of the court”—briefs).
    - d. In most instances, the attorneys for each side have only a half-hour to address the Court during oral argument.
    - e. The chief justice presides in conference.
      1. The chief justice calls first on the senior associate justice for discussion and then the other justices in order of seniority.
      2. If the votes are not clear from the individual discussions, the chief justice may ask each justice to vote.
      3. Once a *tentative vote* has been reached (votes are not final until the opinion is released), an *opinion* may be written.
- C. Opinion writing.
1. The *content of an opinion may be as important as the decision itself*.
    - a. The written **opinion** is the legal reasoning behind the decision.
    - b. Tradition requires that the chief justice—if he voted with the majority—assign the **majority opinion** to himself or another justice in the majority; otherwise, the opinion is assigned by the senior associate justice in the majority.
  2. Drafts of the opinion are circulated for comments and suggestions; substantial revisions may be made.
  3. Justices are free to write their own opinions, to join in other opinions, or to associate themselves with part of one opinion and part of another.
    - a. **Concurring opinions** are those written to support a majority decision but also to stress a different constitutional or legal basis for the judgment.

- b. **Dissenting opinions** are those written by justices opposed to all or part of the majority's decision.
- 4. The vast majority of cases are settled on the principle of *stare decisis* ("let the decision stand"), meaning that an earlier decision should hold for the case being considered.
  - a. All courts rely heavily upon such **precedent**—the way similar cases were handled in the past—as a guide to current decisions.
  - b. Lower courts are expected to follow the precedents of higher courts in their decision making.
  - c. The Supreme Court may overrule its own precedents, as it did in *Brown v. Board of Education* (1954) when the Court overruled *Plessy v. Ferguson* (1896) and found that segregation in the public schools violated the Constitution.
  - d. When precedent is not clear, the law is less firmly established; here there is more leeway and judges become more purely political players with room for their values to influence their judgment.
  - e. Policy preferences do matter in judicial decision making, especially on the nation's highest court.
- D. The Supreme Court decides *very few cases*.
  - 1. In a typical year, the Court issues fewer than 100 (recently, about 80) *formal written opinions* that could serve as *precedent*.
  - 2. In a few dozen additional cases, the Court reaches a ***per curiam* decision**—a decision without explanation (usually unsigned); such decisions involve only the immediate case and have no value as precedent because the Court does not offer reasoning that would guide lower courts in future decisions.
  - 3. Once announced, copies of a decision are conveyed to the press as it is being formally announced in open court.
  - 4. The decisions are bound weekly and made available to every law library and lawyer in the United States.
- E. Implementing court decisions.
  - 1. Even Supreme Court decisions are *not self-implementing*; they are actually "remands" to lower courts, instructing them to act in accordance with the Court's decisions.
  - 2. Court decisions carry legal (even moral) authority, but courts do not possess a staff to enforce their decisions.
  - 3. **Judicial implementation** refers to how and whether court decisions are translated into actual policy.
  - 4. Charles Johnson and Bradley Canon suggest that implementation of court decisions involves several elements:
    - a. There is an *interpretation population*—heavily composed of lawyers and other judges—who must correctly sense the intent of the original decision in their subsequent actions.
    - b. The *implementing population* includes those responsible for putting the decision into effect; judicial decisions are more likely to be smoothly implemented if implementation is concentrated in the hands of a few highly visible officials.
    - c. Every decision involves a *consumer population* (those affected by the decision); the consumer population must be aware of its newfound rights and stand up for them.

## Chapter 16

- F. The debate over original intentions.
  - 1. The most contentious issue involving the courts is the role of *judicial discretion*; the Constitution itself does not specify any rules for interpretation.
  - 2. Some have argued for a jurisprudence of **original intent** (sometimes referred to as **strict constructionism**).
    - a. This view, which is popular with conservatives, holds that judges and justices should determine the intent of the framers of the Constitution and decide cases in line with that intent.
    - b. Advocates of strict constructionism view it as a means of *constraining the exercise of judicial discretion*, which they see as the *foundation of the liberal decisions* of the past four decades.
  - 3. Others assert that the Constitution is subject to multiple meanings; they maintain that what appears to be deference to the intentions of the framers is simply *a cover for making conservative decisions*.

## VI. THE COURTS AND THE POLICY AGENDA

- A. The courts both *reflect* and *help to determine* the national *policy agenda*.
  - 1. Until the Civil War, the dominant questions before the Court regarded the strength and legitimacy of the federal government and slavery.
  - 2. From the Civil War until 1937, questions of the relationship between the federal government and the economy predominated; the courts traditionally favored corporations, especially when government tried to regulate them.
  - 3. From 1938 to the present, the paramount issues before the Court have concerned personal liberty and social and political equality.
    - a. In this era, the Court has enlarged the scope of personal freedom and civil rights, and has removed many of the constitutional restraints on the regulation of the economy.
    - b. Most recently, environmental groups have used the courts to achieve their policy goals.
- B. John Marshall and the growth of judicial review.
  - 1. John Marshall, chief justice from 1801 to 1835, established the Supreme Court's power of judicial review in the 1803 case of **Marbury v. Madison**.
  - 2. In the election of 1800, Democrat Thomas Jefferson defeated Federalist John Adams.
    - a. Adams allegedly stayed at his desk until nine o'clock on his last night in office, signing commissions for Federalist judges.
    - b. Secretary of State John Marshall failed to deliver commissions to Marbury and 16 others; when the omission was discovered, Jefferson and the new secretary of state, James Madison, refused to deliver the commissions.
    - c. Marbury and three others sued Madison, asking the Supreme Court to issue a **writ of mandamus** (a court order to require performance of an act) ordering Madison to give them their commissions.
    - d. They took their case directly to the Supreme Court under the Judiciary Act of 1789, which gave the Court original jurisdiction in such matters.
    - e. Ironically, the new chief justice was Adams' secretary of state (and himself one of Adams' "*midnight appointments*"), John Marshall.
  - 3. In **Marbury v. Madison** (1803), Marshall and his colleagues argued that Madison was wrong to withhold Marbury's commission.

- a. However, the Court also found that the Judiciary Act of 1789 contradicted the words of the Constitution about the Court's *original jurisdiction*; thus, Marshall dismissed Marbury's claim, saying that the Court had no power to require that the commission be delivered.
  - b. In this shrewd solution to a political controversy, Marshall asserted for the courts *the power to determine what is and is not constitutional* and established the power of **judicial review**.
  - c. By in effect reducing its own power—the authority to hear cases such as Marbury's under its original jurisdiction—the Court was able to assert the right of judicial review in a fashion that the other branches could not easily rebuke.
- C. The “nine old men.”
- 1. When Franklin Roosevelt entered the White House, the Court was dominated by conservatives who viewed federal intervention in the economy as unconstitutional and tantamount to socialism.
  - 2. At President Roosevelt's urging, Congress passed dozens of laws designed to end the Great Depression; but the Supreme Court declared the acts unconstitutional.
  - 3. In 1937, Roosevelt proposed what critics called a “**court-packing plan**.<sup>1</sup>”
    - a. Referring to the Court as the “**nine old men**” (a reference both to the advanced ages of the justices and to their political philosophies), he proposed that Congress expand the size of the Court.
    - b. Since Congress can set the number of justices, this move would have allowed him to appoint additional justices sympathetic to the New Deal.
  - 4. Although Congress never passed the plan, two justices (Chief Justice Charles Evans Hughes and Associate Justice Owen Roberts) began switching their votes in favor of New Deal legislation—a transformation that was called the “**switch in time that saved nine**.<sup>2</sup>”
- D. The Warren Court (1953–1969).
- 1. Few eras of the Supreme Court have been as active in shaping public policy as that of the Warren Court.
    - a. In 1954, the Court held that laws requiring segregation of the public schools were unconstitutional (*Brown v. Board of Education*).
    - b. The Court expanded the rights of criminal defendants in numerous areas.
    - c. It ordered states to reapportion their legislatures according to the principle of “*one person, one vote*.<sup>3</sup>”
  - 2. The Court's decisions on desegregation, criminal defendants' rights, and voting reapportionment led to calls from right-wing groups for Chief Justice Earl Warren's impeachment; critics argued that the unelected justices were making policy decisions that were the responsibility of elected officials.
- E. The Burger Court (1969–1986).
- 1. Warren's retirement in 1969 gave President Nixon his opportunity to appoint a “strict constructionist” as Chief Justice; he chose Warren E. Burger.
  - 2. The Burger Court was more conservative than the liberal Warren Court, but did not overturn the due process protections of the Warren era.
    - a. The Court narrowed defendants' rights, but did not overturn the fundamental contours of the *Miranda* decision.
    - b. It was also the Burger Court (not the Warren Court) that wrote the abortion decision in *Roe v. Wade* (1973), required school busing in certain cases to

- eliminate historic segregation, and upheld affirmative action programs in the *Weber* case. (See Chapter 5.)
- c. When the Supreme Court was called upon to rule on whether President Nixon's White House (Watergate) tapes had to be turned over to the courts, it unanimously ordered him to do so, in ***United States v. Nixon*** (1974)—and thus hastened his resignation.
- F. The Rehnquist Court (1986–present).
- 1. The Rehnquist Court has not created a “revolution” in constitutional law; instead, it has been slowly chipping away at liberal decisions such as those regarding defendants’ rights, abortion, and affirmative action. (See Chapters 4 and 5.)
  - 2. The Court no longer sees itself as the special protector of individual liberties and civil rights for minorities; it has typically deferred to the will of the majority and the rules of the government.

## VII. UNDERSTANDING THE COURTS

- A. The courts and democracy.
  - 1. In some ways the courts are not a very democratic institution.
    - a. Federal judges are not elected and are almost impossible to remove.
    - b. Their social backgrounds probably make the courts the most elite-dominated policymaking institution.
  - 2. However, the courts are not entirely independent of popular preferences.
    - a. Even when the Court seems out of step with other policymakers, it eventually swings around to join the policy consensus (as it did in the New Deal).
    - b. The Court is not as insulated from the normal forms of politics as one might think.
      - (1) The Court was flooded with mail during the abortion debate, subjected to demonstrations and protests, and bombarded with *amicus curiae* briefs.
      - (2) Although it is unlikely that members of the Supreme Court cave in to interest group pressures, they are certainly aware of the public’s concern about issues, and this becomes part of their consciousness as they decide cases.
    - c. Courts can also promote *pluralism*; interest groups often use the judicial system to pursue their policy goals, forcing the courts to rule on important social issues.
- B. What courts should do: the scope of judicial power.
  - 1. There are strong disagreements concerning the appropriateness of allowing the courts to have a policymaking role.
  - 2. Many scholars and judges favor a policy of **judicial restraint** (sometimes called *judicial self-restraint*), in which judges play minimal policymaking roles, leaving policy decisions to the legislatures.
  - 3. Advocates of judicial restraint believe that decisions such as those on abortion and school prayer go well beyond the “referee” role they feel is appropriate for courts in a democracy.
  - 4. On the other side are proponents of **judicial activism**, in which judges make bolder policy decisions, even breaking new constitutional ground with a particular decision.

5. Advocates of judicial activism emphasize that the courts may alleviate pressing needs, especially of those who are weak politically or economically.
  6. It is important not to confuse *Judicial Activism* or *restraint* with *liberalism* or *conservatism*.
    - a. In the early years of the New Deal, judicial activists were conservatives.
    - b. During the tenure of Earl Warren, activists made liberal decisions.
    - c. Although the public often associates judicial activism with liberals, the tenure of the conservative Chief Justice Warren Burger and several conservative nominees of Republican presidents marked the most active use of judicial review in the nation's history.
- C. How the court sets limits on the cases it will hear.
1. The federal courts have developed a doctrine of **political questions** as a means to avoid deciding some cases, principally those regarding conflicts between the president and Congress.
  2. Judges attempt, whenever possible, to avoid deciding a case on the basis of the Constitution; they show a preference for less contentious "technical" grounds.
  3. The courts employ issues of *jurisdiction*, *mootness* (whether a case presents an issue of contention), *standing*, *ripeness* (whether the issues of a case are clear enough and evolved enough to serve as the basis of a decision), and other conditions to avoid adjudication of some politically charged cases.
  4. Federal courts have been much more likely to find state laws rather than federal laws unconstitutional.
- D. Other factors that limit judicial activism.
1. One factor that increases the acceptability of activist courts is the ability to overturn their decisions.
    - a. The president and the Senate determine who sits on the federal bench.
    - b. Congress can begin the process of amending the Constitution to overcome a constitutional decision of the Supreme Court; thus, the Sixteenth Amendment (1913) reversed the decision in *Pollack v. Farmer's Loan and Trust Co.* (1895), which prohibited a federal income tax.
    - c. Congress could alter the appellate jurisdiction of the Supreme Court to prevent it from hearing certain types of cases (an alteration that has not occurred since 1869, although some in Congress threatened to employ the method in the 1950s regarding some matters of civil liberties).
    - d. If the issue is one of **statutory construction** (in which a court interprets an act of Congress), the legislature routinely passes legislation that *clarifies existing laws*—and, in effect, overturns the courts.
  2. Thus, the description of the judiciary as the "ultimate arbiter of the Constitution" is hyperbolic; all the branches of government help define and shape the Constitution.

## **KEY TERMS AND CONCEPTS**

***Amicus curiae briefs:*** friend of the court briefs by nonlitigants who wish to influence the Court's decision by raising additional points of view and information not contained by briefs prepared by litigants' attorneys.

**Appellate jurisdiction:** given to a court where cases are heard on appeal from a lower court.

**Class action suits:** cases which permit a small number of people to sue on behalf of all other people similarly affected.

**Courts of appeal:** courts which have the power to review all final decisions of district courts, except in instances requiring direct review by the Supreme Court.

**District courts:** the entry point for most federal litigation.

**Judicial activism:** theory that judges should make bolder policy decisions to alleviate pressing needs, especially for those who are weak politically.

**Judicial implementation:** how and whether court decisions are translated into actual policy.

**Judicial restraint:** theory that judges should play minimal role in policymaking and leave policy decisions to the legislature.

**Judicial review:** the power of the courts to hold acts of Congress, and by implication the executive, in violation of the Constitution.

**Justiciable disputes:** cases that can be settled by legal methods.

***Marbury v. Madison:*** the 1803 Supreme Court case that originated the notion of judicial review.

**Opinion:** a statement of the legal reasoning behind the decision.

**Original intent:** the theory that judges should determine the intent of the framers and decide in line with their intent.

**Original jurisdiction:** given to a court where a case is first heard.

**Political questions:** conflicts between the president and Congress.

**Precedent:** the way similar cases have been handled in the past is used as a guide to current decisions.

**Senatorial courtesy:** a tradition in which nominations for federal judicial positions are not confirmed when opposed by a senator of the president's party from the state in which the nominee is to serve or from the state of the nominee's residence.

**Solicitor general:** a presidential appointee who is in charge of the appellate court litigation of the federal government.

**Standing to sue:** litigants must have serious interest (sustained direct and substantial injury) from a party in a case.

***Stare decisis:*** an earlier decision should hold for the case being considered.

**Statutory construction:** a procedure in which the legislature passes legislation that clarifies existing laws so that the clarification has the effect of overturning the court's decision.

**Supreme Court:** resolves disputes between and among states, maintains the national supremacy of law, ensures uniformity in the interpretation of national laws.

***United States v. Nixon:*** 1974 Supreme Court decision that required President Nixon to turn White House tapes over to the Courts.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Presidents have failed 20 percent of the time to get Senate confirmation of their nominees to the Supreme Court, a percentage much higher than any other federal position. Call on volunteers to analyze why this particular office should have a rate of rejection so much higher than for other offices. And why are so few nominees for district and appeals courts rejected?
- Check the court dockets for state and local courts in your vicinity. Distribute information on locations, time of court sessions, and types of cases pending. Each student should visit a session of court within the next two weeks and write a brief statement describing how the general courtroom atmosphere differed from what he or she may have expected.
- Ask a local criminal attorney to visit your class to discuss how his or her job is different from what's portrayed on television.
- Assign groups of students to two panels. Hold a short debate on the opposing theories of *original intent* and *loose construction* of the Constitution. *You Are the Policymaker: The Debate over Original Intentions* could serve as the basis for allocating responsibilities among members of the panel.
- The Supreme Court has always insisted on maintaining complete secrecy over deliberations among the justices in conference. Therefore, there was great controversy when the Library of Congress released the papers of the late Justice Thurgood Marshall shortly after his death in 1993. Marshall's papers provide a rare look at behind-the-scenes maneuvering by the Court. Divide your class into several groups and have them review newspaper accounts of Marshall's files (May 1993). One or two groups should focus on key cases (particularly in the area of civil liberties), while another group should focus on the controversy over the decision to release the papers to the press.
- For an interesting class discussion, have students debate how democratic the Supreme Court is compared to other institutions. The discussion should integrate the material learned in other chapters about the role of representation and elections in enforcing accountability and responsibility in policymaking.
- For a reading and writing connection, have students read memoirs and court papers from justices, attorneys, and others involved in the civil rights cases of the 1950s and 1960s. Why were these cases appealed to the courts? Were the courts acting in a democratic manner in their decisions? Why were the decisions made when they were? Did the composition of the court, the broader political context, or the specific legal strategy seem to influence the outcome the most?
- Assign the various court cases (federal and state) that arose as a result of the 2000 presidential election. Have each group brief each case (e.g., parties to the case, origin, issues, the decision, and the reasoning behind it). Then, in class discussion, have students evaluate the courts' decisions, and how democratic they were.
- It is the Senate's responsibility to confirm presidential nominees to the courts. Have the students write an essay where they discuss the limits, if any, the opposition party should have in preventing nominees they don't like from taking the bench. Should they go so far as to filibuster nominees that would be confirmed if allowed to be voted on by the entire body?

## **BACKGROUND READING**

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## **MEDIA SUGGESTIONS**

An Introduction to the Federal Courts. Part of the “Court System” series distributed by Insight Media. This 1991 program provides a general introduction to the structure and process of the judicial system.

Congress and the Courts. Part of the “Congress: We the People Series” distributed by Films Incorporated. Provides an examination of the structural relationship between Congress and the Supreme Court.

Frontline: Real Justice. A special two-hour report goes inside the real-life workings of America’s criminal justice system.

Hill vs. Thomas. This program, hosted by Lesley Stahl, provides diverse viewpoints on the Senate nomination hearings of Supreme Court justice Clarence Thomas. Films for the Humanities and Sciences.

The Making of a Justice. Part of the PBS series entitled “The Presidency and the Constitution.” Examines the question of representativeness in the Supreme Court.

## CHAPTER SEVENTEEN: ECONOMIC POLICYMAKING

### PEDAGOGICAL FEATURES

- p. 544 ***How You Can Make a Difference: The Campus Living Wage Project***
- p. 545 ***You Are the Judge: Is it OK for a Company to Discriminate Against Younger Workers?***
- p. 547 ***Young People and Politics: Unemployment and Young Workers***
- p. 548 ***Figure 17.1: Unemployment: Joblessness in America, 1960–2005***
- p. 549 ***Figure 17.2: Inflation: Increases in the Cost of Living, 1960–2003***
- p. 554 ***America in Perspective: China: Trade, and the Internet***
- p. 555 ***A Generation of Change: Computers and the Economy***
- p. 561 ***Key Terms***
- p. 561 ***Internet Resources***
- p. 561 ***Get Connected: Do Something About the Economy!***
- p. 562 ***For Further Reading***

### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Describe the interrelationship of *electoral politics* and the *economy* in the U.S.
- Identify the tools that are used by government in an attempt to control the economy.
- Summarize the key role of the Federal Reserve System in setting U.S. monetary policy.
- Recognize obstacles that make it difficult for politicians to manipulate the economy for short-run advantage to win elections.
- Contrast the views of liberals and conservatives with respect to government involvement in the economy.
- Describe the ways in which government both *benefits* and *regulates* areas of the economy such as business, labor, and agriculture.
- Summarize the development of U.S. consumer protection policy.
- Understand the relationship between democracy, the scope of government, and economic policy in America.

### CHAPTER OVERVIEW

#### INTRODUCTION

Politics and economics are powerful, intertwined forces shaping public policies and public lives. The view that politics and economics are closely linked is neither new nor unique. Although the United States is often described as operating under a **capitalist** economic system, it is more accurately described as a **mixed economy**, a system in which the government, while not commanding the economy, is still deeply involved in economic

decisions. Today we live in a global economy with all its problems and opportunities. **Multinational corporations**—businesses with vast holdings in many countries such as Disney, Coca-Cola, and Microsoft—dominate the world’s economy. Because voters are sensitive to economic conditions, the parties must pay close attention to those conditions when selecting their policies. Voters often judge officeholders by how well the economy performs. This chapter explores the economy and the public policies dealing with it.

## GOVERNMENT, POLITICS, AND THE ECONOMY

Wal-Mart, the world’s largest company, is about as big as the economy of Saudi Arabia and more than half the size of Australia. Government regulation affects the way Wal-Mart does business, and the employment and investment practices of Wal-Mart has a substantial effect on the U.S. economy. About 1.4 million people work for Wal-Mart. Workers there and nearly everywhere are entitled to the **minimum wage**. Its workers also have a right to join a **labor union**, a worker’s organization for bargaining with an employer. First guaranteed by law in 1935, labor unions engage in **collective bargaining** about wages and working conditions with their employers under rules controlled by the National Labor Relations Board.

The problem of **unemployment** is one component of policymakers’ regular economic concern. Measuring how many and what types of workers are unemployed is one of the major jobs of the Bureau of Labor Statistics (BLS) in the Department of Labor.

Some economists challenge the BLS’s *definition* of the unemployment rate (the proportion of the labor force *actively seeking work* but unable to find a job). The unemployment rate would be higher if it included “*discouraged workers*”—people who have become so frustrated that they have stopped actively seeking employment. On the other hand, if the unemployment rate included only those who were unemployed long enough to cause them severe hardship, it would be much lower since most people are out of work for only a short time.

The problem of **inflation** is the other component of policymakers’ regular economic concern. The **Consumer Price Index (CPI)** is the key measure of inflation. Some groups are especially hard hit by inflation (such as those who live on fixed incomes), while those whose salary increases are tied to the CPI (but who have fixed payments such as mortgages) may find that inflation actually increases their buying power.

People who are unemployed, worried about the prospect of being unemployed, or struggling with runaway inflation have an outlet to express some of their dissatisfaction—the polling booth. Ample evidence indicates that economic trends affect how voters make up their minds on election day, taking into consideration not just their own financial situation but the economic condition of the nation as well.

## POLICIES FOR CONTROLLING THE ECONOMY

The impact of government on the economic system is substantial, but it is also sharply limited by a basic commitment to a free enterprise system. The time when government could ignore economic problems, confidently asserting that the private marketplace could handle them, has long passed. When the stock market crash of 1929 sent unemployment soaring, President Herbert Hoover clung to ***laissez-faire***—the principle that government should not meddle with the economy. In the next presidential election, Hoover was handed a crushing defeat by

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Franklin D. Roosevelt. Government has been actively involved in steering the economy since the Great Depression and the New Deal.

Monetary policy and fiscal policy are two tools by which government tries to guide the economy. **Monetary policy** involves the *manipulation of the supply of money and credit* in private hands. An economic theory called **monetarism** holds that the supply of money is key to the nation's economic health. The main agency for making monetary policy is the Board of Governors of the **Federal Reserve System** ("the Fed"). The Fed has three basic instruments for controlling the money supply: setting *discount rates* for the money that banks borrow from the Federal Reserve banks; setting *reserve requirements* that determine the amount of money that banks must keep in reserve at all times; and exercising control over the money supply by *buying and selling government securities* in the market (*open market operations*).

**Fiscal policy** describes the *impact of the federal budget—taxing, spending, and borrowing—on the economy*. Fiscal policy is shaped mostly by the Congress and the president. Democrats tend to favor **Keynesian economic theory**, which holds that government must stimulate greater demand, when necessary, with bigger government (such as federal job programs). This theory emphasizes that government spending could help the economy weather its normal fluctuations, even if it means running in the red.

Since the Reagan administration, many republicans advocate **supply-side economics**, which calls for smaller government to increase the incentive to produce more goods. Ronald Reagan's economic advisors proposed this theory (which is radically different from traditional Keynesian economics), based on the premise that the key task for government economic policy is to *stimulate the supply* of goods, not their *demand*. Supply-side economists argued that incentives to invest, work harder, and save could be increased by cutting back on the scope of government. During his first administration, Reagan fought for and won massive tax cuts, mostly for the well-to-do. Instead of a fiscal policy that promoted bigger government, Americans got a policy that tried (but ultimately failed) to reduce the size of government.

### WHY IT IS HARD TO CONTROL THE ECONOMY

Some scholars argue that politicians manipulate the economy for short-run advantage to win elections; however, no one has shown that decisions to influence the economy at election time have been made on a regular basis. The inability of politicians to so precisely control economic conditions as to facilitate their reelection rests on a number of factors, including the decentralized nature of economic policymaking in the United States.

Government makes economic policy very slowly. Most policies must be decided upon a year or more before they will have their full impact on the economy. The budgetary process is dominated by "uncontrollable expenditures." Given that the law already mandates so much spending, it is difficult to make substantial cuts. Keynesianism is thus largely irrelevant in the twenty-first century. Because the private sector is much larger than the public sector, it dominates the economy.

### ARENAS OF ECONOMIC POLICYMAKING

Government spends one-third of America's gross national product and regulates much of the other two-thirds—a situation that stimulates a great deal of debate. *Liberals* tend to favor

active government involvement in the economy in order to smooth out the unavoidable inequality of a capitalist system. *Conservatives* maintain that the most productive economy is one in which the government exercises a hands-off policy of minimal regulation. *Liberal or conservative*, most interest groups seek benefits, protection from unemployment, or safeguards against harmful business practices.

Competition in today's economy is often about which corporations control access to, and the profits from, the new economy. In the old and the new economy, Americans have always been suspicious of concentrated power, whether it is in the hands of government or business. In both the old economy and the new, government policy has tried to control excess power. Since the early 1980s, a new form of entrepreneurship has flourished: merger mania. Corporate giants have also internationalized in the postwar period. Some multinational corporations, businesses with vast holdings in many countries such as Microsoft, GE, Coca-Cola, and AOL-Time Warner have annual budgets exceeding that of many foreign governments. The purpose of **antitrust policy** is to *ensure competition* and *prevent monopoly*. Antitrust legislation permits the Justice Department to sue in federal court to break up companies that control too large a share of the market. It also generally prevents restraints on trade or limitations on competition, such as price fixing. Enforcement of antitrust legislation has varied considerably.

The most famous and controversial recent antitrust case was filed against Microsoft, makers of computer operating systems running nearly 90 percent of all American computers. The Clinton administration originally filed an antitrust suit against Microsoft, but the Bush administration had other priorities and settled the suit.

Although business owners and managers complain about regulation, the government also sometimes comes to the *aid* of struggling businesses. When a crucial industry falls on hard times, it usually looks to the government for help in terms of subsidies, tax breaks, or loan guarantees (as the Chrysler Corporation did when it was close to bankruptcy).

The federal government is also involved in setting policies for consumer protection. The first major consumer protection policy in the United States was the Food and Drug Act of 1906, which prohibited the interstate transportation of dangerous or impure food and drugs. Today the **Food and Drug Administration (FDA)** has broad regulatory powers over the manufacturing, contents, marketing, and labeling of food and drugs. The Federal Trade Commission (FTC), traditionally responsible for regulating trade practices, also jumped into the business of consumer protection in the 1960s and 1970s, becoming a defender of consumer interests in truth in advertising. Congress has also made the FTC the administrator of the new Consumer Credit Protection Act.

Throughout most of the nineteenth century and well into the twentieth, the federal government allied with business elites to squelch labor unions. Until the Clayton Antitrust Act of 1914 exempted unions from antitrust laws, the federal government spent more time busting unions than trusts. In 1935, Congress passed the **National Labor Relations Act** (the *Wagner Act*), which guaranteed workers the right of **collective bargaining**—the right to have labor union representatives negotiate with management to determine working conditions—and set rules to protect unions and organizers. The **Taft Hartley Act** of 1947 continued to guarantee unions the right of collective bargaining, but also prohibited various unfair practices by unions. Section 14B of the Taft Hartley Act law permitted states to adopt what union

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opponents call right-to-work laws. Such laws forbid labor contracts from requiring workers to join unions to hold their jobs.

### **UNDERSTANDING ECONOMIC POLICYMAKING**

Some of the unjust aspects of a capitalist economy—which have caused revolutions in other countries—have been curbed in the United States; solutions to many of the problems of a free enterprise economy were achieved through the democratic process. As the voting power of the ordinary worker grew, so did the potential for government regulation of the worst aspects of the capitalist system.

On the other hand, it would be an exaggeration to say that democracy regularly facilitates an economic policy that looks after general rather than specific interests. One of the consequences of democracy for economic policymaking is that groups that may be adversely affected by an economic policy have many avenues through which they can work to block it. The *decentralized American political system* often works *against efficiency* in government.

Liberals and conservatives disagree about the scope of government involvement in the economy. Liberals focus on the imperfections of the market and what government can do about them; conservatives focus on the imperfections of government.

Voters expect a lot from politicians, probably more than they can deliver on the economy. The two parties have different economic policies, particularly with respect to unemployment and inflation; Democrats try to curb unemployment more than Republicans, though they risk inflation in so doing, and Republicans are generally more concerned with controlling inflation.

## **CHAPTER OUTLINE**

### **I. GOVERNMENT, POLITICS, AND THE ECONOMY**

- A. In the United States, the political and economic sectors are closely intermingled in a mixed economy, where the government, while not commanding the economy, is still deeply involved in economic decisions.
  - 1. The United States operates under capitalism an economic system in which individuals and corporations own the principal means of production, through which they seek to reap profits.
  - 2. Yet the American system is not one of pure capitalism; it actually has a mixed economy a system in which the government, while not commanding the economy, is still deeply involved in economic decisions.
  - 3. Americans also draw sharp distinctions between “our economy” and “the world economy.” Our new economy is also an international and global economy. Government and the economy in the United States have always been closely linked.
  - 4. Multinational corporations—businesses with vast holdings in many countries such as Disney, Coca-Cola, and Microsoft—dominate the world’s economy.
- B. A look at Wal-Mart illustrates two key points.
  - 1. The government’s long arm of regulation affects Wal-Mart, as it does the hundreds and thousands of other U.S. companies.

2. Wal-Mart epitomizes the imbedding of the U.S. economy in the global economy, a trend that will continue to have an enormous impact on the domestic economy and the politics of economic policy.
- C. Studies by political scientists have reaffirmed Harry S. Truman's observations about voters and their pocketbooks.
  1. Policymakers worry constantly about the state of the economy, and voters often judge officeholders by how well the economy performs.
  2. Traditionally in American politics, Democrats stress the importance of employment while Republicans are worried about inflation. This reflects their constituencies.
- D. Measuring how many and what types of workers are unemployed is one of the major jobs of the Bureau of Labor Statistics (BLS) in the Department of Labor.
  1. No one questions using a survey to determine the **unemployment rate**, but some economists do challenge the BLS's *definition* of this rate (the proportion of the labor force *actively seeking work* but unable to find a job).
- E. The problem of **inflation** is the other half of policymakers' regular economic concern.
  1. The **Consumer Price Index (CPI)** is the key measure of inflation.
  2. Few things are more worrisome to consumers and politicians alike than the combined effects of inflation and unemployment marching upward together, referred to by Jimmy Carter as the "misery index."

## II. POLICIES FOR CONTROLLING THE ECONOMY

- A. The impact of government on the economic system is substantial, but it is also sharply limited by a basic commitment to a free enterprise system.
  1. When the **stock market crash of 1929** sent unemployment soaring, President Herbert Hoover clung to the *laissez-faire* principle that government should not meddle with the economy.
  2. In the next presidential election, Hoover was handily defeated by Franklin D. Roosevelt, whose **New Deal** experimented with dozens of new federal policies to put the economy back on track.
  3. Government has been actively involved in steering the economy since the Great Depression and the New Deal.
  4. The American political economy uses two important *tools to guide the economy*—*monetary policy* and *fiscal policy*.
- B. Monetary policy and the Fed.
  1. **Monetary policy** involves the *manipulation of the supply of money and credit* in private hands.
    - a. An economic theory called **monetarism** holds that the supply of money is the key to the nation's economic health.
    - b. Monetarists believe that having too much cash and credit in circulation generates inflation.
  2. The main agency for making monetary policy is the Board of Governors of the **Federal Reserve System** (otherwise known as "*the Fed*").
    - a. Created by Congress in 1913 to regulate the lending practices of banks and thus the money supply, the Federal Reserve System is intended to be formally beyond the control of either the president or Congress.
    - b. Its seven-member Board of Governors is appointed by the president (and confirmed by the Senate) for 14-year terms—a length of time designed to

- insulate them from political pressures; the general finding is that the Fed actually is responsive to the White House, but at times the chief executive can be left frustrated by the politically insulated decisions of the Fed.
3. The Fed sets **discount rates** for the money that banks borrow from the Federal Reserve banks; by raising or lowering the rate that banks pay, these increased (or decreased) costs will be passed on to people who take out loans, and thus affect the amount of money in circulation.
    - a. The Fed can also exercise control over the money supply by *buying and selling government securities* in the market (open market operations), thereby either expanding or contracting the money supply.
- C. Fiscal policy: Keynesian versus supply-side economics.
1. **Fiscal policy** describes the *impact of the federal budget—taxing, spending, and borrowing—on the economy*.
  2. Fiscal policy is *shaped mostly by the Congress and the president*.
  3. Whether bigger government or smaller government best ensures a strong economy has become the central issue in economic policymaking.
  4. On the side of big government, Democrats lean more toward **Keynesian economic theory**, which holds that government must stimulate greater demand, when necessary, with bigger government (such as federal job programs).
  5. Many Republicans advocate **supply-side economics**, which calls for smaller government (such as tax cuts) to increase the incentive to produce more goods.
    - a. Rather than public works programs to stimulate demand, Americans received tax cuts under President Reagan and President George W. Bush to stimulate supply.

### III. WHY IT IS HARD TO CONTROL THE ECONOMY

- A. Some scholars argue that politicians manipulate the economy for short-run advantage to win elections; however, no one has shown that decisions to influence the economy at election time have been made on a regular basis.
- B. “Managing” the economy is more difficult than many politicians (and citizens) believe.
  1. Politicians—and even economists—do not understand the workings of the economy sufficiently well to always choose the correct adjustments to ensure prosperity.
  2. Most policies must be decided upon a year or more before their full impact will be felt on the economy.
  3. The American *capitalist system* presents a restraint on controlling the economy: because the private sector is much larger than the public sector, it *dominates the economy*.
  4. The increasingly interdependent world activities of other nations can interfere with the American government’s economic plans.
  5. Fiscal policy is hindered by the *budgetary process*: most of the budget expenditures for any given year are “uncontrollable.”
  6. Economic policy in the United States is decentralized: the president and Congress may not agree on taxes or spending, and neither may agree with the Fed.

### IV. ARENAS OF ECONOMIC POLICYMAKING

- A. Economic interests far outnumber any other kind of interest groups.

1. Liberal or conservative, most interest groups seek benefits, protection from unemployment, tax breaks, or safeguards against some other economic evil.
  2. Business, consumers, and labor are three of the major actors in, and objects of, government economic policy.
- B. Americans have always been suspicious of concentrated power, whether in the hands of government or business. In both the old economy and the new, government policy has tried to control excess power in the corporate world.
1. Corruption and concentration of economic power are two major concerns of government regulation.
    - a. The corruption scandals of the twenty-first century followed a binge of corporate concentration in the last century.
    - b. Corporate giants have also internationalized in the postwar period. Some multinational corporations, businesses with vast holdings in many countries, have annual budgets exceeding that of many foreign governments.
    - c. Since the early 1980s, a new form of entrepreneurship has flourished, merger mania.
  2. The purpose of **antitrust policy** is to *ensure competition* and *prevent monopoly* (control of a market by one company).
    - a. Government regulation of business is at least as old as the **Sherman Antitrust Act of 1890**.
  3. Although business owners and managers complain about regulation, the government also sometimes comes to the *aid* of struggling businesses.
  4. The main regulatory agency responsible for regulation of business practices is the Securities and Exchange Commission (SEC).
- C. Consumer policy.
1. The first major consumer protection policy in the United States was the Food and Drug Act of 1906, which prohibited the interstate transportation of dangerous or impure food and drugs.
  2. Today the **Food and Drug Administration (FDA)** has *broad regulatory powers over the manufacturing, contents, marketing, and labeling of food and drugs*.
    - a. It is the FDA's responsibility to ascertain the safety and effectiveness of new drugs before approving them for marketing in America.
  3. "Consumerism" was awakened in the 1960s by consumer activists such as Ralph Nader, who argued that it was the government's responsibility to be a watchdog on behalf of the consumer.
    - a. The **Consumer Product Safety Commission (CPSC)** has broad powers to ban hazardous products from the market.
  4. The **Federal Trade Commission (FTC)**—which has traditionally been responsible for regulating trade practices—also jumped into the business of consumer protection in the 1960s and 1970s; Congress also made the FTC the administrator of the new **Consumer Credit Protection Act** (which enforces "truth in lending").
- D. Labor and government.
1. Until the **Clayton Antitrust Act of 1914** exempted unions from antitrust laws, the federal government spent more time busting unions than trusts.
  2. The major turning point in government policy toward labor took place during the New Deal.

- a. In 1935, Congress passed the **National Labor Relations Act** (often called the *Wagner Act*), which guaranteed workers the right of **collective bargaining**—the right to have labor union representatives negotiate with management to determine working conditions—and set rules to protect unions and organizers.
- b. The **Taft-Hartley Act** of 1947 continued to guarantee unions the right of collective bargaining, but also prohibited various unfair practices by unions.
  - (1) The law permitted states to adopt what union opponents call **right-to-work laws**—laws that forbid labor contracts from requiring workers to join unions in order to hold their jobs.
3. Unions have had two notable successes.
  - a. Partly as the result of successful union lobbying, the government provides *unemployment compensation*.
  - b. Since the era of the New Deal, government has *guaranteed a minimum wage* for hourly employees.

## V. UNDERSTANDING ECONOMIC POLICYMAKING

- A. In America, solutions to many of the problems of a **free enterprise economy** were achieved through the democratic process.
- B. It would be an exaggeration to say that democracy regularly facilitates an economic policy that looks after general rather than specific interests.
  1. One of the consequences of democracy for economic policymaking is that groups that may be adversely affected by an economic policy have many avenues through which they can work to block it.
  2. The *decentralized American political system* often works *against efficiency* in government.
- C. Economic policymaking and the scope of government.
  1. Liberals and conservatives disagree about the scope of government involvement in the economy.
  2. Liberals focus on the imperfections of the market and what government can do about them; conservatives focus on the imperfections of government.
  3. The two parties have different economic policies, particularly with respect to unemployment and inflation; Democrats try to curb unemployment more than Republicans, though they risk inflation in so doing, and Republicans are generally more concerned with controlling inflation.

## KEY TERMS AND CONCEPTS

**Antitrust policy:** government regulation of business to ensure competition and prevent monopoly (control of a market by one company).

**Capitalism:** an economic system in which individuals and corporations own the principal means of production, through which they seek to reap profits.

**Collective bargaining:** the right of workers to have labor union representatives negotiate with management to determine working conditions.

**Consumer Price Index (CPI):** a government statistic that measures the change in the cost of buying a fixed basket of goods and services.

**Federal Reserve System:** created by Congress in 1913 to regulate the lending practices of banks and thus the money supply.

**Fiscal policy:** the government's decisions to tax, spend, and borrow, as reflected in the federal budget.

**Food and Drug Administration (FDA):** government agency with broad regulatory powers over the manufacturing, contents, marketing and labeling of food and drugs.

**Inflation:** a government statistic that measures increases in the price of goods.

**Keynesian economic theory:** the theory emphasizing that government spending and deficits can help the economy weather its normal ups and downs. Proponents of this theory advocate using the power of government to stimulate the economy when it is lagging.

**Laissez-faire:** a belief that government should not intervene in the economy.

**Mixed economy:** a system in which the government, while not commanding the economy, is still deeply involved in economic decisions.

**Monetarism:** economic theory that suggests that the supply of money is key to the nation's economic health.

**Monetary policy:** government decisions regarding the money supply, including the discount rates for bank borrowing, reserve requirements for banks, and trading of government securities.

**Multinational Corporation:** businesses with vast holdings in many countries.

**National Labor Relations Act:** passed by Congress in 1935, guarantees workers the right of collective bargaining; also known as the Wagner Act.

**Protectionism:** the economic policy of shielding an economy from exports.

**Right-to-work laws:** laws forbidding labor contracts from requiring workers to join unions to hold their jobs.

**Securities and Exchange Commission:** the federal agency created during the New Deal that regulates stock fraud.

**Supply-side economics:** economic philosophy that holds that the key task for government economic policy is to stimulate the supply of goods, not their demand.

**Unemployment rate:** a government statistic that measures how many workers are actively seeking work but unable to find jobs.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- *Monetary policy* is primarily set by appointed officials (the Fed), while *fiscal policy* is primarily established by elected officeholders (the president and Congress). Ask your class to consider whether the difference between elected and appointed policymakers appears to have an effect in setting our nation's economic policy. Also, what does the accelerating pace of economic change suggest about elected leaders' ability to manage the economy through fiscal policy?
- U.S. citizens frequently express concerns about the size of foreign investment in the United States (even though it still remains below that of most other economic powers). Survey your class to see what their reactions would be if other nations placed restrictions on *American* investments. An interesting class report could be based on U.S. resentment of French policies under Charles DeGaulle, at a time when the United States still had a positive international balance of payment and the French feared American intrusion into their economy and culture.

- As a library assignment, ask students to research some of the methodological issues surrounding our standard economic measures such as unemployment, inflation, and the consumer price index. In what ways are these measures biased? What don't they measure about the economy? Are there any alternative measures of economic health that should also be considered in economic policymaking?
- Have students examine the platforms of the Republican and Democratic Parties. Do the parties state particular economic goals? What policy positions do they espouse to reach those goals?
- Ask students to prepare briefs on current economic/regulatory issues being considered by Congress or regulatory agencies. Then have them research who supports regulatory change, the nature of such proposals, and who opposes the changes.
- Ask the students how to examine carefully how an end to international trade (both exports and imports) would affect their lives. Remind them to think in both macro and micro terms; that is, how it would affect the country and themselves personally as citizens of the country.

## **BACKGROUND READING**

Erikson, Robert S. The Macro Policy. New York: Cambridge University Press, 2001.

Kettl, Donald. Deficit Politics: The Search for Balance in American Politics. New York: Chatham House Publishers, 1992.

Morris, Irwin L. Congress, the President, and the Federal Reserve: The Politics of American Monetary Policymaking. Ann Arbor, MI: University of Michigan Press, 2000.

Siebert, Horst, ed. Economic Policy Issues of the New Economy. New York: Springer, 2002

Tanzi, Vito, Ke-young Chu, and Sanjeez Gupta, eds. Economic Policy and Equity. Washington, D.C.: Brookings Institution, 1999.

## **MEDIA SUGGESTIONS**

The Great Divide. This program focuses on the moral and ethical issues raised by the economic trend of the 1980s, with the rich getting richer and the poor getting poorer. Films for the Humanities and Sciences.

A Job for the World. Provides an overview of how world leaders have reacted to unemployment, underemployment, and an unstable work environment. Films for the Humanities and Sciences.

Microsoft vs. the Justice Department: Playing Monopoly. Provides a background to the Microsoft antitrust suit, focusing on legal arguments as well as public reactions to the dominance of Microsoft in the microcomputer market. Films for the Humanities and Sciences.

Minimum Wages. This film, featuring Bill Moyers, examines how global economic changes are changing the fortunes of the American working class. Films for the Humanities and Sciences.

Old Ways, New Game. This program focuses on the consequences of global competition for American workers and corporations, highlighting the effects of competition from Germany and Japan. Films for the Humanities and Sciences.

Politics in Action, Chapter 6: The Global Political Economy. Provides an overview of the debate over NAFTA.

## CHAPTER EIGHTEEN: SOCIAL WELFARE POLICYMAKING

### PEDAGOGICAL FEATURES

- p. 567 ***How You Can Make a Difference: Faith-Based Social Welfare Policy***
- p. 569 ***Table 18.1: Who Gets What? Income Shares of American Households***
- p. 572 ***Figure 18.1: Poverty Rates by Race and Hispanic Origin; 1959–2004***
- p. 574 ***Table 18.2: The Major Social Welfare Programs***
- p. 576 ***A Generation of Change: Declining Support for the Poor***
- p. 577 ***You Are the Policymaker: Should Government Promote Marriage?***
- p. 581 ***Young People and Politics: Social Security and UFOs***
- p. 583 ***America in Perspective: Preaching Procreation and Paying for It: Family Policies in Europe and Elsewhere***
- p. 585 ***Key Terms***
- p. 585 ***Internet Resources***
- p. 586 ***Get Connected: Insuring Children***
- p. 586 ***For Further Reading***

### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Explain what is meant by social welfare policy.
- Summarize how liberals and conservatives disagree about the conduct and impact of public assistance programs.
- Distinguish the three major types of taxation: progressive, regressive, and proportional. Show how each affects the public class structure in different ways.
- Summarize the effects that social welfare programs have had on the day-to-day living conditions of groups of Americans, such as the poor, the young, and the elderly.
- Differentiate between *entitlement* programs and *means-tested* programs.
- Indicate the role that entitlements play in the U.S. budgetary system.
- Identify the major American social welfare programs and the groups that benefit from them.
- Contrast social welfare policy in the United States with that of other major Western democracies.
- Trace the evolution of America's social welfare programs, with emphasis on the role of the Great Depression.
- Examine *intergenerational equality issues* that stem from the disparity in public dollars spent on the elderly as contrasted with public funds spent on children.
- Compare and contrast the views of recent presidents of both political parties toward social welfare expenditures.
- Explain why policymaking in the United States is very *incremental* in nature.
- Examine the relationship between social welfare policy and the scope of government.

# CHAPTER OVERVIEW

## INTRODUCTION

Americans believe strongly that people should take personal responsibility for themselves. Debates about social policy are debates about social responsibility. Social policies are often called “social insurance,” however, because they are intended to “insure” people against life’s crises and catastrophes—serious sickness, disability, the ravages of aging or job loss.

## WHAT IS SOCIAL POLICY AND WHY IS IT SO CONTROVERSIAL?

**Social welfare policies** attempt to provide assistance and support to specific groups in society. Many Americans equate social welfare exclusively with government monies given to the poor. Yet the government gives far more money to those who are not poor than to people below the “poverty line”; only 17 percent of social spending goes to the poor. Social welfare policies consist of two kinds of programs. First are the **entitlement programs**. An entitlement is any benefit provided by law and regardless of need. The two biggest entitlement programs are Social Security and Medicare. Second are the **means-tested programs**, which provide benefits selectively only to people with specific needs. To be eligible for these programs, people must be able to prove that they qualify for them. These programs generate powerful political controversy.

## INCOME, POVERTY, AND PUBLIC POLICY

The concept of **income distribution** describes the share of national income earned by various groups in the United States. The distribution of income across segments of the American population is quite uneven. **Income** is the amount of money collected between any two points in time (such as a week or a year); **wealth** is the amount already owned (such as stocks, bonds, bank accounts, cars, and houses). Studies of wealth display even more inequality than those of income.

The census lists Americans’ median family income in 2005 as \$46,326. However, there is also a great deal of poverty. For 2005, the Census Bureau defined a family of three as falling below the poverty level if it had an annual income below \$15,277; that year, 12.6 percent of all Americans were living in poverty.

Poverty in America is concentrated among a few groups. Large percentages of some groups are poor, including African Americans, Hispanics, unmarried women, and inner-city residents. Because of the high incidence of poverty among unmarried mothers and their children, experts on poverty often describe the problem today as the **feminization of poverty**.

The government spends one out of every three dollars in the American economy, and thus has a major impact on its citizens’ wealth and income. In particular, there are two principal ways in which government can affect a person’s income: government can manipulate incomes through its taxing powers, and government can affect income through its expenditure policies.

There are three general types of taxes, and each can affect citizens’ incomes in a different way. A **progressive tax** takes a bigger bite from the incomes of the rich than from those of

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the poor. A **proportional tax** takes the same percentage from everyone, rich and poor alike. A **regressive tax** takes a higher percentage from those at the lower income levels than from the well-to-do. In general, federal taxes are progressive. The EITC is a special tax benefit for working people who earn low incomes.

Government *spending* policies can also affect a person's income. Benefits from government are called **transfer payments** because they transfer money from the general treasury to those in specific need. Government can also give an "**in-kind payment**," something with cash value that is not cash itself (such as food stamps or a low-interest loan for college education or healthcare subsidies for poor families with children).

### **HELPING THE POOR? SOCIAL POLICY AND POVERTY**

For centuries, societies considered family welfare to be a private concern. With the growth of large, depersonalized cities and the requirements of the urban workforce, government was impelled to take a more active role in social welfare support.

A major change in how Americans viewed government's role in providing social welfare came during the Great Depression. After the onset of the Depression in 1929, many Americans began to think that governments must do more to protect their citizens against economic downturns. The federal government responded to this change by passing the **Social Security Act of 1935**, one of the most significant pieces of social welfare legislation of all time. Other programs such as Medicare were added later.

The 1960s brought an outpouring of federal programs to help the poor and the elderly, to create economic opportunities for those at the lower rungs of the economic ladder, and to reduce discrimination against minorities. Many of these programs were established during the presidency of Lyndon B. Johnson (1963–1969), whose administration coined the term the "Great Society" for these policy initiatives.

By the 1980s, many had come to believe that welfare programs of the Great Society had been a failure. President Ronald Reagan chose to target poverty programs as one major way to *cut government spending*. This action served his own ideological beliefs of *less government and more self-sufficiency*.

In August 1996, President Clinton signed a welfare reform bill that was supported by congressional Republicans but was opposed by half of congressional Democrats. The major provisions of the bill included giving each state a fixed amount of money to run its own welfare program; requiring people on welfare to find jobs within two years or lose their benefits; and setting a lifetime maximum of five years on welfare. After welfare reform, they were known as **Temporary Assistance to Needy Families** (TANF), today's name for the means-tested aid for the poorest of the poor. TANF benefits like AFDC are small and declining.

From the Welfare Reform Act's signing in 1996 until September 2002, the number of welfare recipients declined from 12.2 million to five million. Welfare reform coincided with major economic growth in the 1990s. As the twenty-first century dawned, economic recession and then terrorism strained national and state budgets. No state put the poor at the top of its spending agenda.

## LIVING ON BORROWED TIME: SOCIAL SECURITY

As it stands now, the Social Security program is living on borrowed time. By the turn of the twenty-first century, Social Security and Medicare had become the most expensive public policies in the history of the world. Social Security grew over the years, in large part because it worked. More than 90 percent of people polled, year after year, support Social Security. In 1965, Congress tacked onto Social Security a new program, Medicare, to assist the elderly with medical costs.

When Social Security was established in 1935, the average American lived less than 65 years; therefore, most would not even collect benefits. However, today, with life expectancies reaching into the 80s, and with fewer births (of new workers) occurring, the ratio of workers to retirees is getting smaller and smaller. Either Social Security has to be reformed to increase contributions, lower payments, delay retirements, tax benefits of wealthy recipients more heavily, or some combination thereof—the system will go bankrupt eventually.

## SOCIAL WELFARE POLICY ELSEWHERE

Other national governments and their citizens often take quite a different approach to the problems of poverty and social welfare. Most Americans would be amazed at the range of social benefits in the average European country. Europeans pay a high price for generous benefits. Taxes in Western European nations far exceed those in the United States. There, taxes approach (or even exceed) 50 percent of income. Every problem the United States faces in funding Social Security is even bigger in Europe.

## UNDERSTANDING SOCIAL WELFARE POLICY

In the social welfare policy arena, the competing groups are often quite unequal in terms of political resources. For example, the elderly are relatively well organized and often have the resources needed to wield significant influence in support of programs they desire. As a result, they are usually successful in protecting and expanding their programs. For the poor, however, influencing political decisions is more difficult. They vote less frequently and lack strong, focused organizations and money.

Although government benefits are difficult to enact, the nature of democratic politics makes it difficult to withdraw them once they are established. Tremendous pressures come from these supporters to keep or expand programs and to preserve them from elimination. These pressures persist even when the size and costs of programs seem to have grown beyond anything anyone might have originally envisioned.

# **CHAPTER OUTLINE**

## I. INTRODUCTION

- A. Americans believe strongly that people should take personal responsibility for themselves.

1. Although many are suspicious of government programs in general, Social Security is the single most popular policy in America, with over 90 percent of Americans favoring it.
2. On the other hand, programs to help the poor have always been controversial.
3. Even in these days of terrorism and wars, federal spending on social programs (about \$1.6 trillion) dwarfs federal spending on wars and homeland security.

## II. WHAT IS SOCIAL POLICY AND WHY IS IT SO CONTROVERSIAL?

- A. **Social welfare policies** provide benefits to individuals, either through entitlement or means-tested programs.
  1. **Entitlement programs** like Social Security and Medicare are the largest and most expensive social welfare programs in America.
  2. **Means-tested programs** aimed specifically at the poor—such as Medicaid and food stamps—are funded at much lower levels than non-means tested entitlement programs for the elderly.

## III. INCOME, POVERTY, AND PUBLIC POLICY

- A. Who's getting what.
  1. The concept of **income distribution** describes the share of national income earned by various groups in the United States.
    - a. The distribution of income across segments of the American population is quite uneven.
    - b. During the 1960s and 1970s there was relatively little change in the distribution of income in America.
    - c. The 1980s and 1990s were periods when the rich got richer and the poor got poorer, with income and wages distributed more unequally among working people.
  2. **Income** is the amount of money collected between any two points in time (such as a week or a year); **wealth** is the amount already owned (including stocks, bonds, bank accounts, cars, and houses).
    - a. Studies of wealth display even more inequality than those of income, with the top one percent of the wealth-holders currently possessing about one-third of all American wealth.
- B. Who's poor in America?
  1. To count the poor, the U.S. Bureau of the Census has established the **poverty line**, which takes into account what a family would need to spend to maintain an “austere” standard of living (defined in 2005 as an annual income below \$15,277 for a family of three).
  2. Poverty in America is concentrated among a few groups, including African Americans, Hispanics, unmarried women, and inner-city residents.
  3. Because of the high incidence of poverty among unmarried mothers and their children, experts on poverty often describe the problem today as the **feminization of poverty**.
- C. How public policy affects income.
  1. The government spends one out of every three dollars in the American economy, and thus has a major impact on its citizens' wealth and income.
  2. In particular, there are two principal ways in which government can affect a person's income.
    - a. Government can *manipulate income through its taxing powers*.

- b. Government can *affect income through its expenditure policies*.
3. Taxation.
  - a. In general, there are three types of taxes; each can affect citizens' incomes in a different way.
    - (1) A **progressive tax** takes a bigger bite from the incomes of the rich than from the poor (such as a progressive income tax that takes a higher percentage of income from the wealthy).
    - (2) A **proportional tax** takes the same share from everyone, regardless of income or wealth (sometimes called a "flat rate" tax).
    - (3) A **regressive tax** takes a higher percentage from the lower income levels than from the well-to-do (such as sales taxes, which are not overtly regressive but are regressive *in effect*).
4. Government expenditures.
  - a. The government can affect a person's income through its *spending* policies.
  - b. Benefits from government are called **transfer payments** because they transfer money from the general treasury to those in specific need.
    - (1) *Billions* of government checks are written every year, mostly to Social Security beneficiaries and retired government employees.
    - (2) Government can also give an "*in-kind payment*," something with cash value that is not cash itself (such as food stamps, healthcare subsidies, or a low-interest loan for college education).

#### IV. HELPING THE POOR? SOCIAL POLICY AND POVERTY

- A. For centuries, societies considered family welfare to be a private (not a public) concern.
  1. After the turn of the century, America and other industrialized societies recognized the breakdown in family-based support networks.
  2. A major change in how Americans viewed government's role in providing social welfare came during the Great Depression.
- B. The New Deal and the elderly.
  1. After the onset of the Great Depression in 1929, many Americans began to think that governments must do more to protect their citizens against economic downturns.
    - a. External circumstances beyond the control of individuals or their families began to be seen as major contributions to poverty and need.
    - b. The federal government responded to this change by passing the **Social Security Act of 1935**—one of the most significant pieces of social welfare legislation of all time; other programs such as Medicare were added later.
- C. President Johnson and the Great Society.
  1. The 1960s brought an outpouring of federal programs to help the poor and the elderly, to create economic opportunities for those at the lower rungs of the economic ladder, and to reduce discrimination against minorities.
  2. Many of these programs were established during the presidency of Lyndon B. Johnson (1963–1969), whose administration coined the term *the "Great Society"* for these policy initiatives.
    - a. Johnson initiated antipoverty programs, community development programs, Medicare, school-aid schemes, job-retraining programs, and a host of other public programs.

## Chapter 18

- D. Conservatives during Reagan's time and many liberals agreed and convinced many policymakers that welfare was a failure.
1. Murray maintained that these public policies discouraged the poor from solving their problems. He contended that the programs made it profitable to be poor, and discouraged people from pursuing means by which they could rise out of poverty.
  2. Gilens found that Americans tend to see welfare recipients (wrongly) as overwhelmingly African American. Whites' welfare attitudes were strongly influenced by whether they viewed African Americans as lazy or not.
- E. In August of 1996, President Clinton signed a welfare reform bill that received almost unanimous backing from congressional Republicans and was opposed by half of congressional Democrats.
1. The major provisions of this bill were as follows:
    - a. Each state would receive a fixed amount of money to run its own welfare programs;
    - b. People on welfare would have to find work within two years or lose all their benefits; and
    - c. A lifetime maximum of five years on welfare was set.
  2. The law bore the lofty name of the **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)**.
  3. The cash payments to poor families once called Aid to Families with Dependent Children (AFDC) became known as **Temporary Assistance for Needy Families (TANF)**, today's name for the means-tested aid for the poorest of the poor.
  4. From the Welfare Reform Act's signing in 1996 until September 2002, the number of welfare recipients declined from 12.2 million to five million.
  5. Welfare reform coincided with major economic growth in the 1990s. As the twenty-first century dawned, economic recession and then terrorism strained national and state budgets. No state put the poor at the top of its spending agenda.

## V. LIVING ON BORROWED TIME: SOCIAL SECURITY

- A. Welfare reform over the past two decades has focused attention on:
1. The long-term sustainability of entitlement programs, particularly Social Security and Medicare, is a matter of much current debate. Indeed, as it stands now, the Social Security program is living on borrowed time.
  2. The Social Security dilemma is this: The number of Social Security contributors (the workers) is growing slowly, while the number of Social Security recipients (the retired) is growing rapidly.
  3. As the number of retirees grows, and their average benefit is constantly increased to cover the cost of living (called a Cost of Living Allowance), Social Security expenditures are going to increase.
  4. At some point—about 2038—unless something changes, payouts will exceed income.
  5. The issue of Social Security arose in the election of 2000, when Governor George W. Bush and the Republicans proposed diverting a small portion (the suggested figure was two percent) of Social Security contributions to private retirement funds.

## VI. SOCIAL WELFARE POLICY ELSEWHERE

1. American social welfare programs are more limited in scope than is the case in other democracies.
2. Other national governments and their citizens often take a different approach to the problems of poverty and social welfare than does the United States (such as *comprehensive medical services* provided through a National Health Service).
  - a. Americans tend to see poverty and social welfare needs as individual rather than governmental concerns, while European nations tend to support greater governmental responsibility for these problems.
  - b. Europeans often have a more positive attitude toward government, while Americans are more likely to distrust government action in areas like social welfare policy.
3. *Taxes commensurate with the benefits of social policy* are also commonplace in Western European nations, far exceeding those in the United States.

## VII. UNDERSTANDING SOCIAL WELFARE POLICY

### A. Democracy and social welfare.

1. Sorting out the proper balance between *competition* and *compassion* is at the heart of policy disagreements about social welfare programs.
2. In a democracy, these competing demands are resolved by government decision makers.
  - a. These decision makers are aligned with, and pay allegiance to, various groups in society.
  - b. These groups include members of their legislative constituencies, members of their electoral coalitions, and members of their political party.
3. In the social welfare policy arena, the competing groups are often quite unequal in terms of political resources.
  - a. The elderly are relatively well organized and often have the resources needed to wield significant influence in support of their programs.
  - b. The poor vote less and lack strong, focused organizations and money.
4. Although government benefits are difficult to enact, the nature of democratic politics makes it difficult to withdraw them once they are established.
  - a. Policymaking in the United States is very *incremental* in nature, building on past policies.
  - b. Tremendous pressures come from supporters to keep or expand programs and to preserve them from elimination.

## KEY TERMS AND CONCEPTS

**Earned Income Tax Credit:** a “negative income tax” that provides income to very poor individuals in lieu of charging them federal income taxes.

**Entitlement programs:** government benefits that certain qualified individuals are entitled to by law, regardless of need.

**Feminization of poverty:** the increasing concentration of poverty among women, especially unmarried women and their children.

**Income distribution:** the share of national income earned by various groups in the United States.

**Income:** the amount of money collected between any two points in time.

**Means-tested programs:** government programs available only to individuals below a poverty line.

**Personal Responsibility and Work Opportunity Reconciliation Act:** the official name of the “welfare reform” law of 1996.

**Poverty line:** official statistic indicating what a family would need to spend to maintain an “austere” standard of living.

**Progressive tax:** takes a higher percentage from the rich than from the poor.

**Proportional tax:** takes the same percentage from rich and poor.

**Regressive tax:** takes a higher percentage from the poor than from the rich.

**Social Security Act of 1935:** Created both the Social Security program and a national assistance program for poor children.

**Social Security Trust Fund:** The “bank account” into which Social Security contributions are “deposited” and used to pay out eligible recipients.

**Social welfare policies:** attempt to provide assistance and support to specific groups in society.

**Temporary Assistance to Needy Families:** once called “Aid to Families with Dependent Children,” the new name for public assistance to needy families.

**Transfer payments:** benefits from government where money is transferred from the general treasury to those in need.

**Wealth:** the amount already owned.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- American social welfare programs are more limited in scope than is the case in other democracies. Divide your class into three or four research groups, and assign a country (including the United States) to each group. Ask each group to review current social welfare policies of the assigned nation. The group should focus on social welfare policies, but should also go beyond the “obvious” and look at advantages and disadvantages of the system. For example, what effect has the system had on the budget, and what is the level of taxation? One member of each group should be expected to give a brief presentation in class the following week outlining the research group’s conclusions.
- One of the major policy accomplishments of President Clinton, working with a Republican-controlled Congress under House Speaker Newt Gingrich in the early 1990s, was the reform of the social welfare system. Ask students to document the specific changes made to welfare programs in the United States. Then assign each student, or students working in groups, to use both the library and the Internet to determine how the states have responded to their new responsibilities. Is the new system better? In what ways?
- For a reading and writing connection, have students write an essay where they must identify and investigate the number of transfer payments they have benefited from either as direct payments or as benefits in-kind. Then have students evaluate the importance of each of these benefits to the successes or failures they have experienced personally. Finally, have students suggest what they would have to do if these services were not available to them when they needed help.

- Develop a writing assignment that requires students to interview a social welfare professional OR an individual currently or recently living in poverty. Have students describe the nature of poverty from either of these perspectives. How does it differ from what they expected?
- Have students develop a working budget for a family of three living at the poverty line. Conduct a class discussion that contrasts these budgets with students' current lifestyles.
- Assign students to read the Welfare Reform Act of 1996. What values regarding families and religion are emphasized in the text of the act? How is poverty portrayed? Ask students to write an essay on these questions, and to comment on whether Gilens' argument regarding race and attitudes toward welfare are relevant.

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## **MEDIA SUGGESTIONS**

America in the Thirties: Creating the Safety Net. This program examines the origins of the New Deal programs and the psychological and legislative impact of presidential leadership by Franklin Roosevelt. Films for the Humanities and Sciences.

Welfare Reform: Social Impact. This show traces the history of welfare in the U.S., beginning with the Depression. Includes interview with Wisconsin Governor Tommy Thompson. Films for the Humanities and Sciences.

Working: The American Worker. 1996. Examines the efforts of workers to maintain steady incomes in an era of corporate downsizing. Films for the Humanities and Sciences.

## CHAPTER NINETEEN: POLICYMAKING FOR HEALTHCARE AND THE ENVIRONMENT

### PEDAGOGICAL FEATURES

- p. 591 *America in Perspective: We Pay a Lot for Healthcare, but What Do We Get for the Investment?*
- p. 594 *Young People and Politics: Health Insurance, Emergency Rooms, and Young Americans*
- p. 602 *A Generation of Change: Clean Air Policies and Cleaner Air*
- p. 600 *Making a Difference: Robert Bullard*
- p. 604 *You Are the Policymaker: How Much Should We Do to Save a Species? The Florida Manatee*
- p. 606 *Figure 19.1: Sources of America's Energy*
- p. 607 *Table 19.1: Where is the Oil? Who Consumes It?*
- p. 608 *How You Can Make a Difference: Environmental Activism*
- p. 612 *Key Terms*
- p. 612 *Internet Resources*
- p. 612 *Get Connected: Healthcare Policy*
- p. 613 *For Further Reading*

### LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Ascertain the effect that the technological revolution has had on standards of healthcare, and on the costs and access to medical care.
- Contrast the *costs* and the *results* of healthcare policies in the United States with those of other industrialized nations.
- Compare the role of government in medical care in the United States with that of other comparable countries.
- Identify government insurance programs in the United States and determine who benefits from these programs.
- Determine how issues of pollution affect political choices through their impact on business, economic growth, and jobs.
- Summarize legislative enactments in the United States that establish federal environmental policy.
- Ascertain the impact of technological issues on the scope of government.

## CHAPTER OVERVIEW

### INTRODUCTION

The increasing speed of technological advance creates special problems for government and for policymakers. Medical technologies have changed the basic approach to medical care; their cost has transformed the American medical system. The rapid growth of the American economy during the twentieth century has brought energy and pollution problems to the forefront of politics.

Not only does technological change affect how Americans live their lives, but it also changes the expectations they have for the scope of government. This chapter examines public policy in two technologically complex areas: health and the environment.

### HEALTHCARE POLICY

The United States is one of the wealthiest countries in the world, and it spends a *higher proportion of its wealth on healthcare than any other country*. Healthcare already takes up one-seventh of America's GDP, and its costs will almost certainly continue to rise with increased technology. Nevertheless, healthcare statistics show that Americans *lag behind* other countries of similar economic development in some key healthcare categories, including life expectancy and the infant mortality rate.

The United States differs in another substantial way: It does not recognize a constitutional right to healthcare, either directly or indirectly. Most economically developed countries and even many less-developed countries do. Thus, almost 47 million Americans (about 16 percent of the population) lack health insurance altogether, including a disproportionate number of Hispanics and African Americans. Most of the uninsured are under 65 because nearly everyone 65 and older participates in Medicare, a government-subsidized program. Even among those who have insurance, coverage is often incomplete; especially for those with low-paying jobs, health insurance may not cover all of their health needs. *Inequalities in health and healthcare* are major problems in America: the world's highest-quality care is available to some citizens, but many poor and working Americans are relegated to an inferior healthcare system because access to health insurance is not universal in the United States.

The uneven coverage of healthcare has consequences for business too, given that companies that do not offer insurance to their workers pass on these costs to society (and other businesses).

American healthcare costs are higher than the rest of the world. In 2006, they amounted to about \$1.9 trillion, or 15 percent of the entire U.S. GDP. This compares to about 8–10 percent in most similar countries. High costs are due to new technologies and procedures, new expensive drugs, market failure disincentives to save, medical malpractice suits, “defensive medicine,” and an ever expanding definition of healthcare.

About 60 percent of Americans are enrolled in **health maintenance organizations** (HMOs), a form of managed care. Partly because of their cost containment efforts, HMOs have become the medical care system everyone loves to hate. Consumer groups have pressed

Congress for a **patient's bill of rights**, which would give patients rights against HMO decisions to deny care.

As in many other areas of the economy, the role of government in healthcare is smaller in the United States than in other comparable countries. The United States lacks national health insurance or a national health service to provide healthcare directly to those who need it. Even so, 46 percent of the country's total health bill is paid for by government sources; the average for industrialized countries is about 77 percent. Private insurance companies cover one-third, and Americans pay nearly one-fifth of their healthcare costs out of their own pockets.

Although **national health insurance** has never been adopted in the United States, Congress did recognize the special problems of elderly Americans by adopting **Medicare** in 1965. Like Social Security, Medicare costs are outrunning contributions to the Medicare Trust Fund. While Social Security is likely to last until about 2038, the safe horizon for Medicare is much shorter. By 2008, expenditures will outrun revenues. In contrast to Medicare, **Medicaid** is a *means-tested* program designed to provide healthcare for the poor; like other public assistance programs, it is funded by both the states and the national government. Medicaid is for the poorest of the poor (only 42 percent of people below the poverty line even qualify).

In the United States, equality of care and cost containment have taken a back seat to technological advance. Many lifesaving procedures are extremely expensive, so allocating them involves complicated questions of public policy. One reason for uneven government and private healthcare policies is related to the *representation of interests*. Powerful lobbying organizations representing hospitals, doctors, and the elderly want Medicare to pay for the latest techniques. On the other hand, many groups, such as the poor, are unrepresented in government; their healthcare needs may not be met simply because no well-organized groups represent them.

President Clinton's *Health Security Act proposal* required employers to provide health insurance for their employees or pay a premium into a public fund (which would also cover Medicaid and Medicare recipients). Most companies would have to buy coverage through "health alliances" that would collect premiums, bargain with health plans, and handle payments. Opponents labeled the plan as a government takeover of the healthcare system; they launched an aggressive advertising campaign against it. After a long and tortuous battle, the plan died in Congress.

Drug prices in particular have soared in the last decade. President Bush, urged by the AARP and members of both parties, responded with tax breaks for the creation of medical savings accounts, and prescription drug coverage for Medicare. These two new reforms are expected to increase healthcare costs by about \$60 billion and \$530 billion over the next decade.

While Americans are fairly satisfied with their own healthcare, a careful analysis of public opinion surveys shows that people think the nation's healthcare system needs a great deal of reform. Most of these concerns focus on the very issues we have examined here: access and cost. Believing that medical care is close to a right, Americans have been reluctant to face up to the "rationing" of medical care. Medical care may not be a constitutional right, but Americans treat it as if it were. We do not like to admit that "rationing" of medical care goes on all the time in our system.

## ENVIRONMENTAL POLICY

Environmentalists have been telling us for years that our air, water, and land are in bad shape. Although Americans may be generally in favor of “doing something” about the environment, specific proposals to limit suburban growth, encourage carpooling, and limit access to national parks have met with strong resistance.

Issues of pollution affect political choices through their impact on business, economic growth, and jobs. Business and government battle over the impact of pollution control on economic development. One of the tradeoffs policymakers often face is the question of whether tougher pollution legislation will drive away commerce and industry. In 1977, Congress wrote some amendments to the Clean Air Act that require no degradation of air quality, regardless of how pristine or dirty the air of a community. These amendments discourage industry from relocating to areas with clean air.

Spearheading government efforts is the Environmental Protection Agency (EPA), now the nation’s largest federal regulatory agency. The EPA has a wide-ranging mission; it is charged with administering policies dealing with land, air, and water quality. The **Clean Air Act of 1970** charges the Department of Transportation (DOT) with the responsibility of reducing automobile emissions. The smaller size of American cars, the use of unleaded gasoline, and the lower gas consumption of new cars are all due in large part to DOT regulations. The **Water Pollution Control Act of 1972** was enacted in reaction to the tremendous pollution of northeastern rivers and the Great Lakes; since its passage, water quality has improved dramatically. Endangered species are increasingly threatened by expanding human populations and growing economic demands. The **Endangered Species Act of 1973** requires the government to actively protect each of the hundreds of species listed as endangered, regardless of the economic effect on the surrounding towns or region. The act was later amended to allow exceptions in cases of overriding national or regional interest. In 1980, Congress reacted to increased pressure to deal with toxic waste by establishing a Superfund, funded by taxing chemical products. The law established that those who polluted the land were responsible for paying to clean it up.

The United States’ use of fossil fuels is the primary reason it produces 23 percent of the world’s carbon dioxide, the main cause of global warming. However, President Bush and most congressional Republicans have opposed international efforts of the most industrialized countries to reduce greenhouse gases emissions, believing these rules would cost too much.

## ENERGY POLICY

Modern American society depends on the availability of abundant energy. Today, 86 percent of the nation’s energy comes from coal, oil, and natural gas. The most controversial energy source is nuclear power. The tradeoffs between nuclear and other forms of energy emphasize many of the problems of politics in a high-tech age. Recently, policymakers have shown more interest in conservation, renewable energy supplies, and alternative fuels. Currently, only six percent of the United States’ energy comes from renewable sources. Even President Bush, noted for his cozy relationship with the oil industry, cautioned that Americans need to move beyond their “addiction” to oil, in his 2006 State of the Union address.

Recently, even more technologically and politically complex issues relating to energy, the environment, and global warming have emerged. The U.S. relies heavily on fossil fuels, which are the biggest contributors to global warming, and has come under pressure from other nations to reduce its reliance on fossil fuels. Also, the U.S. faces increasing technological and political pressure to deal with the disposal of toxic and nuclear wastes. Widening opposition to potentially hazardous industrial facilities (such as toxic or nuclear waste dumps) has further complicated environmental policymaking in recent years.

## **GROUPS, ENERGY, AND THE ENVIRONMENT**

Technologically complex issues such as health, energy, and the environment pose many special problems in a democracy. High-technology issues make it especially difficult to include the public in a reasoned political debate. In the face of complex, high-tech issues such as nuclear power, many Americans rely on interest groups to provide technological expertise and to serve as advocates for the public interest. A tension exists between demands for government services and protections and a concern about the government providing those services and protections.

Given Americans' increasing concern about the environment, and the centrality of healthcare issues to the public as a whole, it is likely that these issues will remain salient in politics for some time. Government is, and will continue to be, at the center of public debate.

# **CHAPTER OUTLINE**

## **I. INTRODUCTION**

- A. Healthcare, energy, and the environment are types of public policies that are driven by technology.

## **II. HEALTHCARE POLICY**

- A. The health of Americans.

1. Americans are not the healthiest persons in the world. Statistics show that the United States lags behind some other countries regarding the health of its citizens in key categories such as life expectancy and infant mortality rates.
2. As a nation we spend a far larger share of our national resources on health than any other industrialized country, yet we are far from having the healthiest population.
3. The healthcare system in the United States may help explain why the health of Americans does not measure up to that of citizens of some other countries.

- B. The cost of healthcare.

1. Healthcare already takes up *one-seventh* of America's GDP.
2. The United States is one of the wealthiest countries in the world, and it spends a higher proportion of its wealth on healthcare than any other country.
3. Healthcare, mainly for the elderly and the poor, costs almost a fifth of the federal government's budget.
4. There are many reasons for rapid increases in healthcare costs (currently around \$1.9 trillion a year).

- a. New technologies, drugs, and procedures often add to the cost of healthcare by addressing previously untreatable conditions or by providing better (but more expensive) healthcare.
  - b. Much of the money that Americans pay for healthcare goes to services like organ transplants, kidney dialysis, and other treatments that are not widely available outside of the United States.
  - c. Doctors and hospitals have few incentives to be more efficient; in fact, with the rise in medical malpractice suits doctors may be ordering extra tests to ensure than they cannot be sued (an approach that is sometimes called *defensive medicine*).
- C. Access to healthcare.
- 1. Inequalities in health and healthcare are major problems in America: the world's highest-quality care is available to some citizens, but many poor and working Americans are relegated to an inferior healthcare system because access to health insurance is not universal in the United States.
  - 2. Almost 47 million Americans lack health insurance altogether.
  - 3. One of the most recent innovations in seeking to increase access is the development of managed care, which now represents 85 percent of workers receiving health insurance. **Health maintenance organizations** provide medical care, negotiate with physician groups, and try to monitor most aspects of care to control unnecessary use.
- D. The role of government in healthcare.
- 1. American healthcare is provided for by both government and private sources.
    - a. As in many other areas of the economy, the role of government in healthcare is smaller in the United States than in other comparable countries.
    - b. The United States lacks national health insurance or a national health service to provide healthcare directly to those who need it.
    - c. America has the most private medical care system in the developed world.
      - (1) Even so, 46 percent of the country's total health bill is paid for by government sources; the average for industrialized countries is about 77 percent.
      - (2) The government also subsidizes employer-provided health insurance with tax breaks, the benefits of which go disproportionately to affluent, highly paid workers.
      - (3) Private insurance companies cover one-third, and Americans pay nearly one-fifth of their healthcare costs out of their own pockets.
    - d. A great deal of medical research is financed through the *National Institutes of Health (NIH)*.
    - e. The federal government pays for much of the nation's medical bill through the Medicare program for the elderly, the Medicaid program for the poor, and healthcare for veterans.
    - f. Government insurance programs.
      - (1) Harry S. Truman was the first president to call for **national health insurance**—a compulsory insurance program to finance all Americans' medical care; the idea was strongly opposed by the American Medical Association, which called this program *socialized medicine*.
      - (2) Although national health insurance has never been adopted in the United States, Congress did recognize the special problems of elderly Americans by adopting **Medicare** in 1965.

- (a) Part A of Medicare provides hospitalization insurance.
  - (b) Part B (which is voluntary) permits older Americans to purchase inexpensive coverage for doctor fees and other expenses.
- (3) **Medicaid** is a *means-tested* program designed to provide healthcare for the poor; like other public assistance programs, it is funded by both the states and the national government.
- E. Policymaking for healthcare.
    - 1. The cost of medical care in a high-tech age raises difficult and complex issues.
      - a. Equality of care and cost containment have taken a back seat to technological advance.
      - b. Many lifesaving procedures are extremely expensive, so allocating them involves complicated questions of public policy.
      - c. Oregon has taken the lead on the issue of *rationing healthcare*, setting priorities for medical treatments under the Medicaid program.
    - 2. One reason for uneven government and private healthcare policies is related to the *representation of interests*.
      - a. Powerful lobbying organizations representing hospitals, doctors, and the elderly want Medicare to pay for the latest techniques.
      - b. On the other hand, many groups are unrepresented in government; their healthcare needs may not be met simply because no well-organized groups represent them.
    - 3. President Clinton's **Health Security Act proposal** was an effort to deal with the two greatest problems of healthcare policy: costs and access.
      - a. Paying for the plan required employers to provide health insurance for their employees or pay a premium into a public fund (which would also cover Medicaid and Medicare recipients).
      - b. Most companies would have to buy coverage through "*health alliances*" that would collect premiums, bargain with health plans, and handle payments.
      - c. Opponents labeled the plan a government takeover of the healthcare system; they launched an aggressive advertising campaign against it.
      - d. After a long and tortuous battle, the plan died in Congress.
    - 4. Managed care has received more criticism as it has come to dominate the provision of healthcare in the U.S. Critics claim that managed care imposes stifling rules on network physicians, blocks sick patients from seeing specialists, and delays or denies coverage for recommended treatments or medications—all to save money.
    - 5. Medical costs have skyrocketed in the last decade. President Bush and Congress created medical savings accounts and prescription drug coverage for Medicare. These two new reforms are expected to increase healthcare costs by about \$60 billion and \$530 billion over the next decade.
    - 6. There are likely to be increasing calls for more government regulation over the costs of healthcare and some attempt to help those who fall through the cracks of the American healthcare system.

## II. ENVIRONMENTAL POLICY

- A. Economic growth and the environment.
  - 1. Issues of pollution affect political choices through their impact on business, economic growth, and jobs.

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2. Environmentalists have been telling us for years that our air, water, and land are in bad shape.
3. Although Americans may be generally in favor of “doing something” about the environment, specific proposals to limit suburban growth, encourage carpooling, and limit access to national parks have met with strong resistance.
- B. The agency charged with administering environmental laws is the **Environmental Protection Agency (EPA)**. Created in 1970, the EPA is now the nation’s largest federal regulatory agency.
  1. The **Clean Air Act of 1970** charges the Department of Transportation (DOT) with the responsibility of reducing automobile emissions. The smaller size of American cars, the use of unleaded gasoline, and the lower gas consumption of new cars are all due in large part to DOT regulations.
  2. The **Water Pollution Control Act of 1972** was enacted in reaction to the tremendous pollution of northeastern rivers and the Great Lakes; since its passage, water quality has improved dramatically.
  3. The most consistently successful environmental campaigns in the postwar era have been those aimed at preserving wild lands. There are now 378 national parks and 155 national forests. Still, only about four percent of the United States is now designated as wilderness, and half of that is in Alaska.
  4. Endangered species are increasingly threatened by expanding human populations and growing economic demands.
    - a. The **Endangered Species Act of 1973** requires the government to actively protect each of the hundreds of species listed as endangered, regardless of the economic effect on the surrounding towns or region.
    - b. The act was later amended to allow exceptions in cases of overriding national or regional interest.
      - a. A cabinet-level committee was established to decide such cases; so far, it has granted few exemptions to the act.
  5. In 1980, Congress reacted to increased pressure to deal with toxic waste by establishing a **Superfund**, funded by taxing chemical products. The law established that those who polluted the land were responsible for paying to clean it up.

### III. ENERGY POLICY

1. Today, 86 percent of the nation’s energy comes from coal, oil, and natural gas.
  - a. Oil, which accounts for about 40 percent of the energy Americans use, is one of nature’s nonrenewable resources.
  - b. The United States has about two percent of the world’s known remaining oil reserves, but uses more than a quarter of it.
  - c. The United States has plentiful supplies of coal, but coal is the most pollutant energy source.
  - d. Only six percent of America’s energy comes from renewable sources.
  - e. The most controversial energy source is nuclear power. The tradeoffs between nuclear and other forms of energy emphasize many of the problems of politics in a high-tech age.
  - f. Recently, policymakers have shown more interest in conservation, renewable energy supplies, and alternative fuels. President Bush said the U.S. was “addicted to oil.”

2. Many scientists believe that the atmosphere is being changed due to our heavy reliance on fossil fuels, which contribute to a “greenhouse effect” when energy from the sun is trapped under the (polluted) atmosphere and warms the earth.
  - a. There is no technology to control carbon emissions, so the only way to reduce greenhouse gases is to burn less fuel or find alternative sources of energy.
  - b. At the end of 1997, 150 nations met in Kyoto, Japan, and signed a treaty that would require nations to reduce their emissions of greenhouse gases below 1990 levels by about 2010. Opponents fear that cutting greenhouse gases will cost a staggering sum. Due to the strong opposition to the treaty, President Clinton never submitted it to Congress. President Bush opposes it.

#### **IV. GROUPS, ENERGY AND THE ENVIRONMENT**

- A. One of the biggest changes in environmental policymaking in recent years is the increasing presence of new sectors of society joining interest groups to complain about pollution and to press for government action.
  1. The 1960s and 1970s saw an explosion in the size and number of environmental interest groups.
  2. The nature of environmental policymaking changed; issues that were once considered only from the point of view of jobs and economic growth are now much more controversial.
- B. There is currently a backlash against vigorous environmental protection; opponents argue that the effects of environmental regulations on employment, economic growth, and international competitiveness must be part of the policymaking equation.
- C. Widening opposition to potentially hazardous industrial facilities has further complicated environmental policymaking in recent years; local groups have often successfully organized resistance to planned development under the banner “Not In My Back Yard” (NIMBY).

#### **V. UNDERSTANDING HEALTHCARE AND ENVIRONMENTAL POLICY**

- A. Democracy and healthcare and environmental policy.
  1. High-technology issues make it especially difficult to include the public in a reasoned political debate.
  2. In the face of complex, high-tech issues such as nuclear power, many Americans rely on interest groups to provide technological expertise and to serve as advocates for the public interest.
  3. Individual citizens are unlikely to have the information or the resources to participate meaningfully because of the complexity of the debates.
- B. Continued *growth in the scope of government* is expected in numerous areas of high-technology issues.
  1. Americans do not hesitate to call for government to play a greater role in high-technology issues, and the scope of the federal government has grown in response to these demands.
  2. At the same time, there are important forces reigning in the federal government.
  3. A tension exists between demands for government services and protections and a concern about the government providing those services and protections.

## **KEY TERMS AND CONCEPTS**

**Clean Air Act of 1970:** landmark legislation that charged the Department of Transportation with the responsibility of reducing automobile emissions.

**Endangered Species Act of 1973:** legislation that required the government to actively protect each of hundreds of species listed as endangered by the U.S. Fish and Wildlife Service, regardless of the economic effect on the surrounding towns or region.

**Environmental Protection Agency (EPA):** created in 1970, the government agency that is charged with administering various environmental laws.

**Health maintenance organization (HMO):** a form of network health plans that limits the choice of doctors and treatments.

**Medicaid:** government program designed to provide healthcare for the poor.

**Medicare:** government program designed to provide healthcare for the elderly.

**National health insurance:** a program—that has been proposed in a variety of ways over the last few generations—to provide the financing, policies, and regulations to guarantee all or almost all Americans' medical health insurance.

**Superfund:** established by Congress in 1980, a fund devoted to cleaning up toxic waste supported by taxes on toxic waste.

**Water Pollution Control Act of 1972:** passed by Congress to control pollution in the nation's rivers and lakes.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Inequalities in health and healthcare are major problems in America. The textbook points out that altogether over 46 million Americans lack health insurance. Have your students carefully read the section in the text that covers President Clinton's Health Security Act proposal. Ask students to evaluate the proposal both from an economic standpoint and from a perspective of societal need. What changes have occurred in health policy and politics since the failure of Clinton's proposal? Document these changes by collecting newspaper articles on significant legislative and private sector initiatives.
- Ask your class to try to explain the contradiction between the high costs that Americans pay for healthcare (the highest costs in the world) and the fact that healthcare statistics show that Americans lag behind other countries in some key healthcare categories such as life expectancy and the infant mortality rate. Would your students make changes in the basic system, or are they satisfied with the process as it exists? Consider asking students to discuss these issues with members of their families or friends from different generations to see if individuals' experiences and evaluations differ by age group.
- Much of the acid rain caused by American industries actually falls in Canada; officials there estimate that more than 2,000 lakes have "died" as a result of acid rain. Ask your class to consider the implications of internal policies that cross over international boundaries, as happens with pollution. Should Canadians have any recourse against American industry? What would your students' reactions be if the situation were reversed and Canadian industry polluted American waters?
- Have students investigate the quality of the environment in their local community. How clean are the air, the drinking water, the lakes, and the rivers? Require the students to

- interview local officials for this information, as well as to document what they can through government records and local environmental groups.
- Have the students investigate each political party's policy stances on the environment. Assign an essay where each student compares and contrasts the two parties and explains which is closer to his or her views.

## **BACKGROUND READINGS**

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Schreurs, Miranda A. Environmental Politics in Japan, Germany, and the United States. New York: Cambridge University Press, 2003.

Vig, Norman J., and Regina S. Axelrod. The Global Environment: Institutions, Law and Policy. Washington, D.C.: Congressional Quarterly Press, 1999.

## **MEDIA SUGGESTIONS**

The Environment: When Politics and Industry Intersect. This two-part series investigates what goes into lobbying for, and complying with, the legislation designed to ensure green business practices. Films for the Humanities and Sciences.

The Great Health Care Debate. Featuring Bill Moyers, this film examines the failure of President Clinton's healthcare reform bill, highlighting the role of the media and special interest groups. Films for the Humanities and Sciences.

The Politics of Addiction. This program shows how the views of scientists, doctors, counselors, and drug addicts are woven into public policies on drug addiction. Films for the Humanities and Sciences.

## CHAPTER TWENTY: NATIONAL SECURITY POLICYMAKING

### PEDAGOGICAL FEATURES

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### LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Understand how the instruments of foreign policy differ from those of domestic policy.
- List the major international and regional organizations and describe their roles in the realm of international relations.
- Determine how multinational corporations, groups, and individuals operate as actors in international relations.
- Identify the primary policymakers involved in foreign policy decision making.
- Delineate the major institutions of the U.S. national security establishment.
- Briefly outline American diplomatic history from the period of isolationism to contemporary involvement in international relations.
- Summarize how domestic political concerns, budgetary limitations, and ideology all have a role in influencing decisions regarding the structure of defense policy.
- Outline the major agreements negotiated by the United States and other nations on arms limitations and nuclear reduction.
- Explain why the Middle East is such an important component of American foreign policy.
- Understand the roles globalization, trade, and foreign aid play in American foreign policy.
- Evaluate the roles that democracy and the scope of government play in the development of foreign policy and international relations.

# CHAPTER OVERVIEW

## INTRODUCTION

The end of the cold war in the early 1990s brought with it many questions regarding the future of international politics, from what the nature of threat is, to what new alliances are needed, to what the changing role of “superpowers” might be in the new global scene. As of September 11, 2001, our foreign policy goals suddenly changed to ending terrorism. This chapter reviews cold war policies and politics from a historical perspective, as well as new issues concerning terrorism and global inequality.

## AMERICAN FOREIGN POLICY: INSTRUMENTS, ACTORS, AND POLICYMAKERS

**Foreign policy** involves making choices about relations with the rest of the world. The *instruments of foreign policy* are different from those of domestic policy. Foreign policies depend ultimately on three types of tools: military, economic, and diplomatic. Among the oldest instruments of foreign policy are war and the threat of war. Economic instruments are becoming weapons almost as potent as those of war. *Diplomacy* is the quietest instrument of foreign policy; it may involve meetings of world leaders at summit conferences, but more often involves quiet negotiations by less prominent officials.

Most of the challenges in international relations require the cooperation of many nations; thus, **international organizations** play an increasingly important role on the world stage. The **United Nations (UN)**, created in 1945, is the most important of the international organizations today. In addition to its peacekeeping function, the UN runs a number of programs focused on economic development and health, education, and welfare concerns. **Regional organizations** are organizations of several nations bound by a treaty, often for military reasons. For example, members of the **North Atlantic Treaty Organization (NATO)** agreed to combine military forces and to treat a war against one as a war against all. By contrast, the **European Union (EU)**, is a transnational government of the major European nations. It grew from a post-World War II trading alliance into a political institution now encompassing most of Europe. Today, the EU government coordinates monetary, trade, immigration, labor policies, and much more.

Much of the world’s industrial output, and 10 percent of the entire global economy comes from **multinational corporations (MNCs)**. MNCs are sometimes more powerful (and often much wealthier) than the governments under which they operate. **Groups** such as churches and labor unions have long had international interests and activities. Even **individuals** are international actors; the recent explosion of tourism affects the international economic system.

The president is the main force behind foreign policy: as **chief diplomat**, the president negotiates treaties; as **commander in chief**, the president deploys American troops abroad. Presidents are aided (and sometimes thwarted) by a huge national security bureaucracy; Congress also wields considerable clout in the foreign policy arena. Other foreign policy decision makers include **diplomats** (such as the secretary of state and special assistants for national security affairs) and the **national security establishment** (including the Department

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of Defense, the Joint Chiefs of Staff, the National Security Council, and the Central Intelligence Agency).

The U.S. Congress shares with the president constitutional authority over foreign and defense policy. Congress has sole authority, for example, to declare war, raise and organize the armed forces, and appropriate funds for national security activities.

### AMERICAN FOREIGN POLICY: AN OVERVIEW

The United States followed a foreign policy of **isolationism** throughout most of its history. The **Monroe Doctrine** reaffirmed America's inattention to Europe's problems, but warned European nations to stay out of Latin America. In the wake of World War I, President Woodrow Wilson urged the United States to join the **League of Nations**; the Senate refused to ratify the treaty, indicating the country was not ready to abandon isolationism.

Pearl Harbor dealt the death-blow to American isolationism. At the end of World War II, the United States was the dominant world power, both economically and militarily; only the United States possessed nuclear weapons. The charter for the United Nations was signed in San Francisco in 1945, with the United States as an original signatory. NATO was created in 1949, affirming the mutual military interests of the United States and Western Europe.

All of Eastern Europe fell under Soviet domination as World War II ended. In 1946, Winston Churchill warned that the Russians had sealed off Eastern Europe with an "iron curtain." The United States poured billions of dollars into war-ravaged European nations through the Marshall Plan. Writing in *Foreign Affairs* in 1947 (under the pseudonym "X"), George F. Kennan proposed a policy of "**containment**." His containment doctrine called for the United States to isolate the Soviet Union and to "contain" its advances and resist its encroachments. The **Truman Doctrine** was developed to help other nations oppose communism.

The Soviet Union closed off land access to Berlin with the Berlin Blockade (1948–1949), which was countered by a massive *airlift* of food, fuel, and other necessities by the United States and its allies. The fall of China to Mao Zedong's Communist-led forces in 1949 and the development of Soviet nuclear capability seemed to confirm American fears. The invasion of pro-American South Korea by Communist North Korea in 1950 further fueled American fears. The Korean War began when President Truman sent American troops to Korea under United Nations auspices.

The **cold war** was at its height in the 1950s. Eisenhower's secretary of state, John Foster Dulles, proclaimed a policy of "brinkmanship" in which the United States was to be prepared to use nuclear weapons in order to *deter* the Soviet Union and Communist China from taking aggressive action. In the era of **McCarthyism**, domestic policy was deeply affected by the cold war and by anticommunist fears. With containment came a massive buildup of the military apparatus, resulting in the military-industrial complex (a phrase that was coined by President Dwight D. Eisenhower to refer to the interests shared by the armed services and defense contractors). Economist Seymour Melman wrote about Pentagon capitalism, linking the military's drive to expand with the profit motives of private industry. The 1950s ushered in an **arms race** between the Soviet Union and the United States; eventually, a point of mutual assured destruction (MAD) was reached in which each side could destroy the other.

In 1950, President Truman decided to aid the French effort to retain France's colonial possessions in Southeast Asia—the beginning of American involvement in Vietnam. In 1954, the French were defeated by the Viet Minh (led by Ho Chi Minh) in a battle at Dien Bien Phu. Although it was a party to agreements in 1954 among participants in Geneva, Switzerland, the United States never accepted the Geneva agreement to hold national elections in Vietnam in 1956; instead, it began supporting one non-communist leader after another in South Vietnam.

Vietnam first became an election-year issue in 1964. Since Truman's time, the United States had sent *military “advisors”* to South Vietnam, which was in the midst of a civil war spurred by the Viet Cong (National Liberation Front). Senator Barry Goldwater was a foreign policy hard-liner who advocated tough action in Vietnam; President Lyndon Johnson promised that he would not “send American boys to do an Asian boy’s job” of defending the pro-American regime in South Vietnam. Despite his election-year promise, Johnson sent in American troops when we were unable to contain the forces of the Viet Cong and North Vietnam with American advisors.

American troops and massive firepower failed to contain the North Vietnamese. At home, widespread protests against the war contributed to Johnson’s decision not to run for reelection in 1968 and to begin peace negotiations. The new Nixon administration prosecuted the war vigorously, but also worked to negotiate a peace treaty with the Viet Cong and North Vietnam.

Even while the Vietnam War was being waged, President Nixon supported a new policy of *détente*. Popularized by Nixon’s national security assistant (and later secretary of state), Henry Kissinger, *détente* sought a *relaxation of tensions* between the superpowers, coupled with firm guarantees of mutual security. One major initiative that came out of *détente* was the **Strategic Arms Limitation Talks (SALT)**. These talks represented an effort by the United States and the Soviet Union to agree to scale down their nuclear capabilities, with each power maintaining sufficient nuclear weapons to deter a surprise attack by the other. President Nixon signed the first SALT treaty in 1972. A second SALT treaty (SALT II) was signed and sent to the Senate by President Carter in 1979, but the Soviet invasion of Afghanistan that year caused Carter to withdraw the treaty from Senate consideration; both he and President Reagan nevertheless insisted that they would be committed to its arms limitations.

The philosophy of *détente* was applied to the People’s Republic of China as well as to the Soviet Union. President Nixon visited the People’s Republic and sent an American mission there. President Carter extended formal diplomatic recognition in November 1978.

From the mid-1950s to 1981, the *defense budget had generally been declining* as a percentage of both the total federal budget and the gross national product (with the exception of the Vietnam War); the decline in defense spending became a major issue in Ronald Reagan’s presidential campaign. During the campaign, Reagan said America faced a “*window of vulnerability*” because the Soviet Union was pulling ahead of the United States in military spending. President Carter’s last budget had proposed a large increase in defense spending, and the Reagan administration proposed adding \$32 billion on top of that. However, concern over huge budget deficits brought defense spending to a standstill in the second Reagan term. In 1983 President Reagan added another element to his defense policy a new plan for defense against missiles, the Strategic Defense Initiative (SDI).

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Forces of change sparked by Soviet leader Mikhail Gorbachev led to a staggering wave of upheavals that shattered communist regimes and the postwar barriers between Eastern and Western Europe. The *Berlin Wall* was brought down, and East and West Germany formed a unified, democratic republic. The former Soviet Union split into 15 separate nations; non-communist governments formed in most of them. On May 12, 1989, President Bush announced a new era in American foreign policy that he termed “*beyond containment*.”

In 1989, reform seemed on the verge of occurring in China as well as in Eastern Europe. Thousands of students held protests on behalf of democratization in *Tiananmen Square* (the central meeting place in Beijing). However, on the night of June 3 the army violently crushed the democracy movement, killing hundreds—perhaps thousands—of protesters and beginning a wave of executions, arrests, and repression.

Perhaps the most troublesome issue in the national security area is the spread of terrorism—the use of violence to demoralize and frighten a country’s population or government. Despite its risks and uncertainties, the cold war was characterized by a stable and predictable set of relations among the great powers. Now international relations have entered an era of improvisation as nations struggle to develop creative responses to changes in the global balance of power and the new challenges that have emerged.

The national security strategy doctrine issued by the Bush administration in September 2002 is the most dramatic and far-reaching change in national security policy in a half-century. It substitutes preemption of potential threats for deterrence and containment of aggression by hostile nations or groups that appear determined to use weapons of mass destruction against the United States.

### THE POLITICS OF DEFENSE POLICY

Defense spending comprises about one-sixth of the federal budget. Domestic political concerns, budgetary limitations, and ideology all have a role in influencing decisions regarding the structure of defense policy. Conservatives fight deep cuts in defense spending, pointing out that many nations retain potent military capability and insisting that America maintain its readiness at a high level. Liberals, while supporting the war on terrorism, maintain that the Pentagon wastes money and that the United States buys too many guns and too little butter.

Whatever its cause, the lessening of East-West tensions has given momentum to significant reductions in defense spending, what some call the *peace dividend*. Changing spending patterns is not easy, however. The trend of reductions in defense spending was reversed abruptly in 2001 following the September 11 terrorist attacks.

The structure of America’s defense has been based on a large standing military force and a battery of strategic nuclear weapons. The United States has more than 1.3 million men and women on active duty and nearly 826,000 million in the National Guard and Reserves.

To deter an aggressor’s attack, the United States has relied on a triad of nuclear weapons: ground-based intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles (SLBMs), and strategic bombers. These weapons, like troops, are costly (each

Stealth bomber costs over \$2 billion dollars), and they pose obvious dangers to human survival.

During the May 1988 Moscow summit meeting, President Reagan and President Gorbachev exchanged ratified copies of a new treaty eliminating **intermediate-range nuclear forces (INF)**. On November 19, 1990, the leaders of 22 countries signed a treaty, cutting conventional arms in Europe. In 1991, the Warsaw Pact (the military alliance tying Eastern Europe to the Soviet Union) was dissolved. On July 31, 1991, Gorbachev and President Bush signed the *Strategic Arms Reduction Treaty*, following nine years of negotiations.

The democratization of Eastern Europe, the restructuring of the Soviet Union, and the deterioration of the Soviet economy substantially diminished Russia's inclination and potential to threaten the interests of the United States and its allies. In the fall of 1991, President Bush broke new ground with his decision to *unilaterally dismantle* some U.S. nuclear weapons; President Gorbachev followed suit shortly afterward. Presidents Bush and Yeltsin later signed an agreement to sharply reduce the U.S. and Russian nuclear arsenals.

Despite these changes, *high-tech weapons systems* will continue to play an *important role in America's defense posture*. The perception that space-age technology helped win the Gulf War in "100 hours" and with few American casualties provides support for high-tech systems.

## THE NEW GLOBAL AGENDA

By whatever standards one uses, the United States is the world's mightiest power; but for Americans, merely being big and powerful is no guarantee of dominance. This is especially true since access to petroleum in the Middle East and global environmental issues have become increasingly important. Although the United States has great military power, many of the world's issues today are not military ones. Further, the United States is affected by events all over the world that it cannot control unilaterally. Interconnected issues of equality, economics, energy, and the environment have become important.

Military force is become less effective in today's international world. Military power is evolving, to different uses, such as humanitarian interventions. Economics is increasingly used as a powerful foreign policy instrument. For example, trade sanctions, when they are broadly supported by the international community, can bring pressure to bear without military force.

The United States, and much of the international community, is concerned about the spread of nuclear weapons technology beyond the eight countries that currently possess them (United States, Russia, the UK, France, China, India, Israel, Pakistan) to other countries. North Korea claims to have nuclear weapons now, and Iran is seeking to develop them. Others may be not far behind, although many countries have renounced their plans.

Today's international economy is illustrated by **interdependency**. The health of the American economy, for example, depends increasingly on the prosperity of its trading partners and on the smooth flow of trade and finance across borders. Since the era of the Great Depression, the world economy has moved away from high tariffs and protectionism toward lower tariffs and freer trade. President Bush signed the **North American Free Trade Agreement** in 1992 with Canada and Mexico; it was approved by Congress in 1993. In 1994

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Congress approved the **GATT** agreement. Nontariff barriers such as *quotas*, *subsidies*, or *quality specifications* for imported products are common means of limiting imports today; such policies may temporarily “save” American jobs in targeted industries, but they also raise prices on products that Americans use and make the overall economy less efficient—which hurts other workers.

For a number of years, America has experienced a **balance of trade deficit**; the excess of imports over exports *decreases the dollar’s buying power* against other currencies, making Americans pay more for goods they buy from other nations. On the plus side, this decline in the dollar also makes American products cheaper abroad, thereby increasing our exports. In 2005, the trade deficit was \$726 billion.

Whereas the cold war meant continuous conflict between the Soviet Union and the West, world politics today includes a growing conflict between *rich nations* (concentrated in the northern hemisphere) and *poor nations* (concentrated in the southern hemisphere). The income gap between rich, industrialized nations and poor, underdeveloped ones is widening rather than narrowing. Although every nation has income inequality, *the poorer the nation, the wider the gaps between rich and poor*.

Presidents of both parties have pressed for aid to nations in the developing world—sometimes from humanitarian concern, sometimes out of a desire to stabilize friendly nations. **Foreign aid** has taken a variety of forms: sometimes it has been given in the form of grants, but it often has taken the form of credits and loan guarantees to purchase American goods, assistance with agricultural modernization, loans at favorable interest rates, and forgiveness of previous loans; preferential trade agreements have sometimes been granted for the sale of foreign goods here. A substantial percentage of foreign aid is in the form of military assistance and is targeted to a few countries that are considered to be of vital strategic significance. Foreign aid has never been very popular with Americans. Although the United States donates *more total aid than any other country*, it devotes a *smaller share of its GDP* to foreign economic development than any other developed nation.

## UNDERSTANDING FOREIGN AND DEFENSE POLICYMAKING

The themes that have guided students’ understanding of American politics throughout *Government in America*—democracy and the scope of government—also pertain to the topic of international relations. Treaty obligations, the nation’s economic interests in an interdependent global economy, and other questions on the global agenda guarantee that the national government will be active in international relations. When the American people hold strong opinions regarding international relations as, when they first supported and later opposed the war in Vietnam, policymakers are usually responsive. A wide range of interests are represented in the making of foreign policy. As the United States remains a superpower and continues to have interests to defend around the world, the scope of American government in foreign and defense policy will be substantial.

# CHAPTER OUTLINE

## I. INTRODUCTION

- A. On September 11, 2001, communism was no longer the principal threat to the security of the United States, and our foreign policy goals suddenly changed to ending terrorism.

## II. AMERICAN FOREIGN POLICY: INSTRUMENTS, ACTORS, AND POLICYMAKERS

- A. **Foreign policy** involves making choices about relations with the rest of the world.
  - 1. Because the president is the main force behind foreign policy, the White House receives a highly confidential intelligence *briefing* every morning.
  - 2. The *instruments of foreign policy* are different from those of domestic policy.
    - a. Foreign policies depend ultimately on three types of tools: *military*, *economic*, and *diplomatic*.
    - b. Among the oldest instruments of foreign policy are *war and the threat of war*. The United States has often used force to influence actions in other countries.
    - c. Today, *economic instruments* are becoming weapons almost as potent as those of war.
      - (1) The control of oil can be as important as the control of guns.
      - (2) Trade regulations, tariff policies, and monetary policies are among the economic instruments of foreign policy.
    - d. *Diplomacy* is the quietest instrument of foreign policy.
      - (1) Sometimes national leaders meet in summit talks.
      - (2) More often, less prominent negotiators work out treaties handling all kinds of national contracts.
- B. Actors on the world stage.
  - 1. International organizations.
    - a. More than 125 foreign governments have emerged since 1945—nearly two dozen in the 1990s alone.
    - b. Most of the challenges in *international relations* require the cooperation of many nations; thus, **international organizations** play an increasingly important role on the world stage.
    - c. The **United Nations (UN)**, created in 1945, is headed by the **secretary general**.
      - (1) Its members agree to renounce war and respect certain human and economic freedoms.
      - (2) The **UN General Assembly** is composed of about 191 member nations, each with one vote; the **Security Council**, with five permanent members and 10 chosen from session to session, is the seat of real power; the **Secretariat** is the executive arm of the UN and directs the administration of UN programs.
      - (3) In addition to its peacekeeping function, the UN runs a number of programs focused on economic development and health, education, and welfare concerns.
  - 2. Other international organizations.

- a. The **International Monetary Fund** helps regulate the world of international finance; the **World Bank** finances development projects in new nations; and the **International Postal Union** helps get the mail from one country to another.
  - b. **Regional organizations** are organizations of several nations bound by a treaty, often for military reasons.
    - (1) The **North Atlantic Treaty Organization (NATO)** was created in 1949; its members (the United States, Canada, most Western European nations, and Turkey) agreed to combine military forces and to treat a war against one as a war against all.
    - (2) The *Warsaw Pact* was the regional security community of the Soviet Union and its Eastern European allies; the Warsaw Pact has been dissolved, and the role of NATO is changing dramatically as the cold war has thawed.
    - (3) The **European Union (EU)**, is a transnational government of the major European nations. Today, the EU government coordinates monetary, trade, immigration, labor policies, and much more.
  3. Multinational corporations, groups, and individuals.
    - a. Much of the world's industrial output comes from **multinational corporations (MNCs)**, which are sometimes more powerful (and often much wealthier) than the governments under which they operate.
    - b. **Groups** such as churches and labor unions have long had international interests and activities.
      - (1) Environmental and wildlife groups, such as Greenpeace, have proliferated, as have groups interested in protecting human rights, such as Amnesty International.
      - (2) Some groups are committed to the overthrow of particular governments and operate as terrorists around the world.
    - c. **Individuals** are also international actors.
      - (1) The recent explosion of tourism affects the international economic system.
      - (2) Growing numbers of students are going to and coming from other nations; they are carriers of ideas and ideologies.
      - (3) Immigrants and refugees place new demands on public services.
- C. The policymakers.
1. The president is the main force behind foreign policy: as **chief diplomat**, the president negotiates treaties; as **commander in chief**, the president deploys American troops abroad.
  2. Presidents are aided (and thwarted) by a huge national security bureaucracy; Congress also wields considerable clout in the foreign policy arena.
  3. Other foreign policy decision makers.
    - a. The *diplomats*.
      - (1) The **secretary of state** has traditionally been the key advisor to the president on foreign policy matters.
      - (2) The more than 30,000 people working in the **State Department** are organized into *functional areas* and *area specialties*.
      - (3) The top positions in the department and the highly select members of the **Foreign Service** are heavily involved in formulating and executing American foreign policy. (Presidents Nixon and Carter relied more

- heavily on their *special assistants for national security affairs* than on their secretaries of state.)
- (4) Many recent presidents have bypassed institutional arrangements for foreign policy decision making and have established more personal systems for receiving policy advice.
4. The *national security establishment*.
- a. The **Department of Defense (DOD)** was created after World War II when the Army, Navy, and Air Force were combined into one department.
  - b. The commanding officers of each of the services, plus a chair, constitute the **Joint Chiefs of Staff**; Richard Betts carefully examined the Joint Chiefs' advice to the president in many crises, and found that the Joint Chiefs were no more likely than civilian advisors to push an aggressive military policy.
  - c. The **secretary of defense** manages a budget larger than that of most nations and is the president's primary military advisor.
  - d. American foreign military policies are *supposed to be coordinated*; the **National Security Council (NSC)** was formed in 1947 for this purpose.
    - (1) Despite the coordinating role assigned to the NSC, conflict within the foreign policy establishment remains common.
    - (2) The NSC staff has sometimes competed with—rather than integrated—policy advice from cabinet departments; it has also become involved in *covert operations*.
  - e. The **Central Intelligence Agency (CIA)**, known as "*The Company*," was created after World War II to coordinate American information and data-gathering intelligence activities abroad and to collect, analyze, and evaluate its own intelligence.
    - (1) The size of its budget and staff are secret; estimates put them at \$5 billion and about 20,000 people.
    - (2) Most of its activities are *uncontroversial*, as the bulk of the material it collects and analyzes comes from readily available sources.
    - (3) The CIA also engages in **covert activities**.
      - (a) One way the CIA collects information is by *espionage* (usually against foreign adversaries).
      - (b) The CIA has a long history of involvement in other nations' internal affairs; it has trained and supported armies and has nurtured coups.
      - (c) At times, the agency engaged in wiretaps, interception of mail, and the infiltration of interest groups *in the United States*; this violated the CIA's charter and damaged the agency's morale and external political support.
      - (d) With the end of the cold war, there is less pressure for covert activities and a climate more conducive to *conventional intelligence gathering*. Currently, Congress requires the CIA to *inform relevant congressional committees* promptly of current and anticipated covert operations.
      - (e) Reconciling covert activities with the principle of open democratic government remains a challenge for public officials. The failure to predict the terrorist attack on September 11, 2001, increased the intensity of this debate, with many leaders calling for an increase in covert activities.

- f. Many other intelligence agencies exist, such as the National Reconnaissance Office and the National Security Agency.
  - (1) In 2004, Congress created the position of the Director of National Intelligence, to better coordinate the 100,000 employees of 16 agencies spending about \$44 billion.
  - (2) In 2005, a debate erupted regarding the NSA's monitoring of private communications between the U.S. and other countries.
- 5. Congress.
  - a. The president *shares constitutional authority* over foreign and defense policy with Congress.
    - (1) Congress has sole authority to *declare war, raise and organize the armed forces, and appropriate funds* for national security activities.
    - (2) The Senate determines whether *treaties* will be ratified and ambassadorial and cabinet *nominations* confirmed.
    - (3) The “*power of the purse*” and responsibilities for *oversight* of the executive branch give Congress considerable clout, and senators and representatives examine defense budget authorizations carefully.
  - b. It is a common mistake to believe that the Constitution vests foreign policy solely in the president. Sometimes this erroneous view leads to perverse results, as with the Iran-Contra affair, when officials at high levels in the executive branch lied to Congress and others in an attempt to protect what they viewed as the president’s “exclusive” powers.

### III. AMERICAN FOREIGN POLICY: AN OVERVIEW

- A. From isolationism to internationalism.
  - 1. The United States followed a foreign policy of **isolationism** throughout most of its history.
  - 2. The **Monroe Doctrine** reaffirmed America's inattention to Europe's problems, but warned European nations to stay out of Latin America.
  - 3. In the wake of World War I, President Woodrow Wilson urged the United States to join the **League of Nations**; the Senate refused to ratify the treaty, indicating the country was not ready to abandon isolationism.
  - 4. *Pearl Harbor* dealt the death blow to American isolationism.
  - 5. The charter for the United Nations was signed in San Francisco in 1945, with the United States as an original signatory.
- B. At the end of World War II, the United States was the dominant world power, both economically and militarily.
  - 1. Only the United States possessed nuclear weapons.
  - 2. The United States poured billions of dollars into war-ravaged European nations through the **Marshall Plan**.
  - 3. NATO was created in 1949, affirming the mutual military interests of the United States and Western Europe.
- C. All of Eastern Europe fell under Soviet domination as World War II ended.
  - 1. In 1946, Winston Churchill warned that the Russians had sealed off Eastern Europe with an “**iron curtain**.”
  - 2. Writing in *Foreign Affairs* in 1947 (under the pseudonym “X”), George F. Kennan proposed a policy of “**containment**.” His containment doctrine called for the United States to isolate the Soviet Union and to “contain” its advances and resist its encroachments.

3. The **Truman Doctrine** was developed to help other nations (particularly Greece) oppose communism.
  4. The Soviet Union closed off land access to Berlin with the **Berlin Blockade** (1948–1949); it was countered by a massive *airlift* of food, fuel, and other necessities by the United States and its allies.
  5. The fall of China to Mao Zedong's Communist-led forces in 1949 and the development of Soviet nuclear capability seemed to confirm American fears.
  6. The invasion of pro-American South Korea by Communist North Korea in 1950 fueled American fears further.
    - a. President Truman sent American troops to Korea under United Nations auspices.
    - b. The **Korean War** (which lasted until July 23, 1953) was a chance to put containment into practice.
  7. The 1950s were the height of the **cold war**.
    - a. Eisenhower's secretary of state, John Foster Dulles, proclaimed a policy of "**brinkmanship**," in which the United States was to be prepared to use nuclear weapons in order to *deter* the Soviet Union and Communist China from taking aggressive action.
    - b. In the era of **McCarthyism** (named for Senator Joseph McCarthy, who made unsubstantiated accusations of disloyalty and breaches of security against both public officials and private citizens), domestic policy was deeply affected by the cold war and by anticommunist fears.
  8. With containment came a massive buildup of the military apparatus, resulting in what some people called the **military-industrial complex**.
    - a. The phrase was coined by President Dwight D. Eisenhower to refer to the interests shared by the armed services and defense contractors.
    - b. Economist Seymour Melman wrote about Pentagon capitalism, linking the military's drive to expand with the profit motives of private industry.
  9. The 1950s ushered in an **arms race** between the Soviet Union and the United States; eventually, a point of **mutual assured destruction (MAD)** was reached in which each side could destroy the other.
- D. The Vietnam War.
1. In 1950, President Truman decided to aid the French effort to retain France's colonial possessions in Southeast Asia.
  2. During the 1950s, the Viet Minh (the Vietnamese communist forces) began to receive military aid from the new communist government in China.
  3. In 1954, the French were defeated by the Viet Minh (led by Ho Chi Minh) in a battle at Dien Bien Phu.
  4. Although it was a party to the 1954 agreements among participants in Geneva, Switzerland, the United States never accepted the Geneva agreement to hold national elections in Vietnam in 1956; instead, it began supporting one non-communist leader after another in South Vietnam.
  5. Vietnam first became an election-year issue in 1964.
    - a. Since Truman's time, the United States had sent *military "advisors"* to South Vietnam, which was in the midst of a civil war spurred by the Viet Cong (National Liberation Front).
    - b. Senator Barry Goldwater was a foreign policy hard-liner who advocated tough action in Vietnam; President Lyndon Johnson promised that he would

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- not “send American boys to do an Asian boy’s job” of defending the pro-American regime in South Vietnam.
6. Despite his election-year promise, Johnson sent in American troops when we were unable to contain the forces of the Viet Cong and North Vietnam with American advisors.
    - a. American troops (more than 500,000 at the peak of the *undeclared war*) and massive firepower failed to contain the North Vietnamese.
    - b. At home, widespread protests against the war contributed to Johnson’s decision not to run for reelection in 1968 and to begin peace negotiations.
  7. The new Nixon administration prosecuted the war vigorously (in Cambodia as well as in Vietnam), but also worked to negotiate a peace treaty with the Viet Cong and North Vietnam.
    - a. A peace treaty was signed in 1973, but no one expected it to hold.
    - b. South Vietnam’s capital, Saigon, fell to the North Vietnamese army in 1975.
    - c. South and North Vietnam were reunited into a single nation, and Saigon was renamed Ho Chi Minh City.
- E. The era of *détente*.
1. Even while the Vietnam War was being waged, Richard Nixon supported a new policy of *détente*.
    - a. Popularized by Henry Kissinger, Nixon’s national security assistant (and later secretary of state), *détente* sought a *relaxation of tensions* between the superpowers, coupled with firm guarantees of mutual security.
    - b. Foreign policy battles were to be waged with diplomatic, economic, and propaganda weapons; the threat of force was downplayed.
  2. One major initiative coming out of *détente* was the **Strategic Arms Limitation Talks (SALT)**.
    - a. These talks represented an effort by the United States and the Soviet Union to agree to scale down their nuclear capabilities, with each power maintaining sufficient nuclear weapons to deter a surprise attack by the other.
    - b. President Nixon signed the first SALT treaty in 1972.
    - c. A second SALT treaty (SALT II) was signed and sent to the Senate by President Carter in 1979, but the Soviet invasion of Afghanistan that year caused Carter to withdraw the treaty from Senate consideration; both he and President Reagan nevertheless insisted that they would be committed to its arms limitations.
  3. The philosophy of *détente* was applied to the People’s Republic of China as well as to the Soviet Union.
    - a. President Nixon visited the People’s Republic and sent an American mission there.
    - b. President Carter extended formal diplomatic recognition in November 1978.
- F. The Reagan rearmament.
1. From the mid-1950s to 1981, the *defense budget had generally been declining* as a percentage of both the total federal budget and the gross national product (with the exception of the Vietnam War).
    - a. Ronald Reagan referred to the Soviet Union as the “*Evil Empire*”; he viewed the Soviet invasion of Afghanistan in 1979 as typical Russian aggression.

- b. During his presidential campaign, Reagan said America faced a “*window of vulnerability*” because the Soviet Union was pulling ahead of the United States in military spending.
  - 2. President Carter’s last budget had proposed a large increase in defense spending, and the Reagan administration proposed adding \$32 billion on top of that. In the second Reagan term, concern over huge budget deficits brought defense spending to a standstill.
  - 3. In 1983, President Reagan proposed the **Strategic Defense Initiative (SDI)**—renamed “Star Wars” by critics—to create a global “umbrella” of protection in space.
- G. The final thaw in the cold war.
- 1. The cold war ended spontaneously—a situation that few could have predicted.
    - a. On May 12, 1989, President Bush announced a new era in American foreign policy, one that he termed “*beyond containment*.” Bush declared that it was time to seek the integration of the Soviet Union into the community of nations.
    - b. Forces of change sparked by Soviet leader Mikhail Gorbachev led to a staggering wave of upheavals that shattered communist regimes and the postwar barriers between Eastern and Western Europe.
    - c. The *Berlin Wall* (the most prominent symbol of oppression in Eastern Europe) was brought down, and East and West Germany formed a unified, democratic republic.
    - d. The former Soviet Union split into 15 separate countries; non-communist governments formed in most of them.
  - 2. In 1989, reform seemed on the verge of occurring in China as well as in Eastern Europe.
    - a. Thousands of students held protests on behalf of democratization in *Tiananmen Square* (the central meeting place in Beijing).
    - b. However, on the night of June 3, the Chinese army violently crushed the democracy movement, killing hundreds—perhaps thousands—of protesters and beginning a wave of executions, arrests, and repression.
- H. The War on Terrorism.
- 1. Perhaps the most troublesome issue in the national security area is the spread of terrorism, the use of violence to demoralize and frighten a country’s population or government.
  - 2. President Bush declared a “war on terrorism” following the September 11, 2001, attacks on New York and Washington.
  - 3. The threat posed by groups and the hostile states supporting them has forced America to reconsider basic tenets of its national security policy.
  - 4. The national security strategy doctrine issued by the Bush administration in September 2002 is the most dramatic and far-reaching change in national security policy in half a century. It substitutes **preemption** of potential threats or deterrence and containment of aggression by hostile nations or groups that appear determined to use weapons of mass destruction against the United States.
- I. Afghanistan and Iraq
- 1. After the 9/11 attack, the United States attacked the Taliban regime in Afghanistan, which had been harboring al-Qaeda.
  - 2. After declaring Iraq, Iran, and North Korea an “axis of evil,” President Bush argued that Iraq was part of the war on terror.

3. Poor planning for a postwar Iraq has contributed to a continuing insurgency. Because of the ongoing conflict, al-Qaeda had grown and decentralized.
4. Support for the war and President Bush has sharply declined. Critics claim that America has lost moral authority. Others fear that the United States is fighting a tactic (terrorism) rather than the forces that generate terrorism (the causes).

#### **IV. THE POLITICS OF DEFENSE POLICY**

##### **A. Defense spending.**

1. The central assumption of the current American defense policy is that the United States requires forces and equipment sufficient to win decisively a single major conflict, defend American territory against new threats, and conduct a number of holding actions elsewhere around the world.
2. Defense spending comprises about one-fifth of the federal budget.
3. Domestic political concerns, budgetary limitations, and ideology all have a role in influencing decisions regarding the structure of defense policy.
4. Defense spending is a *political issue* entangled with *ideological disputes*.
  - a. Conservatives oppose deep cuts in defense spending, pointing out that many nations retain potent military capability and insisting that America needs to maintain its high state of readiness.
  - b. They credit the collapse of communism in Eastern and Central Europe to Western toughness and the massive increase in defense spending that occurred in the early 1980s.
  - c. Liberals maintain that the Pentagon wastes money and that the United States buys too many guns and too little butter.
  - d. They contend that Gorbachev and his fellow reformers were responding primarily to internal (not external) pressures; they believe the erosion of the Communist Party's authority was well under way when Gorbachev rose to power and that it accelerated as *glasnost* called attention to the party's failures.
5. Some scholars have argued that America faces a tradeoff between defense spending and social spending.
  - a. Evidence for the existence of such a tradeoff is mixed.
  - b. In general, defense and domestic policy expenditures appear to be independent of each other.
6. The lessening of East-West tensions has provided momentum for significant reductions in defense spending (what some call the *peace dividend*).
  - a. Some conservatives favor cutting defense spending in order to decrease the budget deficit.
  - b. Some liberals want to allocate the funds to expanded domestic programs.
  - c. Changing spending patterns is not easy: when assembly lines at weapons plants close down, people lose their jobs; these programs become political footballs.
  - d. Defense spending is decreasing, and the size of the armed forces is also being reduced.

##### **B. Personnel.**

1. The United States has nearly 1.3 million men and women on active duty and about 826,000 in the National Guard and Reserves; about 300,000 active duty troops are deployed abroad, mostly in Europe.

2. This is a very costly enterprise; many observers feel that America's allies—especially prosperous nations like Japan and Germany—should bear a greater share of common defense costs.
- C. Weapons.
1. To deter an aggressor's attack, the United States has relied on a *triad of nuclear weapons*—ground-based **intercontinental ballistic missiles (ICBMs)**, submarine-launched **ballistic missiles (SLBMs)**, and **strategic bombers**.
  2. Arms reduction.
    - a. During the May 1988 Moscow summit meeting, President Reagan and President Gorbachev exchanged ratified copies of a new treaty eliminating **intermediate-range nuclear forces (INF)**; Reagan became the first American president to sign a treaty to reduce current levels of nuclear weapons.
    - b. On November 19, 1990, the leaders of 22 countries signed a treaty cutting *conventional arms* in Europe.
    - c. In 1991, the Warsaw Pact (the military alliance tying Eastern Europe to the Soviet Union) was dissolved.
    - d. On July 31, 1991, President Gorbachev and President Bush signed the *Strategic Arms Reduction Treaty*, following *nine years of negotiations*.
  3. The democratization of Eastern Europe, the restructuring of the Soviet Union, and the deterioration of the Soviet economy substantially diminished Russia's inclination and potential to threaten the interests of the United States and its allies.
    - a. In the fall of 1991, President Bush broke new ground with his decision to *unilaterally dismantle* some U.S. nuclear weapons; President Gorbachev followed suit shortly afterward.
    - b. Presidents Bush and Yeltsin signed an agreement to sharply reduce the U.S. and Russian nuclear arsenals.
  4. Despite these changes, *high-tech weapons systems* will continue to play an *important role in America's defense posture*.
    - a. The perception that space-age technology helped win the Gulf War in “100 hours” and with few American casualties provides support for high-tech systems.
    - b. Producing expensive weapons also provides jobs for American workers.

## V. THE NEW GLOBAL AGENDA

- A. By whatever standards one uses, the United States is the world's mightiest power; but for Americans, merely being big and powerful is no guarantee of dominance.
  1. Our economy is increasingly dependent on international trade.
  2. Political scientist Stanley Hoffman likened the United States' plight to that of Jonathan Swift's *Gulliver*, the traveler who was seized and bound by the tiny Lilliputians.
- B. New issues and tools have emerged in the increasingly complex foreign affairs domain.
  1. Military instruments of power are becoming somewhat less useful in the new interdependent world.
  2. Economic sanctions are a new and powerful non-military penalty imposed on a foreign government in an attempt to modify its behavior.

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3. Nuclear proliferation has become a more central issue, with the United States adopting a more assertive posture in attempting to deny nuclear weapons to rogue states.

4. Terrorism is the most troublesome issue in this new environment.

C. The international economy.

1. Today's international economy is illustrated by **interdependency**.

2. The *International Monetary Fund (IMF)* is a cooperative international organization of 185 countries intended to stabilize the exchange of currencies and the world economy. The necessity of the IMF making the loans dramatically illustrates the world's economic interdependence.

3. The health of the American economy depends increasingly on the prosperity of its trading partners and on the smooth *flow of trade and finance across borders*.

- a. *Exports and imports* have increased tenfold since 1970 alone; spending by foreign tourists bolsters U.S. travel, hotel, and recreation industries; American colleges and universities derive a significant portion of their revenue from foreign students.

- b. The *globalization of finances* has been even more dramatic than the growth of trade; worldwide computer and communications networks instantaneously link financial markets in all parts of the globe.

4. At one time, **tariffs** (taxes added to the cost of imported goods) were the primary instruments of international economic policy.

- a. Tariffs are intended to raise the price of imported goods in order to "protect" American businesses and workers from foreign competition.

- b. Tariff making became a two-edged sword: high U.S. tariffs encourage *other nations to respond* with high tariffs on American products.

5. Since the era of the Great Depression, the world economy has moved away from high tariffs and *protectionism* toward lower tariffs and freer trade.

- a. President Bush signed the **North American Free Trade Agreement** in 1992 with Canada and Mexico; it was approved by Congress in 1993.

- b. In 1994, Congress also approved the even more important **General Agreement on Tariffs and Trade (GATT)** treaty. In addition to lowering protectionist barriers, it also created the World Trade Organization.

- c. Many other free trade agreements, both regional and between individual states are being approved around the world today.

6. Various circumstances combine to upset the **balance of trade** (the ratio of what a country pays for imports to what it earns from exports).

- a. For a number of years, America has experienced a balance of trade *deficit*; the excess of imports over exports decreases the dollar's *buying power* against other currencies, making Americans pay more for goods they buy from other nations.

- b. On the plus side, this decline in the dollar also makes American products cheaper abroad, thereby increasing our exports.

- c. Year after recent year, the American balance of trade has been preceded by a minus sign, and the deficit for the balance of trade was more than \$726 billion in 2005.

- d. A poor balance of trade exacerbates *unemployment*; jobs as well as dollars are flowing abroad.

7. A *cheaper dollar* also makes the *cost of American labor more competitive*. More foreign-owned companies are now building factories in the U.S.

8. In 1973, the **Organization of Petroleum Exporting Countries (OPEC)** responded to American support of Israel in the short war against Egypt by embargoing oil shipments to the United States and Western European nations. The United States is vulnerable because of its dependence on imported oil.
- D. **Foreign aid** has sometimes been given in the form of *grants*, but it often has taken the form of *credits and loan guarantees to purchase American goods, loans at favorable interest rates, and forgiveness of previous loans; preferential trade agreements* have sometimes been granted for the sale of foreign goods here.
  1. A substantial percentage of foreign aid is in the form of *military assistance* and is targeted to a few countries that are considered to be of vital strategic significance.
  2. Foreign aid programs have also assisted with *agricultural modernization, irrigation, and population control*.
  3. Foreign aid has never been very popular with Americans. Although the United States donates more total aid than any other country, it devotes a *smaller share of its GNP* to foreign economic development than any other developed nation.

## VI. UNDERSTANDING NATIONAL SECURITY POLICYMAKING

- A. Foreign and defense policymaking and democracy.
  1. Americans are usually more interested in domestic policy than foreign policy.
  2. Public opinion plays an important part in American foreign and defense policy; as with other issues, policymakers are reluctant to make unpopular decisions.
  3. The system of *separation of powers* plays a crucial role in foreign as well as domestic policy: the president does not act alone; Congress has a central role in matters of international relations. (See Chapter 12.)
  4. *Pluralism* is important to the development of American international economic policy: agencies and members of Congress—as well as their constituents—each pursue their own policy goals; even foreign governments hire lobbying firms.
- B. Foreign and defense policymaking and the scope of government.
  1. America's *global connections as a superpower* have many implications for how active the national government is in the realm of foreign policy and national defense.
  2. Treaty obligations, the nation's economic interests in an interdependent global economy, and other questions on the global agenda guarantee that the national government will be active in international relations.
  3. As the United States remains a superpower and continues to have interests to defend around the world, the scope of American government in foreign and defense policy will be substantial.

## KEY TERMS AND CONCEPTS

**Arms race:** one side's weaponry motivates the other side to procure more weaponry.

**Balance of trade:** the ratio of what a country pays for imports to what it earns from exports.

**Central Intelligence Agency (CIA):** created after World War II to coordinate American information and data-gathering intelligence activities.

**Cold war:** where the U.S. and the Soviet Union were often on the brink of war.

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**Containment doctrine:** called for the U.S. to isolate the Soviet Union to contain its advances by peaceful or coercive means.

**Détente:** a slow transformation from conflict thinking to cooperative thinking in foreign policy strategy designed to ease tensions between the superpowers and guarantee mutual security.

**European Union (EU):** a transnational government composed of most European countries, that coordinates monetary, trade, immigration, and labor policies for their mutual benefit.

**Foreign policy:** involves making choices about relations with the rest of the world.

**Interdependency:** actions reverberate and affect other people's actions.

**Isolationism:** a policy that directs the U.S. to stay out of other nations' conflicts.

**Joint Chiefs of Staff:** composed of commanding officers of each of the services, plus a chair, are the president's military advisors.

**McCarthyism:** persecution of prominent Americans and State Department officials accused of being communists during the 1950s.

**North Atlantic Treaty Organization (NATO):** created in 1949 to combine military forces of the U.S., Canada, Western European nations, and Turkey.

**Organization of Petroleum Exporting Countries (OPEC):** organization comprised of oil producing countries in the Middle East.

**Secretary of defense:** the president's main civilian defense advisor.

**Secretary of state:** a key advisor to the president on foreign policy.

**Strategic Defense Initiative (SDI):** also known as "Star Wars," this plan proposed creating a global umbrella in space to destroy invading missiles.

**Tariff:** raises the price of an imported good to protect domestic business.

**United Nations:** an international organization created in 1945 where members agree to renounce war and respect human and economic freedoms.

## TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS

- Reconciling covert activities with the principles of open democratic government remains a challenge for public officials. Does your class perceive any conflict between "democracy" and the need for "national security"? What types of limitations would your students place on covert activities? What type of distinction do they draw between activities of democracies and activities of nations like the former Soviet Union when it comes to national security?
- Public opinion polls find that Americans today are more likely to perceive threats to their security in economic competition from allies than from military rivalry with potential adversaries. As a library project, challenge your students to contrast the positions of the United States and Japan with regard to both defense expenditures and protective economic policies. Divide the class into several research groups for this project, and have them allocate some division of responsibility among themselves.
- For class discussion, have students debate the value of American involvement in UN peacekeeping efforts. In particular, have them examine the costs and benefits of this policy to American taxpayers. Ask them what exactly they would propose instead of American participation in these efforts.
- Have each student choose a country, and, using Internet, library, and government document sources, investigate the nature of U.S. foreign policy toward that country.

What specific issues does the United States have an interest in? What policy instruments (foreign aid, diplomacy, military forces, etc.) is the United States using to accomplish those goals? Have students write a brief essay addressing these questions. If shared with the class, this writing exercise could also result in an interesting discussion highlighting the diversity of American interests around the world, and help students to develop more thoughtful positions on foreign and defense policymaking.

- Assign students to read media reports from Europe, Central America, and elsewhere to gauge foreign opinion toward the U.S. attack on Iraq. How do beliefs about and attitudes toward the war and the U.S. compare? Do such differences matter, and in what ways?
- Ask the students to write down the purpose(s) the Bush administration had in going to war with Iraq. Then have them reveal their answers, and discuss why they differ from one another. What are the consequences of the war, and have any of these objectives/goals been achieved? You may also find that some believe Iraq to be responsible for 9/11, even years after the Bush administration has declared this to be untrue.

## **BACKGROUND READING**

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Inside the Cold War. Reconstructs the chain of events that brought the superpowers to the brink of war. Films for the Humanities and Sciences.

The Road to War: American Decision Making During the Gulf Crisis. This film provides an in-depth analysis of how decisions were made in response to the Gulf crisis. Films for the Humanities and Sciences.

## Chapter 20

The United Nations: It's More Than You Think. 1991. This program examines the structure and functions of the UN. Insight Media.

Frontline: Ghosts of Rwanda. 2004. This film examines the Rwandan crisis and America's, as well as the UN's, response.

# CHAPTER TWENTY-ONE: THE NEW FACE OF STATE AND LOCAL GOVERNMENT

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## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Discuss the new importance of state and local government.
- Identify provisions that are typically included in state constitutions.
- Outline the stages by which state constitutions may be amended.
- Describe and analyze the debate over direct democracy.
- Summarize the tasks that state legislatures perform.
- Assess legislative turnover and term limits.
- Summarize the tasks that state governors perform.
- Explain the significance of *fragmentation* of state executive authority.
- Describe the three-tier organization of state judicial systems and the functions each level performs.
- Identify and describe the three basic forms of municipal government.

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- Identify the tasks performed by municipalities, school districts, county governments, townships, and special districts.
- Discuss how the fragmentation of local governments causes competition among them and makes it difficult for them to cooperate with one another.
- Summarize the sources of revenues and expenditures of state governments.
- Analyze the democracy and the scope of government at the state and local levels.

# CHAPTER OVERVIEW

## INTRODUCTION

In this chapter, we discuss **subnational government** with an eye toward two important characteristics: *revitalization* and *diversity*. Since the early 1960s, the states have become revitalized in their institutions, their personnel, and their role in the federal system. With the weight of the philosophical argument about where policymaking power should lie in the federal system swinging strongly toward the states for the past 30 years, the federal government has provided the states and localities with increasing control over policymaking.

## STATE CONSTITUTIONS

State constitutions typically include provisions for separation of powers, legislative powers, executive powers, judicial powers, local governments, taxation and finance, and a bill of rights. States tend to have constitutions that are considerably longer than the U.S. Constitution; most are burdened with details that attempt to spell out government authority and limit government power.

Most states avoid the politically difficult process of writing a new constitution. Instead, most have adapted their governing documents by adding periodic amendments through a two-step process of *proposal and ratification*.

## STATE ELECTIONS

Most top-level state policymakers are elected to office, and recently greater attention has been given to state elections by voters. Most gubernatorial elections are held in non-presidential election years, and have become similar to presidential elections with their reliance on the mass media and money, and being candidate, rather than party, based.

State legislatures were malapportioned for much of the twentieth century, giving greater representation to rural areas than their population warranted. Following a succession of U.S. Supreme Court decisions in the mid-1960s (*Baker v. Carr*, 1962; *Reynolds v. Sims*, 1964), state legislative districts were redrawn to adhere to the principle of “*one-person, one-vote*.” The result was an increase in urban state representatives and senators; a larger number of Republicans were elected in the South; and large states such as New York and California now have legislatures that are younger, better educated, and more racially and ethnically diverse.

Legislative elections in the 1990s are less dependent on candidate personality and the mass media than are gubernatorial races, though they are becoming more like congressional races. State legislatures are more closely divided today than in previous decades, and about half of

the states have divided legislatures. *Divided government* exists when a single party does not control both chambers of the state legislature and the governor's office. After the 2004 elections, 29 states had divided government, approximately the same level as has been seen since the mid-1980s. Since 1990, 21 states have adopted term limits for state legislators, almost exclusively through direct democracy mechanisms. Elected state officials have become increasingly diverse with respect to race and gender.

## GOVERNORS AND THE EXECUTIVE BRANCH

Like the president, governors are expected to wear “*many hats*” in their jobs. A governor directs a complex state government and the programs that it administers. Governors initiate much of the legislation that state legislatures will adopt, they help manage conflict, and they must work with a number of other elected executive officials to produce public policy.

Recent governors have often had previous experience as a statewide elected official or held a federal elective position. Various state-level reforms have enhanced the formal powers of some governors, with governors in seven states being ranked as very strong, 18 governors ranked as strong, 10 ranked as moderate, and governors in 15 being ranked as weak.

Two of a governor’s most important formal powers for controlling state government are the veto and the executive budget. Governors in 42 states have a **line-item veto** that permits them to veto or amend portions of a budget bill or legislative language.

Governors also enhance their influence with more “personal powers.” In sharp contrast to the political “hacks” who commonly served as governors earlier in this century, the modern governor is likely to be bright, experienced, and capable of managing the diverse problems of a state.

So many independent executives, commissions, and boards work within state governments that many politicians and scholars have called for major state government reorganization to allow governors more control and to increase efficiency generally. Such reorganization seldom results in cost saving and efficiency benefits often promised by its proponents.

## STATE LEGISLATURES

State legislatures are far more active, informed, representative and democratic today than they were 40 years ago. Like Congress, state legislatures are responsible for a myriad of tasks as public representatives: making laws, appropriating money, overseeing the executive branch, approving the governor’s appointments, and serving constituents. State legislatures also perform duties assigned to them by the U.S. Constitution, such as ratifying proposed amendments to the Constitution and redrawing congressional districts following each census and reapportionment.

Three types of *legislative professionalism* reforms have been passed over the past three decades: increasing the length of legislative sessions, increasing legislators’ salaries, and increasing the professional staff available to legislators. Not all agree that these are positive changes. We may now be seeing the beginning of a “deprofessionalizing” trend in some states, as some harken back to the Jeffersonian ideal of the citizen legislature. Term limit laws are the most obvious manifestation of this, but recent laws in California limiting

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legislative staffing and in Colorado limiting the powers of the legislative leadership may also signal that the legislative professionalism movement is cyclical.

### STATE COURT SYSTEMS

Most judicial business in the United States occurs in the state court systems. State courts have one hundred times the number of trials and hear five times more appeals than federal courts. States have generally organized their courts into a *three-tier system* of trial courts, intermediate courts of appeals, and a court of last resort, similar to the model of organization of the federal courts.

**Trial courts** are organized on a local basis. A single judge presides over each case, and citizens are called upon to serve as jurors and members of grand jury panels. It is at the trial court level that the *facts of the case* are considered, along with *due process guarantees* required for the accused under the U.S. Constitution.

Appeals may be made to an intermediate **court of appeals** in 38 states (in other states, appeals go directly to the court of last resort). Appeals courts are organized on a regional basis in which judges work together in *panels* of three or more. Juries are not used in appellate courts; instead, judges read briefs and hear arguments prepared by lawyers that address legal issues such as whether the law was appropriately applied at the trial court level and whether due process of law was followed.

All states have a **court of last resort**, usually called a *supreme court*, that is the *final appellate level* in a state. The court of last resort hears both civil and criminal cases on appeal except in Oklahoma and Texas, which each have two top courts—one for civil appeals and one for criminal appeals. Supreme court decisions are significant *policy actions*; these courts are often called upon to practice judicial review of actions of the state legislature and the executive branch, to interpret laws and the state constitution, and to make judicial policy.

Popular *elections* are used to choose judges and justices for a limited term of office in some states; some states still use **partisan ballots** for judicial elections, but many have begun to choose judges on **nonpartisan ballots**. The most recent wave of judicial selection reforms in 17 states was the adoption of a hybrid system of appointment and election known as the **Merit Plan**.

### DIRECT DEMOCRACY

**Constitutional initiative, legislative initiative, referendum, and recall** are all tools of **direct democracy** introduced during the **Progressive Era**. Some observers feel that these tools often lead to *poorly crafted initiatives* and that they provide another avenue of *political influence for better financed, more privileged interest groups*.

### STATE AND LOCAL GOVERNMENT RELATIONS

The intergovernmental relationship between states and their inferior local governments is important to understanding government as is the relationship between the national government and the states. It is not, however, nearly as ambiguous a relationship as that between the national and state governments. The basic relationship is that the local

governments are totally subservient to the state government. According to **Dillon's Rule**, local governments have only those powers that are explicitly given to them by the states. Many cities have managed to get state legislatures to grant them a degree of autonomy in their **local charter**.

## LOCAL GOVERNMENTS

There are more than 91,000 governments in the United States, which has a strong tradition of **grass roots democracy**. Many Americans believe that public policy is best produced by governments that are *closest to the people*. Every U.S. citizen lives within the jurisdiction of a national government, a state government, and perhaps 10 to 20 local governments. However, the vast number of governments is as much a burden as a boon to democracy.

Most city and school district governments are located in a **county** (called a *parish* in Louisiana and a *borough* in Alaska), and **county government** is the *administrative arm of state government in local areas*. County governments keep records of births, deaths, and marriages; establish a system of justice and law enforcement; maintain roads and bridges, collect taxes, conduct voter registration and elections; and provide for public welfare and education. County governments usually consist of an elected **county commission** that makes policy and a collection of "*row officers*" (such as a sheriff, prosecutor, county clerk, and assessor), who run county services; some *urban counties* now elect a county executive or appoint a county administrator.

**Township** governments are found in 20 states. Most have limited powers to assist with services in rural areas, but some function much like city governments. Townships can provide for public highways and local law enforcement, keep records of vital statistics and tax collections, and administer elections.

**Municipalities** (city governments) provide *most basic local programs and services*, such as police and fire protection, street maintenance, solid waste collection, water and sewer works, park and recreation services, and public planning. Many local communities in the United States were originally operated under the "**town meeting**" form of direct democracy, where all voting-age adults in a community gathered once a year to make public policy. Since cities became too large for the town meeting style of governance, three *modern forms of municipal government* have been used: **mayor-council government** (with "weak" and "strong" variations), **council-manager government**, and **commission government**.

Most city council members and mayors are elected on a *nonpartisan ballot*. Traditionally, city council members represented a **district** or **ward** of the city—a practice that permitted the ward-based machine bosses to control elections. Reformers advocated **at-large** city elections, with all members of the city council chosen by voters across the city. An unintended consequence of at-large representation is that *minority group members have had difficulty gaining election* to the city council.

**School districts** are responsible for delivering education programs in over 13,000 areas of the country; most school systems are run as independent local governments. In an **independent school district**, local voters within a geographically defined area are responsible for their own public education system. Within the guidelines of state policy and the parameters of state funding, locally elected school boards and appointed administrators deliver education

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services. One of the hottest debates in school policy today concerns how to *pay for* and *guarantee equity* in public education.

The United States also has 35,052 *independent, limited-purpose governmental units* (other than school districts) known as **special districts**. This classification includes a wide variety of local “districts” for parks, natural resources, fire protection, and libraries, as well as “public authorities,” “boards,” and government “corporations” that can be found in every state. Special districts represent *the fastest growing form of local democracy* during the past two decades and often result from the need of local governments to coordinate in a policy area.

Each governing body in a fragmented metropolis tends to look at problems from its *own narrow, partial perspective*. As a result, *local bodies fail to cooperate* with one another and plan effectively for the region’s future needs. This fragmented nature of local governments leads to racial and class inequalities. With a few notable exceptions, prospects for increased cooperation among local governments remain dim. In many areas of the country, a **council of governments** (frequently referred to as a COG) exists wherein officials from various localities meet to discuss mutual problems and plan joint, cooperative action. These COGs are often formally very weak, being underfunded, poorly staffed, and lacking in any real legislative or taxing power.

## STATE AND LOCAL FINANCE POLICY

The finances of state and local governments are a confusing array of responsibilities, revenues, and budgets. This situation is primarily due to different ways in which states and their local governments have allocated the functional responsibilities among local governments.

State government revenues are derived from a variety of sources. States receive the largest share of revenue (42.8 percent) from *taxes*, primarily sales taxes, income taxes, and motor vehicle and fuel taxes. The second largest source of state revenue is *aid from the federal government* (almost 21.7 percent), followed by revenue from *state insurance programs* (approximately 21.2 percent). Smaller revenue sources include charges for services, state-operated liquor stores, utilities, payments from local governments, and a number of miscellaneous sources.

Nearly 50 percent of state money goes to *operate state programs, construct state buildings, and provide direct assistance to individuals*; approximately 30 percent is allocated as *aid to local governments*. Local governments allocated the bulk of their money to education (about 38 percent), followed by health and social services (about 13 percent), and public safety (about nine percent).

## UNDERSTANDING STATE AND LOCAL GOVERNMENTS

States have been willing to decentralize their governing arrangement to permit the creation of grass roots-oriented local governments to address citizens’ policy demands. The very existence of so many governments to handle so many different and needed services speaks to the *health of democracy*.

Yet state and local politics are *not perfectly democratic*: there is poor coverage in the media; there are low levels of citizen participation; business interests have substantial leverage in state and city affairs; and term limits can also have undemocratic aspects.

Growth in state and local government employment has exceeded that of the federal government for most of this century. Most of the growth has been associated with heightened demands of state and local residents for more government programs. Many state and local governments have tried to *reorganize their government structures* to get more effective government and more efficient use of taxpayers' dollars; in most cases, this process of reorganization has *not* resulted in smaller government.

Most state governments have experimented with *sunset legislation* in an effort to limit the scope of state government. However, as demands for services have grown, state and local governments have also had to grow in order to meet new challenges.

## **CHAPTER OUTLINE**

### **I. INTRODUCTION**

- A. State and local governments, or **subnational governments**, touch our lives every day.
- B. Since the early 1960s, the states have become revitalized in their institutions, their personnel, and their role in the federal system.
- C. With the weight of the philosophical argument about where policymaking power should lie in the federal government swinging strongly toward the states for the past 30 years, the federal government has provided the states and localities with increasing control over policymaking.
- D. A second characteristic important to understanding subnational government in the United States is diversity.
- E. To understand this diversity among the states is to understand the politics and history of the United States better. This also raises the important questions of why these differences exist and what effects these differences have.

### **II. STATE CONSTITUTIONS**

- A. State constitutions are subordinate to the U.S. Constitution and the laws of the United States, but they take *precedence over state law*.
- B. States tend to have constitutions that are considerably longer than the U.S. Constitution; most are burdened with details that attempt to spell out government authority and limit government power.
- C. States may amend their constitutions through a two-step process of *proposal* and *ratification*.
  - 1. The most common method is **legislative proposal** (permitted in all 50 states), usually requiring approval by a vote of two-thirds of the legislature and then submission to state voters who may **ratify** the proposal by a simple majority vote.
  - 2. A second method is proposal by a **constitutional convention**.

### III. STATE ELECTIONS

- A. Most top-level state policymakers are elected to office.
- B. State elections used to be determined by national forces, but now they are more visible and voters pay more attention to them.
- C. Gubernatorial elections have been *presidentialized*, becoming more personalized and resembling the mega-event of presidential elections.
  - 1. Most gubernatorial elections are in non-presidential-election years.
  - 2. Gubernatorial candidates must raise money and they do it by themselves rather than rely on party organizations.
  - 3. Gubernatorial elections have become less predictable over the past decade.
- D. Races for state legislative offices are often decided based on forces beyond the candidates' control—the party identification of district voters and parties' candidates in the race for governor and president.
  - 1. Recently these races have become more like the electoral races for Congress.
- E. State legislatures have become more competitive and more partisan; there is more divided government and many states have enacted term limits.
- F. State-elected officials are more diverse than ever.

### IV. GOVERNORS AND THE EXECUTIVE BRANCH

- A. The job of governor.
  - 1. Like the president, governors are expected to wear “*many hats*” in their jobs.
    - a. A governor directs a complex state government and the programs that it administers.
    - b. Governors initiate much of the legislation that state legislatures will adopt.
    - c. They help manage conflict.
    - d. They must work with a number of other elected executive officials to produce public policy.
  - 2. The powers of governors are not always commensurate with expectations that citizens have of them.
    - a. State constitutions often grant only *weak powers* to governors, frequently dividing executive powers among many different administrative actors and agencies. In addition, extensive civil service and merit-based employment policies in most states further diminish the governor's power.
    - b. Important formal powers include the **line item veto** and the executive budget. Forty-two governors have the item veto, which allows them to veto only parts of a bill, while allowing the rest of it to pass into law.
    - c. Governors supplement their formal powers with more “personal powers.”
    - d. Modernization in state governments has resulted in enhanced powers for governors, but it usually has not resolved the problem of *fragmentation of executive power*.
  - 3. Other executive officers include:
    - a. Attorney general—the state’s legal officer, elected in 43 states.
    - b. Treasurer—the manager of the state’s bank accounts, elected in 38 states.
    - c. Secretary of state—in charge of elections and record-keeping, elected in 36 states.
    - d. Auditor—financial comptroller for the state, elected in 25 states.
    - e. In some states, agricultural commissioner, and commissioners for land, labor, mines, and utilities, among others.

## V. STATE LEGISLATURES

- A. Between 1965 and 1985 many—but not all—state legislatures underwent a metamorphosis into more full-time, professional bodies, with several operating like state-level congresses.
  - 1. State legislatures serve the same basic function in the states as Congress does in the federal government.
    - a. Make basic laws.
    - b. Appropriate money.
    - c. Oversee activities of executive branch.
    - d. Serve constituencies.
- B. *Legislative professionalism* reforms designed to improve the efficiency and effectiveness of the legislature in doing these jobs focus on the capacity of the legislature to perform its role with an expertise, seriousness, and effort comparable to other actors.
  - 1. Legislative sessions have been lengthened.
  - 2. Legislative salaries have been increased.
  - 3. Professional staff available to legislators has been increased.
  - 4. Critics of legislative professionalism claim it leads to an overemphasis on reelection, inflated campaign costs, and a lack of leadership.
  - 5. States with professional legislatures tend to be those with large and heterogeneous populations, and there is some evidence that professionalism leads to more liberal welfare policy and more divided government.
- C. We may now be seeing the beginning of a “deprofessionalizing” trend in some states, as some harken back to the Jeffersonian ideal of the citizen legislature.

## VI. STATE COURT SYSTEMS

- A. Organization of state courts reflect two influences:
  - 1. Model of organization established by federal courts.
  - 2. Judicial preferences of each state’s citizens, as manifested in state constitutions and statutes.
- B. States have recently tried to organize a system in a way that parallels the federal system.
  - 1. State courts have one hundred times the number of trials and hear five times more appeals than federal courts.
- C. States have generally organized their courts into a *three-tier system* of trial courts, intermediate courts of appeals, and a court of last resort.
  - 1. **Trial courts** are organized on a local basis.
    - a. Judges often work in only one county and specialize in criminal, juvenile, or civil litigation.
    - b. A single judge presides over each case.
    - c. Citizens are called upon to serve as jurors and members of grand jury panels.
    - d. It is at the trial court level that the *facts of the case* are considered, along with *due process guarantees* required for the accused under the U.S. Constitution.
  - 2. Appeals may be made to an intermediate **court of appeals** in 37 states (in other states, appeals go directly to the court of last resort).
    - a. Appeals courts are organized on a regional basis in which judges work together in *panels* of three or more.

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- b. No witnesses are called before appellate courts.
- c. Juries are not used in appellate courts; instead, judges read *briefs* and hear arguments prepared by lawyers that address legal issues such as whether the law was appropriately applied at the trial court level and whether due process of law was followed.
- d. “**Appeals of right**” involve cases that *must be heard and decided* by appellate courts based upon merit (mandatory appeals).
- 3. All states have a **court of last resort**, usually called a *supreme court*, which is the *final appellate level* in a state.
- C. How judges are chosen varies across states.
  - 1. Fifteen states select judges by appointment.
  - 2. Eleven states select judges by partisan election ballot.
  - 3. Nineteen states select judges by non-partisan ballots.
  - 4. Sixteen states use a hybrid system of appointment and election known as the Merit Plan, where the governor appoints the states’ judges from a list of persons recommended by the state bar or a committee of jurists and other officials.
    - a. After a trial period, an election is held in which voters are asked whether the judge should be retained in office.
    - b. There are repeated retention elections, but judges seldom lose.

## VII. DIRECT DEMOCRACY

- A. There are three main tools of direct democracy, a method of policymaking unique to subnational governments.
  - 1. Eighteen states permit **popular initiative**, a direct democracy method to amend the constitution; proposed amendments may be placed directly before the voters (bypassing the legislature) when sufficient signatures are obtained on petitions.
  - 2. The **constitutional initiative**, a **Progressive Era** reform, is one of the tools of direct democracy that sought to place increased power directly with the people.
  - 3. Other Progressive Era reforms include the **legislative initiative**, the **referendum**, and the **recall**.
- B. Problems of direct democracy.
  - 1. There is considerable *debate over the desirability* of rewriting and adding constitutional provisions through citizen-initiated amendments. Proposed constitutional amendments are often poorly drafted.
  - 2. It is also unclear to what extent the initiative process empowers citizens or *merely gives new tools to better-financed, more privileged interest groups*.

## VIII. STATE AND LOCAL GOVERNMENT RELATIONS

- A. According to **Dillon’s Rule**, local governments have only those powers that are explicitly given them by the states.
  - 1. The basis for this rule is the United States Constitution.
  - 2. Local governments can use informal political clout to make policy.
  - 3. Formal powers are gained through state legislatures granting a local charter—an organizational statement and grant of authority in which local governments are said to operate under **home rule**.

## IX. LOCAL GOVERNMENTS

- A. Many Americans believe that public policy is best produced by governments that are *closest to the people*, but the sheer number of local governments creates a complexity that may actually hurt democracy.
  - 1. The latest count from the U.S. Bureau of the Census revealed that there are *91,186 American governments*.
  - 2. Every U.S. citizen lives within the jurisdiction of a national government, a state government, and perhaps *10 to 20* local governments.
- B. Most city and school district governments are located in a **county** (called a *parish* in Louisiana and a *borough* in Alaska), and **county government** is the *administrative arm of state government in local areas*.
  - 1. County governments keep records of births, deaths, and marriages; establish a system of justice and law enforcement; maintain roads and bridges, collect taxes, conduct voter registration and elections; and provide for public welfare and education.
  - 2. Rural residents rely on county governments for services more often than city residents.
  - 3. County governments usually consist of an elected **county commission** that makes policy and a collection of "*row officers*" (such as a sheriff, prosecutor, county clerk, assessor) who run county services; some *urban counties* now elect a county executive or appoint a county administrator.
- C. **Township** governments are found in 20 states.
  - 1. Most have limited powers to assist with services in rural areas, but some function much like city governments.
  - 2. Townships can provide for public highways and local law enforcement, keep records of vital statistics and tax collections, and administer elections.
  - 3. Most *do not* have the power to pass local ordinances.
- D. **Municipalities** (city governments) provide *most basic local programs and services*, such as police and fire protection, street maintenance, solid waste collection, water and sewer works, park and recreation services, and public planning.
  - 1. Citizen satisfaction with the delivery of services varies greatly.
  - 2. Many local communities in the United States were originally operated under the "**town meeting**" form of direct democracy, where all voting-age adults in a community gathered once a year to make public policy.
  - 3. Since cities became too large for the town meeting style of governance, three *modern forms of municipal government* have been used.
    - a. **Mayor-council government** - typically, local residents elect a mayor and a city council.
      - (1) *Strong mayor* variety - city council makes public policy, while the mayor and city bureaucracy who report to the mayor are responsible for policy implementation; strong mayors have the power to veto actions of the city council.
      - (2) *Weak mayor* variety - most power is vested in the city council, which directs the activities of the city bureaucracy; mayor serves as presiding officer for city council meetings and ceremonial head of city government.
      - (3) Most mayor-council cities follow the weak mayor form; small cities of 10,000 or fewer residents are most likely to have a weak mayor charter.

- b. **Council-manager government** - voters choose a city council and may choose a mayor, who often acts as both presiding officer and voting member of the council; council is responsible for political or policy decisions; implementation and administration of the council's actions is placed in the hands of an appointed **city manager**.
  - c. **Commission government** - voters elect a panel of city commissioners who make public policy, but each is also elected as a commissioner of a *functional area of city government* (such as public safety); bureaucrats report to a single commissioner
4. Most city council members and mayors are elected on a *nonpartisan ballot*.
- a. Traditionally, city council members represented a **district** or **ward** of the city—a practice that permitted the *ward-based machine bosses to control elections*.
  - b. Reformers advocated **at-large** city elections, with all members of the city council chosen by voters across the city.
    - (1) These at-large representatives could not create public policies to benefit only their own neighborhoods since they were elected by all of the city's voters.
    - (2) An *unintended consequence* of at-large representation is that *minority group members have had difficulty gaining election* to the city council.
- E. **School districts** are responsible for delivering education programs in 13,506 areas of the country; most school systems are run as independent local governments.
- 1. In an **independent school district**, local voters within a geographically defined area are responsible for their own public education system.
  - 2. Within the guidelines of state policy and the parameters of state funding, locally elected school boards and appointed administrators deliver education services.
  - 3. One of the important debates in school policy today concerns how to *pay for and guarantee equity* in public education.
    - a. Although the Supreme Court declared that states have a responsibility to eliminate discrimination in education policy (*Brown v. Education of Topeka*, 1954; *Swann v. Charlotte-Mecklenberg County Schools*, 1971), the United States continues to see inequities in the public school systems, with racial minorities still encountering poorly funded public education in many instances.
    - b. This equality problem is combined with a *financial crisis* in many public school systems today.
    - c. States have widely divergent school aid policies, with some providing a lot of aid to needy districts, and others not.
    - d. Local revenue sources are disproportionately based upon the local property tax (a policy choice that results in wealthier districts having an abundance of resources while poorer districts are limited to relatively inadequate revenues).
- F. The United States has 35,052 *independent, limited-purpose governmental units* (other than school districts) known as **special districts**.
- 1. This classification includes a wide variety of local “districts” for parks, natural resources, fire protection, and libraries, as well as “public authorities,” “boards,” and government “corporations” that can be found in every state.
  - 2. Usually these districts provide only a single service.

3. These governments are sometimes referred to as “invisible governments” because there is limited knowledge and involvement of citizens in their policymaking process.
- G. Fragmentation, cooperation, and competition.
  1. Each governing body in a fragmented metropolis tends to look at problems from its *own narrow, partial perspective*. As a result, *local bodies fail to cooperate* with one another and plan effectively for the region’s future needs.
  2. Traditionally, special districts have been used to encourage regional cooperation.
- H. Limits of local government.
  1. Constitutional limitations: Local governments have only the legislative, spending, and taxing authority that a state chooses to give them.
  2. Structural limitations: Extensive metropolitan fragmentation results in limitations on local government power.
  3. The use of special districts conflicts with a strong emphasis on small government and direct democracy.
  4. Conflicts of interest between urban and suburban citizens makes regional coordination difficult.
  5. **Council of governments** are informal organizations where officials from various localities meet to discuss mutual problems and plan joint, cooperative action.

## X. STATE AND LOCAL FINANCE POLICY

- A. State government revenues are derived from a variety of sources.
  1. States receive the largest share of revenue (43 percent) from *taxes*, primarily sales taxes, income taxes, and motor vehicle and fuel taxes.
  2. The second largest source of state revenue is *aid from the federal government* (slightly less than 22 percent), followed by revenue from *state insurance programs* (21 percent).
  3. Smaller revenue sources include charges for services, state-operated liquor stores, utilities, payments from local governments, and a number of miscellaneous sources.
- B. About 50 percent of state money goes to *operate state programs, construct state buildings, and provide direct assistance to individuals*; approximately 30 percent is allocated as *aid to local governments*.
- C. Sources of local government revenues.
  1. The finances of local governments are a confusing array of responsibilities, revenues, and budgets.
  2. Local governments receive their revenues from three main sources—taxes, user charges, and intergovernmental aid.
  3. “Own-sources” taxes (mainly property taxes, sales taxes, and income taxes) and intergovernmental aid now each account for nearly 35 percent; charges on users of services (including libraries and recreation) account for about 21 percent; municipally owned utilities and liquor stores bring in about eight percent.
- D. Local government expenditures.
  1. Primary areas of services include public education (about 38 percent), health and social services (13 percent), and public safety (nine percent).

## XI. UNDERSTANDING STATE AND LOCAL GOVERNMENTS

- A. Democracy at the state and local levels.
  - 1. States have been willing to decentralize their governing arrangement to permit the creation of grass roots-oriented local governments to address citizens' policy demands.
  - 2. Although more than 91,000 local governments are found across the country, most of these units are effectively making public policy in a government that is closest to the people.
  - 3. The very existence of so many governments to handle so many different and needed services speaks to the *health of democracy*.
  - 4. Yet state and local politics are not perfectly democratic.
    - a. There is poor coverage in the media.
    - b. There are low levels of citizen participation.
    - c. Business interests have substantial leverage in state and city affairs due to local governments competing for economic development.
    - d. Term limits can also have undemocratic aspects.
    - e. Judicial branch is invisible to most citizens.
- B. The scope of state and local governments.
  - 1. Growth in state and local government employment has exceeded that of the federal government for most of this century; most of the growth has been associated with heightened demands of state and local residents for more government programs.
  - 2. Many state and local governments have tried to *reorganize their government structures* to get more effective government and more efficient use of taxpayers' dollars; in most cases, this process of reorganization has *not* resulted in smaller government.
    - a. Most state governments have experimented with **sunset legislation** (periodic review of legislation to control the growth of government and eliminate unneeded agencies and programs).
    - b. States have also empowered their legislatures to review executive branch regulations and rules.
  - 3. Modernization of subnational governments has not always been undertaken to reduce the size of governments: as demands for services have grown, state and local governments have had to *grow* in order to meet new challenges.

## **KEY TERMS AND CONCEPTS**

**City manager:** official appointed by an elected city council and given the responsibility of implementing policy decisions.

**Council of governments:** association of officials from various localities that facilitates discussion of mutual problems and planning joint, cooperative activities.

**Dillon's Rule:** initially enunciated by Judy John Dillon, states that local governments have only those powers that are explicitly given to them by the states.

**Direct democracy:** a method of policymaking in the U.S. unique to subnational governments where voters participate directly in policymaking.

**Home rule:** power of cities to write their own charters and to change them without permission from the state legislature.

**Initiative:** direct democracy technique that allows proposed constitutional amendments to be placed on a statewide ballot when enough signatures are obtained.

**Lieutenant governor:** an executive officer of state government, often elected by voters; typically presides over the state senate.

**Line-item veto:** power of governors to veto only certain parts of a bill while allowing the rest to pass into law.

**Local charter:** an organizational statement and grant of authority from the state to a local government.

**Merit Plan:** judicial selection process whereby the governor appoints the state's judges from a list of persons recommended by the state bar or a committee of jurists and other officials.

**Recall:** direct democracy technique that allows voters to remove an official from office prior to completion of an elected term.

**Referendum:** direct democracy technique that allows citizens to pass a bill originally proposed and approved in the state legislature.

**Subnational governments:** state and local governments.

**Town meeting:** a form of direct democracy where all voting-age adults in a community gather annually to make public policy.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Voters in a number of states have approved term limitations for their state legislators; some states also have term limitations for governors. Ask your class to write a brief essay supporting the idea of term limitations, then ask students to write a paragraph *refuting their own arguments*. (This process may be reversed, if you prefer, but students should not know in advance about the second half of the task.)
- Divide your class into research teams to examine the different ways by which states select judges. Students should look at both partisan and nonpartisan elections, at the Missouri Plan, and at variations of the Missouri Plan generally referred to as “merit selection.”
- Compile a list of state and local government decision-making bodies that are open to the public in your area, such as city councils or commissions, county commissions, zoning or planning boards, school boards, and courts. As a class project, have each student sign up to attend a session or meeting of at least one government entity on your list.
- Have students review recent coverage of local government and politics in the local newspaper, identifying what major issues are being debated. If there is no local coverage (a point which you might want to discuss in class), then have students visit local government offices and ask for meeting agendas, press releases, or government reports that might convey what issues are currently on the agenda. Ask students to research the various groups that are represented in the policy discussion, what positions they take, and the resources and limitations that local government faces in dealing with the problem.
- Ask students to compile a list of government jurisdictions relevant to their home residences, identifying what services each unit provides. Have students present these lists in class, and discuss the advantages and disadvantages of this diversity in our democracy.

## **BACKGROUND READING**

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Hill, Kim Quaile. Democracy in the Fifty States. Lincoln, NE: University of Nebraska Press, 1994.

Haynie, Kerry L. African American Legislators in the American States. New York: Columbia University Press, 2001.

Hovey, Harold A. State Fact Finder. Washington, D.C.: Congressional Quarterly Press, 1999.

Thompson, Joel E., Gary F. Moncrief, and Herbert E. Alexander. Campaign Finance in State Legislative Elections. Washington, D.C.: Congressional Quarterly Press, 1997.

## **MEDIA SUGGESTIONS**

Can the States Do It Better? This film considers different viewpoints on whether, and what, state governments can accomplish more effectively than the national government, highlighting the historical conflicts between the states and the national government. Films for the Humanities and Sciences.

Can the States Do It Better? This program begins with the historical dispute between Thomas Jefferson and Alexander Hamilton regarding the relative powers of the federal and state governments, including issues as current as school vouchers and welfare reform. Films for the Humanities and Sciences.

The Law. This program provides an overview of how state governments affect virtually every aspect of our daily lives. Films for the Humanities and Sciences.

The Lawmakers. This film describes the various motivations and goals of individuals who choose to become legislators, including interviews with both state and national legislators. Films for the Humanities and Sciences.

Lawmaking. This program uses interviews with state legislators to describe the legislative process in the states. Films for the Humanities and Sciences.

# **TEXAS**

## **CHAPTERS**



# CHAPTER TWENTY-ONE: INTRODUCING GOVERNMENT IN TEXAS

## PEDAGOGICAL FEATURES:

- p. 659     *Why It Matters #1: Political Culture*  
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 p. 661     *Why It Matters #2: Population Projections*  
 p. 663     *Texas in Perspective: Cultural Diversity Among States*  
 p. 665     *Young People and Politics: Protests over Illegal Immigration Reform*  
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 p. 679     *A Generation of Change: The Rapid Rise of Tuition Rates in Texas*  
 p. 682     *Key Terms*  
 p. 682     *Internet Resources*  
 p. 682     *Get Connected: Population Projections*  
 p. 683     *For Further Reading*

## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Understand political culture
- Determine the factors that affect Texas political culture
- Distinguish between the moralistic, individualistic, and traditionalistic subcultures in Texas
- Understand the population growth patterns in Texas and its effects on state policies
- Describe and analyze the economy of Texas and its key industries
- Analyze the benefits and burdens of NAFTA in Texas
- Examine income distribution, geography, race, ethnicity, and the disparity between rich and poor in Texas
- Evaluate educational levels in Texas and describe the problems facing the state
- Analyze the nature of democracy and the scope of government in Texas as they are determined by the political culture, population, economics, income, and educational levels

## CHAPTER OVERVIEW

### **POLITICAL CULTURE**

**Political culture** refers to a set of values, attitudes, and beliefs that are widely shared within society about government's role in society and in people's lives. This does not mean everyone agrees on specific policies, but they agree on abstract policies. Across the United States, different regions and states place different emphasis on different values. They vary in how they view the role of government and subsequently in the kinds of policies different states have. Even within Texas there are differences, and it can be difficult to generalize about political culture in a state with more than 22 million people from a variety of backgrounds, races, and economic interests. Texas unique history creates a belief that Texas is better than other states. Also, size plays an important role in Texas' identity. The size and wide open spaces of Texas, along with its battle for freedom and independence, also contribute to the belief that Texas is a land of opportunity. In some ways Texas is a microcosm of the United States and the political culture of freedom and opportunity that has characterized the American dream.

Daniel Elazar examined the political culture of the United States and identified three distinct political subcultures: moralistic, individualistic, and traditionalistic. Elazar contends that these subcultures were established by those that settled the eastern seaboard and were then carried to other parts of the United States as people migrated west and took with them their subcultures. The **moralistic subculture** views government as a force for good and a means to right the wrongs in society. Government is needed to promote the public good and to work for the benefit of all citizens. The moralistic subculture also places a responsibility on citizen participation in the political process, and encourages the public to vote. The moralistic subculture has not been a strong influence in Texas politics.

The **individualistic subculture** does not see government's role as trying to correct all the inequalities and injustices of society. Rather, government has the narrow purpose of maintaining the rules that protect people's rights to pursue their interests, and government should be careful not to interfere with that pursuit. The influence of the individualistic subculture in Texas today can be seen in the kinds of policies Texas has towards the poor. Texas traditionally has not provided much money to programs to help the poor. Using government and taxpayer dollars to correct the ills of society runs contrary to the individualistic subculture. The burden is on the individual to pull himself up by the bootstraps and make the most of himself.

The **traditionalistic subculture** sees government's role as preserving the existing political order. Power is centralized in the hands of a few and government is used to serve the elites and maintain the status quo. The traditionalistic subculture has a dim view of democracy and discourages political participation by the masses. The traditionalistic subculture that settlers brought with them was familiar to the Mexicans living in Texas and reinforced Mexican political culture. The traditionalistic culture has remained an important factor with the Hispanic culture in Texas, and the traditionalistic subculture is also interwoven with the history of African Americans in Texas.

Texas was settled by those who ascribed to either the individualistic or traditionalistic subculture and these two subcultures have mixed together. Both subcultures have similar views on the proper scope of government and who should participate in it. Consequently Texas has favored limited government, with low taxes and minimal social services. The tax system in Texas is highly

regressive and favors the economic elites, and the amount of funding the state provides for social services ranks Texas near the bottom among states.

## POPULATION GROWTH AND CHANGES

The Texas population has increased by a double-digit percentage every decade beginning with the first census in 1850, and has outpaced the rate of growth in the United States every decade since. Texas is expected to continue to grow at a faster clip than the rest of the nation. Big changes are expected to occur in the composition of the population. Hispanics will become a majority sometime in the next 20 to 30 years.

Texas has long had a diverse population, with different races and ethnicities making significant contributions to its history and culture. Yet, beginning before Texas was a state, Anglos have made up the largest part of the population and controlled the state's politics and economics. The change in the population's size and composition in recent decades, however, and changes that seem likely to occur in the future, indicate a shift in political and economic power to minorities. Even in the years under Spain and Mexico, Texas was primarily settled by Anglos, and these settlement patterns were reinforced with the movement of people from the southern United States. In 1950 two-thirds of the population was still Anglo but has dropped steadily since then. Still, White population migration from the north has continued to change Texas political patterns as evidenced in part by the rise of the Republican party.

African Americans and Hispanics have also traditionally made up important segments of the population. In the last 150 years Hispanics increased steadily in numbers and are now the dominant minority within the state. There is also a rising Asian community in the state. In 2004 Texas became a **minority-majority** state, meaning that non-Caucasians made up the majority of the population. Buoyed by immigration and rising birthrates Hispanics are predicted to become the majority in the Texas population in the next 25 to 50 years. This will bring further political changes to the state.

The changing demographics in the state are reflected in the state's politics. The increase in the number of minority voters has led to minority candidates being elected mayors of the largest cities in Texas, to the state legislature, and to statewide offices. In 2002 the Texas Democratic Party nominated a Hispanic for governor, an African American for the U.S. Senate and an Anglo for lieutenant governor; this was an attempt to appeal to the growing number of minority voters.

Texas has also become an urban population, meaning more people live in cities than rural areas. In 2000 83 percent of the population lived in cities. The image remains however, of Texas as a rural state. Three of the ten largest cities in the nation (Houston, San Antonio and Dallas) are in Texas. This urban growth places more demands on government for roads, water, parks, and schools. Urban growth also marks a shift of political power in Texas from rural interests to urban interests, which has been one of the major conflicts throughout much of Texas history. This conflict is frequently seen in the state legislature and is a conflict built into the state constitution, which was written to favor rural interests.

## ECONOMIC DEVELOPMENT IN TEXAS

Politics and economics are interrelated. The policies that government implements affect the economic activity in the state, and the economy affects the kinds of policies the state is able to

## Texas Chapter 21

implement. Texas primarily uses a sales tax and when the economy slows so does the stream of revenue that comes from sales tax. Under the state constitution, Texas must operate under a balanced budget.

Although cotton, cattle, and oil have been the traditional symbols of the Texas economy for most of its history and remain important components of the economy, today the Texas economy is more diversified and less dependent on these traditional industries than before.

In the nineteenth century, cotton was king in Texas. After the Civil War, cattle also became a staple of the economy. Today farming and ranching are big business, and Texas ranks near the top in most agricultural categories among all 50 states. Cotton remains the primary crop grown, and Texas produces one-fourth of the total cotton harvest in the United States. However, only about 15 percent of the population is dependent upon agriculture for their livelihood.

The discovery of oil in the early twentieth century transformed the state from relying on agriculture to being a major petroleum power. Oil became the driving force for the state's economy, politics, and culture for most of the twentieth century. The oil and gas industry, more than anything else, has shaped the Texas economy, providing thousands of jobs and billions of dollars in tax revenue. It has also contributed to a political culture and belief that with hard work and with some luck one could make his fortune. There have been some downsides to the state's traditional reliance on the oil and gas industry. One negative is that the state's economy has been closely tied with the ups and downs of the oil market. In the oil shortages of the 1970s, Texas made record profits, but when oil prices plummeted in the 1980s, the state was forced to diversify.

In the 1980s the economy became more diversified and less dependent on the highs and lows of the energy industry. The restructuring that took place during the 1980s better prepared businesses in the state to take advantage of the prosperity of the 1990s. The state's economy rebounded in the 1990s and exceeded the growth rate of the United States each year of the 1990s. When the "tech bubble" busted in 2000, Texas' economy suffered.

Another important development for the Texas economy was the creation of the North American Free Trade Agreement (NAFTA), which was ratified by Congress in 1993. NAFTA was a treaty among the United States, Canada, and Mexico that eliminated most tariffs and other trade barriers among these nations and created the world's largest free trade zone. NAFTA was hotly debated in Congress, but Texas' business and political leaders, including most of the Texas congressional delegation, were supportive of NAFTA's passage. After ten years, the results of NAFTA are mixed; some areas have done well and prospered while others seem to have been hurt. One result for Texas has been the expansion of the state's trade with foreign nations.

## INCOME AND EDUCATION

While the Texas economy has grown at a greater rate than that of the United States, education has lagged behind. With the enormous population growth, income distribution and education have become key areas of focus and concern.

Texas is stereotyped as a state of rich individuals, but this is deceiving. Texas ranks 32nd in income among states, and the median household income is below the national average. Texas has a great divergence of wealth and poverty spread across the state.

Geographically, the most economic and income growth took place in the Texas Triangle, which ties together the state's largest metropolitan areas: Dallas-Fort Worth, Houston, San Antonio, and Austin. Dallas-Fort Worth is a major transportation and distribution center for Texas, Louisiana, Arkansas, and Oklahoma and is the state's banking and financial center. High technology and telecommunications fueled much of its growth in the 1990s. Houston's economy relies heavily on the oil and natural gas industry with half of jobs in the metro area tied in, directly or indirectly, with it. Houston is the home of the state's international business community and its deepwater port is second in the nation in the amount of tonnage being transported through it. Within this triangle, per capita income has been above the national average, while outside of this area per capita income is about 70% of the national average. Of particular concern is the area along the Texas-Mexico border, which includes some of the poorest areas in the nation.

The gap between rich and poor in Texas is greater than in every other state but New York and, as is the case in almost all other states, the gap between rich and poor is widening. The average income of the richest fifth of Texans is eight times greater than the poorest fifth. In addition, Texas has a greater percentage of children, elderly, and the population in general under the poverty level than the national average.

A wide disparity in income also exists among different races and ethnicities, with the median income of Anglo households being significantly higher than that of Black and Hispanic households. Minorities tend to be less educated than Anglos and tend to hold low-skilled, low-paying jobs. Moreover, minorities in Texas are younger on average than the Anglo population and thus have less work experience and receive less pay.

Having an educated population is critical for a state for a number of reasons. The educated have better-paying jobs, leading to a better state economy, more tax revenue, and more options for what government can do. Texas has fared poorly in educating its citizens. One of the reasons that Texas does not fair as well as other states in educational attainment is the number of minorities in the state. Nationally and in Texas, minorities historically have much lower educational attainment than Anglos. There is a fear that with the growing population among minorities and the poor educational levels, that Texas will be a center of poorly educated and ill-trained workers in low-paying jobs. To counter this potential scenario, the state has attempted to enforce educational standards through mandatory standardized testing and by setting high goals for the numbers of college graduates. Spending, however, has not increased as much as spending in other areas of state government.

## **UNDERSTANDING TEXAS**

Voter turnout in Texas has traditionally been low and minority participation has been kept low. With limited participation and voice from the masses, the elites set up a system that resulted in vast differences in income, education, and political opportunities among different groups in Texas. However, the changing demographics of the state offer the prospect of unseating the established powers and providing more opportunities for minorities.

With its political culture focusing on individual work ethics and limited government, Texas government has not traditionally involved itself in solving social problems. However, with the changing demographics and continued problems in education and the rising number of the poor, the state must find ways to overcome past attitudes.

## CHAPTER OUTLINE

### I. POLITICAL CULTURE OF TEXAS

- A. **Political culture** refers to a set of values, attitudes, and beliefs that are widely shared within society about government's role in society and in people's lives.
- B. Across the United States, there are different political cultures in different states and regions with some basic similarities that Americans share.
  - 1. People in different regions put different emphasis on these values.
  - 2. They vary in how they view the role of government and policies.
  - 3. Differences exist even within Texas.
- C. Most Texans agree on several things.
  - 1. Texas is better than other states.
  - 2. Texas has an unique history of being the only state to have been its own nation.
  - 3. Texas' very large size contributes to the notion that it is distinct and better.
  - 4. Texas is a land of opportunity.
- D. Daniel Elazar identified three distinct political subcultures.
  - 1. The **moralistic subculture** views government as a force for good and a means to right the wrongs in society. Government is needed to promote the public good and to work for the benefit of all citizens. It is most important in helping those that are in most need of help, such as the elderly, children, and the poor. Because the moralistic subculture views government and politics as good, it also portrays those in government as noble, dedicated public servants who are willing to make the necessary personal sacrifices to serve their fellow citizens. The moralistic subculture also places a responsibility on citizen participation in the political process, and encourages the public to vote. The moralistic subculture has not been a strong influence in Texas politics. Most Texans do not view government positively nor politicians as honest, hardworking people who make personal sacrifices to serve their fellow citizens.
  - 2. The **individualistic subculture** does not see government's role as trying to correct all the inequalities and injustices of society. Rather, government has the narrow purpose of maintaining the rules that protect people's rights to pursue their interests, and government should be careful not to interfere with that pursuit. As people migrated into West Texas in the late nineteenth and early twentieth centuries, they usually came from the parts of Texas and from Midwestern states where the individualistic subculture was dominant. This cultural heritage combined with the wide open spaces of West Texas and the image of the cowboy going out to battle the elements to further feed the individualistic subculture.
  - 3. The **traditionalistic subculture** sees government's role as preserving the existing political order. Power is centralized in the hands of a few and government is used to serve the elites and maintain the status quo. Whenever policies are approved that favor the masses, it is only because the elites want it to happen. The traditionalistic subculture has a dim view of democracy and discourages political participation by the masses.

- E. In short, Texas was settled by those who ascribed to either the individualistic or traditionalistic subculture. These two subcultures have mixed together, and we can see their effect on the state's history, government, and policies today.
1. Consequently Texas has favored limited government, with low taxes and minimal social services.
  2. The tax system in Texas is highly regressive and favors the economic elites, and the amount of funding the state provides for social services ranks Texas near the bottom among states.
  3. For much of Texas' history, the establishment actively worked to keep people from voting and passed laws that restricted suffrage for minorities. The result was that Texas had one of the lowest turnouts in the nation and still remains in the bottom ten.

## II. POPULATION GROWTH AND CHANGE

- A. The Texas population has increased by a double-digit percentage every decade beginning with the first census in 1850, and has outpaced the rate of growth in the United States every decade since.
1. Texas is expected to continue to grow at a faster clip than the rest of the nation, though the estimated growth varies depending on what scenarios of birth, death, and immigration one uses to project into the future.
  2. Hispanics will become a majority sometime in the next 20 to 30 years, depending on the growth scenario one uses.
  3. The state will become even more racially and ethnically diverse than it already is, and that the most growth will take place in the cities.
- B. A Diverse Population
1. Beginning before Texas was a state, Anglos have made up the largest part of the population and controlled the state's politics and economics.
  2. The change in the population's size and composition in recent decades, however, and changes that seem likely to occur in the future indicate a shift in political and economic power to minorities.
  3. Texas Population in the Past
    - a. Few Hispanics lived in Texas originally.
    - b. The small Hispanic population quickly became a minority in the 1820s and 1830s with the immigration of Anglo Americans into Texas, and the slaves they brought with them.
    - c. The Anglo population continued to increase, and by 1950 almost three-fourths of Texans were Anglo.
    - d. Since its peak in 1950, the Anglo population, because of immigration and birthrate among minorities, has decreased so that it is now less than half of the population.
    - e. In the 1850s and 1860s, African Americans accounted for about 30 percent of the population, most of whom were slaves.
    - f. In the last few decades, because of immigration from Latin America, particularly Mexico, and much higher birth rates among Hispanics than Anglos and African Americans, Hispanics have greatly increased their share of the population.
    - g. The largest proportion of "Other" comes from Asian Americans who, along with Hispanics, are the fastest growing part of the population.
  4. Texas Population in the Future

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- a. Just a few decades ago Texas was predominantly Anglo, but in 2004 Texas became a **minority-majority** state, meaning that non-Caucasians made up the majority of the population.
- b. Hispanics, because of their birthrate and immigration from Latin America, will not only become more numerous than any other race and ethnicity but will become the majority of the state's population.
- 5. Effect of Population Changes on Texas Politics
  - a. The changing demographics in the state are reflected in the state's politics.
  - b. The increase in the number of minority voters has led to minority candidates being elected mayors of the largest cities in Texas, to the state legislature, and to statewide offices.
  - c. Throughout the 2002 campaign, race was a factor, but not necessarily to the detriment of the minority candidates.
  - d. The Democrats had two potential Hispanic nominees for governor.
  - e. The Democrats ended up nominating Tony Sanchez, the first Hispanic candidate to run for governor from one of the major parties. Democrats nominated Ron Kirk, an African American and at that time the mayor of Dallas, for the United States Senate; they also nominated John Sharp, a Caucasian, for lieutenant governor.
  - f. Republicans attempted to keep that appeal to a minimum, by portraying it as racially divisive.
- C. Urbanization. More people live in cities than in rural areas.
  - 1. In the middle of the nineteenth century, most people lived in small towns and on farms, and only 4 percent of the population was urban.
  - 2. By the 1940s more people in Texas lived in urban areas than rural.
  - 3. Many people across the nation, including some who live in the big cities of Texas, likely still think of Texas as a rural state.
  - 4. Most Texans live in cities, including three of the 10 largest cities in the United States (Houston, San Antonio, and Dallas).
  - 5. New demands are placed on government for more roads, water, parks, schools, and other issues relating to population growth.
  - 6. Urban growth also marks a shift of political power in Texas from rural interests to urban interests, which has been one of the major conflicts throughout much of Texas history.

## III. ECONOMIC DEVELOPMENTS IN TEXAS

- A. The policies that government implements affect the economic activity in the state, and the economy affects the kinds of policies the state is able to implement.
  - 1. With a good economy people have jobs, pay more in taxes, and need less governmental assistance, allowing government more flexibility in how it spends the money flowing into its coffers.
  - 2. A bad economy leads to less government revenue, more demands for government spending, and fewer policy options for government.
  - 3. Texas' dependence on the sales tax for revenue requires that people make purchases, and in so doing pay sales tax. In a poor economy, however, not as many people make purchases, especially for big-ticket items.
  - 4. The state constitution requires a balanced budget.
- B. Cotton and Cattle

1. In the nineteenth century, cotton was king and the backbone of the Texas economy.
  2. Before the Civil War, the excess number of cattle in Texas kept prices low in the state, and most Texans paid little attention to the cattle industry.
  3. After the war, however, many decided to use the thousands of free-roaming cattle in the state to take advantage of the demand for beef in the other parts of the United States.
  4. As the cattle industry prospered, large ranches started to develop, beginning in South Texas and moving into Central Texas, then into North Texas, and eventually into the Panhandle.
  5. Today farming and ranching are big business. Receipts from farms and ranches totaled \$15.342 billion in 2004, ranking Texas second only to California.
  6. Cotton remains the king and is the state's most important crop.
  7. Even though agriculture is an important part of the Texas economy, fewer people today have their livelihoods directly tied in with it
- C. Oil
1. The discovery of oil in the early twentieth century transformed the state from relying on agriculture to being a major petroleum power.
  2. The first major discovery of oil and the one that changed Texas occurred January 10, 1901 at Spindletop, near Beaumont.
  3. Subsequently the biggest discoveries took place in West Texas in the 1930s and 1940s.
  4. The oil and gas industry, more than anything else, has shaped the Texas economy, providing thousands of jobs and billions of dollars in tax revenue.
  5. The effects of oil revenue can be seen throughout the state in a variety of ways, and higher education is one of oil's beneficiaries.
  6. The Constitution of 1876 set aside one million acres in far-west Texas as an endowment to the Permanent University Fund (PUF) for a university that was not yet created.
  7. In 1923 oil began to be actively produced on land dedicated to the PUF and was the first major oil discovery in the West Texas Permian Basin. Money generated from oil led to a building expansion at the University of Texas.
  8. As of 2005, the principal of the PUF is about \$9.4 billion and ranks as the second largest endowment next to Harvard's.
  9. Although the oil and gas industry has been and remains good for Texas, there have been some downsides to the state's traditional reliance on the oil and gas industry.
    - a. One negative is that the state's economy has been closely tied with the ups and downs of the oil market.
    - b. This is good when oil prices are high, but painful when they fall.
- D. High Tech
1. Because of the difficult economic times of the 1980s, businesses in the state were forced to restructure, and the economy became more diversified and less dependent on the highs and lows of the energy industry.
  2. The state's economy rebounded in the 1990s and exceeded the growth rate of the United States each year of the 1990s, even though the national economy was very good for most of the decade.
  3. Texas benefited more from the high-tech sector than most other states.

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4. However, when the “tech bubble” burst in 2000, many companies declared bankruptcy or went out of business, and companies that survived were forced to cut jobs and projects.
- E. NAFTA. Another important development for the Texas economy was the creation of the North American Free Trade Agreement (NAFTA), which was ratified by Congress in 1993.
  1. NAFTA was a treaty among the United States, Canada, and Mexico that eliminated most tariffs and other trade barriers among these nations and created the world’s largest free trade zone.
  2. NAFTA was hotly debated in Congress, but Texas’ business and political leaders, including most of the Texas congressional delegation, were supportive of NAFTA’s passage.
  3. After more than a decade of experience with NAFTA, most experts would conclude that NAFTA has neither been as bad as its opponents feared nor as good as many of its supporters claimed it would be.
  4. Not all regions and economic sectors have benefited from NAFTA, and for many it remains unclear whether NAFTA created more jobs than it destroyed, although most experts would contend it has been good for Texas.
  5. Texas has increased its trade with other nations.
  6. In 2005, Texas exports totaled \$128.7 billion, making Texas the number one state for export revenues for the fourth year in a row.

## IV. INCOME AND EDUCATION

- A. Although the Texas economy has often fared better than the United States economy in recent years, not all groups have enjoyed the benefits of economic prosperity and not all groups are in position to take advantage of what the economy may provide.
- B. Income Distribution: the stereotype of Texans as rich is deceiving.
  1. In 2004 Texas ranked 32<sup>nd</sup> among states in income.
  2. Texas per capita income has traditionally been lower than that of the U.S.
  3. There are vast differences in income among different groups within the state, such as among geographic areas, between rich and poor, among races and ethnicities, and between the highly educated and less educated.
  4. Geographically, the most economic and income growth took place in the Texas Triangle, which ties together the state’s largest metropolitan areas: Dallas-Fort Worth, Houston, San Antonio, and Austin.
    - a. Dallas-Fort Worth and Houston have traded the top spot over the years, income has increased the most in Austin, and San Antonio has consistently lagged behind the other three metropolitan areas in income level.
    - b. Since 1969, the per capita income within the Triangle has usually been above the national average, and the rest of Texas was about 70 percent of the national average.
    - c. Along the Texas-Mexico border, are some of the poorest areas in the nation.
  5. The gap between rich and poor in Texas is greater than in every other state but New York and, as is the case in almost all other states, the gap between rich and poor is widening. Texas has a greater percentage of children, elderly, and the population in general under the poverty level than the national average.

6. A wide disparity in income also exists among different races and ethnicities, with the median income of Anglo households being significantly higher than that of Black and Hispanic households.
    - a. Minorities tend to be less educated than Anglos and tend to hold low-skilled, low-paying jobs.
    - b. Moreover, minorities in Texas are younger on average than the Anglo population and thus have less work experience and receive less pay.
  7. The educated make more money than the less educated, but in Texas the numbers indicate that education is even more important.
    - a. There is a greater difference in income level between those with a college degree and those with a high school degree in Texas than nationwide
    - b. College graduates in Texas make more than the college graduates nationally, and the high school graduates in Texas make less than the high school graduates nationally.
- C. Education
1. Having an educated population is critical for a state.
    - a. The educated have better-paying jobs, leading to a better state economy, more tax revenue, and more options for what government can do.
    - b. The educated also tend to be more knowledgeable about politics and policy, more likely to vote, and more law-abiding.
  2. In 2004, Texas ranked last among states in the percentage of its population 25-years and older that graduated high school at 78.3 percent, compared with the national average of 85.2 percent.
    - a. One of the reasons that Texas does not fair as well as other states in educational attainment is the number of minorities in the state.
    - b. Hispanics in Texas lag far behind the educational attainment of other races and ethnicities, and are lower than the national average for Hispanics, which is much lower than other groups.
    - c. Texas is at a competitive disadvantage with other states when it comes to having a qualified workforce, and this disadvantage might get worse.
    - d. The fear is that a less educated workforce will not be able to support a growing economy and Texas' economy will be less competitive, income will decline, and tax revenue will decrease, even as there is an increased demand on government.
  3. The state has made some progress in education.
    - a. Minorities have increased their numbers in higher education, and Blacks in particular are making a significant increase in educational attainment.
    - b. In 2002 Texas Higher Education Coordinating Board issued an initiative, entitled "Closing the Gaps," that set goals for increasing the number of academically prepared students and the number of college graduates, particularly in certain fields of study and among minorities, as well as other goals.
    - c. The data show Texas is exceeding its goals among Anglo and African-American students, but falling well short among Hispanics.

## Texas Chapter 21

- d. Enrollment in colleges and universities has not kept up with the increasing population.
4. Education spending has not kept up with other forms of spending in the state. Among the ten most populous states, Texas ranks seventh in education spending. The high cost of obtaining a university degree further worsens the income inequality in Texas and hits minorities and low- and middle-income families especially hard.

## V. UNDERSTANDING TEXAS

- A. Texas and Democracy: In varying degrees the Texas political culture has ranged from actively discouraging voting to being ambivalent to voting and participation in the political process.
  1. Voter turnout in Texas has consistently been below the national average and has ranked near the bottom among states, with minorities, especially Hispanics, having a much lower turnout than Anglos.
  2. The elites set up a system that resulted in vast differences in income, education, and political opportunities among different groups in Texas.
  3. However, the changing demographics of the state offer the prospect of unseating the established powers and providing more opportunities for minorities.
- B. Texas and the Scope of Government
  1. People in Texas desire to limit government and keep taxes low.
  2. Texans do not like where their state ranks with other states when it comes to a variety of measurements, such as the percentage of children and elderly in poverty, the number of infant deaths, the proportion of the population without health insurance, and the percentage of people graduating from high school and college.
  3. However, it is not clear they have a government that can deal with these issues effectively.
  4. Texas' attitude toward government and government spending may change as minorities become more powerful in the state and politicians have to be more responsive to voices that want and expect government to be more committed to addressing these problems.

## **KEY TERMS:**

**Political culture:** refers to a set of values, attitudes, and beliefs that are widely shared within society about government's role in society and in people's lives

**Moralistic subculture:** views government as promoting the public good and working for the benefit of all citizens.

**Individualistic subculture:** views government's role as protecting people's rights to pursue their interests.

**Traditionalistic subculture:** views government's role as preserving the existing political order.

**Minority-majority:** non-Caucasians making up the majority of the population.

## TEACHING IDEAS

- Bring a blank map of Texas to class and with students draw in the various regions within the state. Focus on the geography, history, ethnicity/race, and industry of each region. Have students discuss how these factors might affect politics in each region. Also provide information on political party patterns of voting in each region
- Spend a class period examining Texas history. Bring a copy of the original Texas constitution to compare to that of the United States. Focus on the often forgotten individuals in Texas history such as Juan Seguin and those killed at Goliad. Students will find interesting the method by which Texas became a state and the unique privileges this provided the state, especially the fact that Texas is the only state whose flag may fly at the same height as that of the United States.
- Use the information gathered in the “Get Connected: Population Projections” to develop an estimation of the population growth in your area. Make a list of all the policy areas that the area will face as population grows, such as transportation (traffic), housing, libraries, water, etc. Discuss these needs and prioritize which must be handled first and why? Have students divide into groups and develop priority lists.
- Assign students to research a brief history of other states. Then compare these histories in class. Discuss how the history of a state and the kinds of persons who settled there affect a state’s government and political views.
- With predictions that Texas will have a Hispanic majority in another 20 to 30 years, discuss how this will change Texas politics. Have students imagine it is the year 2050, and then debate what changes might have occurred. With the statistics on the low levels of education among Hispanics in Texas, how might this affect Texas’ future? How will the state need to change its basic services?
- Take the “Your Are the Policymaker” section from the chapter and discuss with students the merits and problems of standardized testing. Have them examine how many students have been passing the exams. What are their own memories of taking the exams? How do the student assess the exam and what they learned from first to 12<sup>th</sup> grade.
- Remind students to be sensitive to their fellow classmates and the diversity of students who are in the classroom. As college students who pay tuition, ask their views of illegal immigrant students who receive the right to in-state tuition in Texas. Ask if there are any out-of-state students who are paying out-of-state tuition. Have students compare costs of in-state and out-of-state tuition in Texas and other states.
- Have students draft ways to encourage Texans to work for a college education. Each student should draft a proposal and advertising campaign to push college education in Texas. How might more Hispanics be encouraged to attend and graduate from college?

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## **ONLINE RESOURCES AND MEDIA:**

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Giant. Drama illustrating life in Texas in early twentieth century and the impact of oil on state's economy. Warner Brothers Films, 1956.

Imax: Texas, Big Picture. Short documentary gives a good overview of all that is Texas. Sling Shot video.

<http://www.texas.gov/>

Website portal for all of Texas government, which allows access to all other areas of and websites in state government.

<http://www.lsjunction.com/>

Lone Star Junction website provides data, historical and culture information on the state of Texas.

<http://www.texancultures.utsa.edu/>

Website for University of Texas at San Antonio Museum of Texan Cultures.

[http://www.llb.state.tx.us/Fact\\_Book/Texas\\_Fact\\_Book\\_2004\\_1103.pdf](http://www.llb.state.tx.us/Fact_Book/Texas_Fact_Book_2004_1103.pdf)

Website contains the Fact Book of Texas online in a PDF format.

# CHAPTER TWENTY-TWO: THE TEXAS CONSTITUTION

## PEDAGOGICAL FEATURES

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 p. 711      *Internet Resources*  
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## LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Understand the purpose of a *constitution*
- Describe the differences between *vertical* and *horizontal federalism*
- Understand judicial federalism
- Discuss and analyze the seven Texas constitutions
- Compare the different Texas constitutions and the commonalities they share
- Explain the key articles of the current Texas constitution
- Describe how the Texas constitution is changed or amended
- Explain why the constitution has been amended so frequently
- Describe the governor's role in amending the constitution
- Detail the attempts to revise the constitution
- Assess the Texas constitution's ability to provide democracy to its citizens
- Understand how the constitution affects the scope of government

## CHAPTER OVERVIEW

### THE TEXAS CONSTITUTION IN THE FEDERAL SYSTEM

A constitution also allocates powers to the government and establishes limits to the exercise of those powers. A state constitution affects the relationship of a state to the federal government and

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identifies the state's relationships to its local government. A state constitution is a key element in the practice of intergovernmental relations. Texans are governed by both the state and national constitutions. Federalism is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people.

The relationship between the state and federal constitutions can be viewed vertically, horizontally, and judicially. The relationship between the federal government and the various state governments is called **vertical federalism**. The federal government has certain obligations to its member states. According to the United States Constitution, the national government is to provide a republican form of government. It is required to preserve the territorial integrity of each state and protect them from invasion or annexation by another state. States are also part of the amending process for the Constitution and help to choose the president and vice-president through the electoral college. States are also limited under the federal constitution.

The United States Constitution also defines the relationships among the states and each state's obligations to other states, known as **horizontal federalism**. Article IV, Section 1 of the United States Constitution, the "Full Faith and Credit Clause," requires that every state must recognize "the public acts, records judicial proceedings of every other state." The Privileges and Immunities Clause of Article IV extends the privileges and immunities available in a state to citizens of other states; however, this clause has been essentially rendered useless by the Fourteenth Amendment to the United States Constitution.

**Judicial federalism** refers to the situation where a state court looks to the state constitution to find rights not identified in the United States Constitution. Texas courts have adopted the federal court interpretation of the United States Constitution on rights, but the Texas courts also have found additional protections in the state constitution.

## ORIGINS AND DEVELOPMENTS OF THE TEXAS CONSTITUTION

Constitutions represent the consensus of the people and are the product of the history and ideology of each state. From 1827 to 1876, seven constitutions were written and implemented for Texas. Each constitution reflects the era in which it was written, and shows the importance of continuity and change among the people in the region.

**The Constitution of the State of Coahuila y Tejas.** The region now known as Texas was part of the New World possessions of Spain and, after the Mexican Revolution, the frontier of the United States of Mexico. The first constitution that governed Texas was the national Mexican Constitution of 1824, since Texas was a territory in the state of Coahuila, part of Mexico. The Mexican constitution was based upon federalist principles, but it also established Roman Catholicism as the state religion. Each of the federal states in Mexico was urged to write a constitution, so in 1827 the state of Coahuila y Tejas adopted its own constitution. Texas was not well-represented in the state government. It elected only two of the members of the 12-member, unicameral state congress and had little impact on the election of the governor. The courts applied Spanish law and were organized based on Spanish principles. Spanish law contributed several provisions to legal procedure in Texas concerning private property, two of which continue today: the community property system and the homestead exemption from bankruptcy. Married couples enjoyed two types of property: separate property owned solely by one spouse and usually acquired before marriage, and community property owned equally by both spouses and acquired during the time they were married. A woman maintained control of her separate property even after a divorce.

The homestead exemption from bankruptcy also developed from Spanish law. Under Spanish law, the wife had to grant permission before the husband could sell the homestead, or the family home. The application of this Spanish legal principle allowed for the development of stable frontier families living in challenging conditions. Twice Anglo colonists presented outlines for a new constitution that would create a separate state of just Texas; these both failed and were both based to some extent on principles in the U.S. Constitution. Santa Anna instead imposed a dictatorship. He abolished the 1824 constitution and federalism; officials appointed by Santa Anna took over executive duties in the states, and state legislatures were replaced by appointed councils. Reaching the end of their patience, Texans declared independence from Mexico in 1836.

**The Constitution of the Republic of Texas, 1836.** The Constitution of the Republic of Texas was the first Anglo-American constitution to govern Texas. The new constitution was brief, in part because it largely copied the U.S. Constitution and because the delegates were concerned about impending military action.

The Constitution established the separation of powers of the government into the familiar three branch model, a bicameral legislature, the checks and balances of each branch, a bill of rights, and the democratic selection of government officials by free, Anglo and Hispanic male voters. The constitution included several provisions from Spanish law including community property, homestead exemptions and protections, and debtor relief. With the defeat of Santa Anna at the battle of San Jacinto on April 21, 1836, Texas achieved independence. A vote of the people ratified the constitution on the first Monday of September 1836.

**Texas Constitution of 1845.** On February 28, 1845, the United States Congress approved a joint resolution offering admission of Texas into the Union provided that Texas could meet certain requirements by January 1, 1846, including drafting a new constitution. President James K. Polk signed the act of admission on December 29, 1845, and Texas became the 28<sup>th</sup> state.

The first statehood constitution was more than twice as long as the constitution of the Republic of Texas. The new constitution featured the separation of powers into three branches, a bicameral legislature, an elected governor and legislature, and an appointed judiciary. The community property and homestead exemption provisions were retained from the Republic of Texas constitution. The bicameral legislature was to meet every other year in regular session. Representatives were elected for two-year terms and senators were elected to four-year terms. Among the more interesting provisions, ministers of the Gospel were ineligible to be legislators. The governor served two-year terms and he was prohibited from serving more than four years in any period of six years. He appointed the attorney general, secretary of state, and supreme and district court judges. The comptroller of public accounts and the treasurer were elected every two years by a joint session of the legislature.

**Constitution of 1861.** Democratic leaders in Texas demanded that Texas secede from the Union after the election of Abraham Lincoln in the presidential election of 1860. The Secession Convention in March approved amendments to the 1845 Constitution to reflect membership in the Confederate States of America. These amendments took effect without being considered by voters. The Constitution of 1861 was an adaptation of the 1845 Constitution. Primarily, the Secession Convention removed references to the United States of America, emphasized the constitutionality of slavery, and demanded states' rights. The freeing of slaves became illegal. All state officials were required to take an oath of loyalty to the Confederacy.

**The Constitution of 1866.** With the defeat of the Confederate States by the Union Army, the government of the state of Texas was under the control of the national government. One of the

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requirements of Reconstruction was that the state would call a constitutional convention to update the Constitution written at secession. Key provisions removed all references to the Confederacy. Slavery was abolished and certain legal rights granted to former slaves. However, the Constitution failed to provide political rights to Blacks, including the right to vote or to hold public office. The governor was granted the item veto on appropriations bills, a power that was incorporated into the Constitution of 1876. The document included numerous specific public policies. Public lands were set aside to fund the public schools and a state university, another innovation that appeared in the 1876 constitution.

**Constitution of 1869.** Shortly after the Constitution of 1866 was ratified by voters in Texas, Radical Republicans gained control of United States Congress during the 1866 mid-term elections. They enacted more rigid reconstruction legislation including a bill that required congressional approval of new state constitutions in the former Confederate states. In 1867, the new Texas constitution was declared illegal under the new federal law. Under the provisions of the laws enacted by the Radical Republicans in Congress, Texans had to take new steps in order to be restored to full statehood. The state had to have another constitutional convention, with delegates elected by only male citizens over the age of twenty-one, regardless of race, color, or "previous condition of servitude." Congress required that the convention write a new state constitution that would provide for universal adult male suffrage. When the constitution had been written and the state had ratified the Fourteenth Amendment of the United States Constitution, Congress would consider the case for readmission to the Union. The convention disbanded without completing a new constitution. The uncompleted constitution was signed by only 49 of the 90 delegates. This document was published under orders of the military and ratified as the constitution by Texas voters in July 1869. Texas was readmitted to the Union in 1870. The House of Representatives was to be composed of 90 members and the Senate would have 30. Senators were given six-year terms with one-third being elected biennially. The legislature would meet in annual sessions. The governor was given the power to appoint the attorney general and the secretary of state. Other officials were elected by the voters. The size of the supreme court was reduced from five to three. All judges were appointed. A poll tax was authorized and the funds raised were dedicated to the school fund. It declared that the Constitution of the United States, including the Thirteenth and Fourteenth Amendments, was the supreme law of the land. It forbade slavery and declared that all people were equal before the law.

**Draft Constitution of 1874 and the Convention of 1875.** The Constitution of 1869 was the subject of controversy from the time it was ratified until it was replaced six years later. Much of the controversy emerged out of the disputed process through which it was drafted and ratified. The first governor elected under this constitution was Edmund J. Davis, the candidate of the Radical faction of the Republican Party in Texas. His administration was controversial because he appointed several corrupt men to important offices and he was not opposed to calling out the militia to implement his policies. In 1873 Democrats won control of the legislative branch and were determined to make changes. The new Democratic governor, Richard Coke, called a special session of the legislature in the summer of 1875 to consider calling another constitutional convention. The legislature finally succeeded in its task and called a convention to meet in Austin in September 1875. The convention was dominated by Democrats and Patrons of Husbandry (the Grange). The influence of the Grange led to the conservative elements included in the Constitution. Working together, Grange delegates added articles providing for public officers' low salaries, homestead protection, regulation of the railroads in the state, and restrictions on the taxing power of state government. With its numerous amendments, the Constitution of 1876 is the constitution in effect today.

## CONTENTS OF THE TEXAS CONSTITUTION

The Constitution of 1876 was closely patterned on the previous state constitutions. There are a number of provisions and statements in the current document copied directly from previous constitutions.

There is a brief **preamble**.

**Article I – Bill of Rights.** One function of a constitution is to place limits on government's ability to coerce its people. These limits are typically expressed in state constitutions in a bill of rights. Like previous Texas Constitutions, the lengthy Texas Bill of Rights appears in Article I of the Texas Constitution. The bill of rights declares Texas to be a free and independent state, subject only to the United States Constitution. This declaration of the supremacy of the national constitution is unique. It reflects the opinions of the Constitution's drafters that the state government may need to be protected from the national government. In Article I, Section 2, it states the right of Texans to change their state government as they deem necessary.

**The Structure and Powers of Government – Articles II – V.** Another function of a constitution is to develop structures of government. The Texas Constitution accomplishes this function in Articles II through V. Article II provides a general overview of the separation of powers in Texas government. The article divides the government into three departments with one having legislative power, another having executive power and the third with judicial power. The article also specifies that a person may not serve in more than one of the departments at a time.

Article III, the longest of the three articles dealing with the branches of government, outlines the structure and functions of the legislative branch. The article's length can be attributed to the efforts of the drafters to specifically limit the powers of the legislature to only those duties identified in the constitution. Among the specifications on the proceedings of the legislature is a requirement that all bills be considered by committee before being considered on the floor, a unique provision when compared to other state constitutions. The salary received by state legislators is identified in Article III, Section 24. The Texas Constitution sets the base pay for members of the House and Senate and their presiding officers at \$7,200 per year, among the lowest in the nation.

Article IV describes the structure of the executive branch of state government:

“The executive department of the State shall consist of a governor, who shall be the chief executive officer of the State, a lieutenant-governor, secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office and attorney general.”

Each of these offices, except that of the secretary of state, is elected. Executive officers were originally given two-year terms of office with no restrictions on reelection.

The judicial branch was organized in Article V, creating six levels of courts:

“The judicial power of this State shall be vested in one Supreme Court, in a Court of Appeals, in District Courts, in County Courts, in Commissioners' Court, in Courts of Justices of the Peace, and in such other courts and may be established by law.”

These judges are elected directly, with terms of six years for the supreme court and the appeals courts, four years for the district courts, and two years for all other courts.

**Education, Taxation, and Revenue – Article VII and VIII.** Education policy had been a source of controversy in Texas from the time of the Civil War. Texas tradition since colonial days has been to

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encourage education, but there were questions about who should pay for the education. The Constitution of 1876 includes provisions on higher education as well as elementary and secondary schools. It also mandated the establishment of a university “of the first class.” The drafters also provided for a method to fund the new university and the public schools with the Permanent School Funds and the Permanent University Fund (PUF). Revenue generated from the sale and lease of public lands goes into the funds, which are then distributed to public schools and higher education institutions. The constitution created a State Board of Education composed of the governor, comptroller and secretary of state. Article VII, Section 10 created the University of Texas, an innovation that had not appeared in any previous constitution. The taxation and revenue article focuses primarily on the local property tax.

**Local Government – Articles IX and XI.** The article on county government is not very specific about the powers and structure of county government, a surprise considering the specificity in the rest of the document. Most of the structure of county government appears in Article V on the judiciary, primarily in the discussion of the county judge and the county commissioners’ court.

**Additional Articles.** Article X focuses on railroads, an important issue when the constitution was written in 1875. At the time of the Convention of 1875, railroads were expanding throughout the state. Article XII on private corporations has been mostly repealed. The article was inserted into the Texas Constitution to allow for corporations to be created under general law. Prior to the ratification of the Constitution in 1876, all corporations were created by special acts of the legislature. Article XV specifies the process of impeachment. Article XVI is the General Provisions Article, a virtual laundry list of items. Article XVII outlines the mode of amending the constitution of the state.

## CHANGING THE TEXAS CONSTITUTION

Constitutional changes may be made either by formal amendments or by a number of informal processes. Formal amendments change the letter of the constitution. The formal amending process is much more important in changing the Texas Constitution than it is in altering the United States Constitution. Tradition, practice, and procedure, do not effectively change the spirit of the Texas Constitution.

**Amending the Texas Constitution.** The process begins in the Texas legislature, during any regular biennial session. Two-thirds of all members of each chamber of the Texas legislature must approve any proposed amendments through a joint resolution. Once approved, the secretary of state’s office writes explanatory statements that are then certified by the attorney general. The statements must be published twice in newspapers around the state, so that the proposed amendments are publicized before the voters must make their decision. The legislature prepares the language that appears on the ballot, usually in the November following a legislative session. To become part of the Texas Constitution, a majority of voters must vote in the affirmative. Constitutional amendments usually go before the voters in an election held in November of odd-numbered years. The date, however, is determined by the legislature. Amendments may be proposed during special sessions of the legislature, but only if the amendment deals with the subject of the governor’s call to special session. By the end of 2005, the Texas legislature had passed a total of 615 amendments. Of these, 439 have been adopted and 176 have been defeated by Texas voters. Thus, the Texas Constitution has been amended 439 times since it was ratified by voters in 1876. These amendments are incorporated in the text of the document and not appended as a list at the end of the document, which is how the 27 amendments to the United States Constitution were handled.

Texans are willing to amend their Bill of Rights. One such amendment is the Equal Legal Rights Amendment (ELRA), approved by voters on November 7, 1972. The amendment made illegal all laws that discriminated against anyone based on sex, and resulted in the repeal or alteration of 33 Texas laws. The approval of the amendment marked the end of a nearly 20-year process guided by Hermine Tobolowsky, an attorney and political activist.

**The Governor's Role in Amending the Constitution.** The governor is not formally involved in the amending process. He or she may publicize support or opposition to particular measures, but the constitution does not require that the governor indicate approval by signing a proposal.

**Removing Provisions from the Constitution.** While it may be easy to get an amendment into the Texas Constitution, it is much more difficult to remove a provision from the Constitution.

## REVISING THE TEXAS CONSTITUTION

Amendment is an effort to make incremental, piecemeal changes to the Texas Constitution. Revision is the work to redraft the entire document. Since 1876, there have been numerous attempts to revise the Constitution, although to date the Constitution remains unrevised (though heavily amended). The first recorded legislative effort to call a constitutional amendment was the introduction of a joint resolution in 1887. The resolution failed to get the support of enough legislatures and it died in committee. The progressive movement of the early twentieth century spurred more discussion of constitutional revision. The Progressives wanted to reform politics to counteract some of the societal problems caused by the rapid industrialization in the late 1900s. In 1917, Governor James Ferguson vetoed a referendum on a constitutional convention that had been approved by the legislature. Governor Ferguson, an opponent of prohibition, argued that the only way to change the Constitution was through the amendment process. The period immediately after World War II saw a number of efforts to at least study the possibility of revising the Texas Constitution. Most of these efforts were the result of governors interested in modernizing an aging constitution. Constitutional revision came closest to fruition in the 1970s. In the 1960s, the United States Supreme Court ordered state legislatures to redraw their legislative districts to allow for more equal representation.

In 1971, the Texas Legislature passed a resolution calling for the establishment of a constitutional revision commission. The resolution also specified that the legislature would meet as a constitutional convention in January 1974. On November 7, 1972, voters approved the amendment that became Article XVII, Section 2, of the Constitution. The constitutional revision commission held nineteen public hearings across the state and published its recommendations for a new constitution in November 1973. In 1974, the legislature met as a constitutional convention to consider the commission's recommendations. Due to the influence of various political interests, the convention was unable to produce a new constitution to submit to the voters. Since the 1970s, constitutional revision has largely remained the subject of academics and editorial writers.

## THE TEXAS CONSTITUTION AND DEMOCRACY

Assessing the democratic nature of the Texas Constitution is difficult, in part because of its extreme length and obscure provisions, and in part because it was not really written to provide for a democracy. The current governing document, written in 1875 and ratified in 1876, was designed in reaction to the extremes presented by the Reconstruction era that followed the defeat of the Confederacy in the Civil War. One basic principle of a constitution is that it should be easy for the

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people to read. It should be brief, concise, well-organized, and written in simple language. The Texas Constitution fails in all of these respects. It also is inflexible, requiring amendments to keep it up-to-date.

### **THE TEXAS CONSTITUTION AND THE SCOPE OF GOVERNMENT**

A constitution creates a structure of government and establishes limits on the operation of that government. The limits on Texas government are quite explicit and specific as listed in the Texas Constitution. The limits on the government are a significant part of the history of Texas as well as reflecting much of the early history of the state of Texas. The present constitution was written by the farmers of Texas in order to control government spending. These farmers believed that the previous constitution had allowed the state government to waste taxpayers' money and they wanted to make sure that no money would be wasted under the new constitution.

## **CHAPTER OUTLINE**

### **I. THE TEXAS CONSTITUTION IN THE FEDERAL SYSTEM**

- A. A constitution establishes the basic framework within which government functions.
  - 1. A constitution also allocates powers to the government and establishes limits to the exercise of those powers.
  - 2. A state constitution affects the relationship of a state to the federal government and identifies the state's relationships to its local government.
  - 3. A state constitution is key element in the practice of intergovernmental relations.
  - 4. The citizens of Texas, like the citizens of the other 49 states, are governed by two constitutions: their state's constitution and the United States Constitution.
    - a. The two constitutions operate in what has been termed the federal system.
    - b. Federalism is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people.
    - c. The relationship between the state and federal constitutions can be viewed vertically, horizontally, and judicially.
- B. The Constitution identifies the common obligations between the states and the national government, primarily in Article IV. This relationship between the federal government and the various state governments is called **vertical federalism**.
  - 1. The federal government has certain obligations to its member states.
    - a. The national government is to provide a republican form of government.
    - b. It is required to preserve the territorial integrity of each state and protect them from invasion or annexation by another state.
    - c. The national government provides protection from domestic insurrections.
    - d. The states are allowed to participate in the process of amending the national Constitution when states consider proposed amendments by specially called conventions or through the state legislature.
    - e. The president and vice president are elected by the states meeting in the Electoral College and members of Congress represent states.
  - 2. The national constitution also establishes limitations on state power.

- a. The primary limit is the Supremacy Clause of Article VI.
  - b. This clause establishes a hierarchy of authority followed by state and federal courts in interpreting the national and state constitutions.
  - c. The United States Supreme Court applied the Supremacy Clause in the early case *McCulloch v. Maryland*.
- C. The United States Constitution also defines the relationships among the states and each state's obligations to other states, known as **horizontal federalism**.
- 1. Article IV, Section 1 of the United States Constitution, the "Full Faith and Credit Clause," requires that every state must recognize "the public acts, records judicial proceedings of every other state." This requirement only applies to civil proceedings, not criminal matters. The applicability of the Full Faith and Credit Clause has been a key question in the same-sex marriage debate.
  - 2. The Privileges and Immunities Clause of Article IV extends the privileges and immunities available in a state to citizens of other states. This complicated clause has been essentially rendered useless by the Fourteenth Amendment to the United States Constitution.
  - 3. One example of a creative method used by states in horizontal federalism is the interstate compact. An interstate compact is a contract between two or more states creating an agreement on a particular policy issue.
- D. **Judicial federalism** refers to the situation where a state court looks to the state constitution to find rights not identified in the United States Constitution.
- 1. Texas courts have adopted the federal court interpretation of the United States Constitution on rights, but the Texas courts also have found additional protections in the state constitution.
  - 2. Some state constitutions provide rights with greater specificity than does the United States Constitution.

## II. THE ORIGINS AND DEVELOPMENT OF THE TEXAS CONSTITUTION

- A. Constitutions represent the consensus of the people and are the product of the history and ideology of each state. From 1827 to 1876, seven constitutions were written and implemented for Texas. Each constitution reflects the era in which it was written, and shows the importance of continuity and change among the people in the region.
- B. **The Constitution of the State of Coahuila y Tejas**
- 1. The region now known as Texas was at the frontier of the New World possessions of Spain and, after the Mexican Revolution, the frontier of the United States of Mexico.
  - 2. Following the pattern of the United States Constitution, the Mexican Constitution divided governmental power among executive, legislative, and judicial branches.
  - 3. The Mexican Constitution of 1824 established a federal system that included the state of Coahuila y Tejas, and called for each state to develop its own constitution.
  - 4. In 1827, the state adopted a state constitution, the first state constitution that governed Texas.
    - a. Because of its limited population, Texas was not well-represented in the state government. It elected only two of the

- members of the 12-member, unicameral state congress and had little impact on the election of the governor.
    - b. The courts applied Spanish law and were organized based on Spanish principles.
    - c. They had to travel 700 miles to the state capitol at Saltillo to file appeals in legal cases.
  - 5. Spanish law contributed several provisions to legal procedure in Texas concerning private property, two of which continue today: the community property system and the homestead exemption from bankruptcy.
    - a. Married couples enjoyed two types of property: separate property owned solely by one spouse and usually acquired before marriage, and community property owned equally by both spouses and acquired during the time they were married. A woman maintained control of her separate property even after a divorce.
    - b. The homestead exemption from bankruptcy also developed from Spanish law. Under Spanish law, the wife had to grant permission before the husband could sell the homestead, or the family home.
  - 6. Discontented Anglo colonists in Texas held a convention in 1832 and discussed grievances against the Mexican government.
    - a. Texas was located far from the seat of state government.
    - b. There were limits on additional immigration from the United States.
    - c. It appears as though most of the grievances came from the Anglo settlements in Texas. The political chief of the province, ruled that the meeting was unauthorized and therefore illegal.
  - 7. In 1833, a second convention met in the same town. The convention approved the demands drawn up by the previous convention and proposed a new constitution for a separate state of Texas in the Republic of Mexico.
  - 8. In 1834, Santa Anna led a successful revolt against the Mexican president and established himself as the leader of Mexico, abolishing the constitution and federalism.
  - 9. Texans declared independence from Mexico in 1836.
- C. **The Constitution of the Republic of Texas, 1836** was the first Anglo-American constitution to govern Texas.
- 1. The constitution was modeled closely on the United States Constitution and the constitutions of several other states.
  - 2. The Constitution established the separation of powers of the government into the familiar three branch model, a bicameral legislature, the checks and balances of each branch, a bill of rights, and the democratic selection of government officials by free, Anglo and Hispanic male voters.
  - 3. It included several provisions from Spanish law including community property, homestead exemptions and protections, and debtor relief.

4. The constitution could be amended but the process was so complex that no amendments were adopted. Amendments had to be approved by two sessions of Congress and then approved by a popular vote.
- D. **Texas Constitution of 1845**
1. On February 28, 1845, the United States Congress approved a joint resolution offering admission of Texas into the Union. President James K. Polk signed the act of admission on December 29, 1845, and Texas became the 28<sup>th</sup> state.
  2. More than twice as long as the constitution of the Republic of Texas, the new constitution featured the separation of powers into three branches, a bicameral legislature, an elected governor and legislature, and an appointed judiciary.
  3. The community property and homestead exemption provisions were retained.
  4. The bicameral legislature was to meet every other year in regular session. Representatives were elected for two-year terms and senators were elected to four-year terms.
  5. Legislators were paid \$3 a day.
  6. Among the more interesting provisions, ministers of the Gospel were ineligible to be legislators.
  7. The governor served two-year terms and he was prohibited from serving more than four years in any period of six years. He appointed the attorney general, secretary of state, and supreme and district court judges. The comptroller of public accounts and the treasurer were elected every two years by a joint session of the legislature.
  8. Only one amendment was added to the constitution during the 16 years it remained in place.
- E. **Constitution of 1861** was written when Democratic leaders in Texas demanded that Texas secede from the Union after the election of Abraham Lincoln in the presidential election of 1860.
1. The Secession Convention in March approved amendments to the 1845 Constitution to reflect membership in the Confederate States of America. These amendments took effect without being considered by voters.
  2. It emphasized the constitutionality of slavery, demanded states' rights, and the freeing of slaves became illegal.
  3. All state officials were required to take an oath of loyalty to the Confederacy. Governor Sam Houston refused to sign the oath and was forced out of office to be replaced by the lieutenant governor.
- F. **The Constitution of 1866.**
1. With the defeat of the Confederate States by the Union Army, the government of the state of Texas was under the control of the national government.
  2. One of the requirements of Reconstruction was that the state would call a constitutional convention to update the constitution written at secession.
  3. Key provisions removed all references to the Confederacy. Slavery was abolished and certain legal rights granted to former slaves.

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4. The constitution failed to provide political rights to Blacks, including the right to vote or to hold public office.
  5. The governor was granted the item veto on appropriations bills.
  6. The document included numerous specific public policies.
  7. The new constitution called for a system of internal improvements and for a system of public education.
- G. **Constitution of 1869.** Shortly after the Constitution of 1866 was ratified by voters in Texas, Radical Republicans gained control of United States Congress during the 1866 mid-term elections.
1. In 1867, the new (1866) Texas constitution was declared illegal under the new federal law.
  2. The Radical Republicans also wanted to force each of the former confederate states to ratify the Thirteenth and Fourteen Amendments to the U.S. Constitution and provide for Black suffrage.
  3. Texans had to take new steps in order to be restored to full statehood. The state had to have another constitutional convention, with delegates elected by only male citizens over the age of 21, regardless of race, color, or "previous condition of servitude."
  4. When the constitution had been written and the state had ratified the Fourteenth Amendment of the United States Constitution, Congress would consider the case for readmission to the Union.
  5. Texas held the Constitutional Convention of 1868-1869 to comply with the new national laws. The majority of the 90 delegates were Republicans, elected by the newly enfranchised black male citizens of the state.
  6. The convention met in two sessions lasting a total of 150 days, but was unable to come to an agreement. The convention disbanded without completing a new constitution. The uncompleted constitution was signed by only 49 of the 90 delegates. This document was published under orders of the military and ratified as the constitution by Texas voters in July 1869. Texas was readmitted to the Union in 1870.
    - a. The House of Representatives was to be composed of 90 members and the Senate would have 30. Senators were given six-year terms with one-third being elected biennially.
    - b. The legislature would meet in annual sessions.
    - c. The governor was given the power to appoint the attorney general and the secretary of state. Other officials were elected by the voters.
    - d. The size of the Supreme Court was reduced from five to three. All judges were appointed.
    - e. A poll tax was authorized and the funds raised were dedicated to the school fund.
  7. The Constitution of 1869 also included specific policy statements.
    - a. It declared that the Constitution of the United States, including the Thirteenth and Fourteenth Amendments, was the supreme law of the land.
    - b. It forbade slavery and declared that all people were equal before the law.
    - c. The provision included the creation of an immigration bureau and no-fee grants for homesteads to settlers. Mineral rights were granted to landowners.

- d. The legislature also was prohibited from enacting lotteries or granting divorces.
- H. Draft Constitution of 1874 and the Convention of 1875.**
- 1. The Constitution of 1869 was the subject of controversy from the time it was ratified.
  - 2. Many Texans also believed that the document was too long and that it centralized too much power in the hands of the governor.
  - 3. The first governor elected under this constitution was Edmund J. Davis, the candidate of the Radical faction of the Republican Party in Texas.
  - 4. When the Democrats regained control of both the legislative and executive branches with the election of 1873, party leaders were determined to change the Constitution of 1869.
    - a. The two chambers of the legislature differed on the method of revising the constitution.
    - b. No convention was called before the end of the legislative session.
    - c. In 1874, Governor Richard Coke called for a new constitution in his inaugural address. On the power of the governor's request, legislative leaders created a bicameral legislative committee to draft a new constitution.
    - d. Governor Coke called a special session of the legislature in the summer of 1875 to consider calling another constitutional convention.
  - 5. Unlike the convention in 1868, this convention was dominated by Democrats. Black codes restricting the right to vote and outright threats of bodily harm kept many black voters away from the polls.
  - 6. Seventy-five of the 90 delegates were Democrats, and 15 were Republicans, including the six black delegates. Forty-one were farmers and forty were members of the Patrons of Husbandry (the Grange).
    - a. The influence of the Grange led to the conservative elements included in the Constitution.
    - b. The delegates worked to remove what many Anglo citizens of the state saw as excesses of the Reconstruction government, including the expansion of black suffrage.
    - c. The delegates also worked to ensure that the apparent corruption of the Davis government would not happen again.
  - 7. With its numerous amendments, the Constitution of 1876 is the constitution in effect today.

### III. CONTENTS OF THE TEXAS CONSTITUTION

- A. The Constitution of 1876 was closely patterned on the previous state constitutions. The Bill of Rights appears as Article I, just like in the 1845 document. The placement of the articles in a constitution and the provisions included in the document are key indications of the priorities of the drafters.
- B. **Preamble:** This preamble's brevity is an interesting contrast to the longer preamble of the United States Constitution at 52 words.
- C. **Article I – Bill of Rights:** Like previous Texas constitutions, the lengthy Texas Bill of Rights appears in Article I of the Texas Constitution, unlike the national Bill of Rights, which occurs as a later addendum to the constitution.

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1. A few specific provisions in the Texas Bill of Rights reflect the opinions of the constitution's drafters that the state government may need to be protected from the national government.
  2. Article I, Section 2, states the right of Texans to change their state government as they deem necessary.
- D. **The Structure and Powers of Government – Articles II – V:** Another function of a constitution is to develop structures of government.
1. Article II provides a general overview of the separation of powers in Texas government.
  2. Article III, the longest of the three articles dealing with the branches of government, outlines the structure and functions of the legislative branch.
    - a. Among the specifications on the proceedings of the legislature is a requirement that all bills be considered by committee before being considered on the floor, a unique provision when compared to other state constitutions.
    - b. The Texas Constitution sets the base pay for members of the House and Senate and their presiding officers at \$7,200 per year, among the lowest in the nation.
    - c. Since 1876, voters have approved four pay raises for legislators.
    - d. Voters in 1991 approved an amendment to the Texas constitution that created the State Ethics Commission and placed the Commission in charge of suggesting to the voters legislative pay increases and establishing a per diem for state legislators. The Commission has not suggested any increase in annual salary, but it has consistently raised the per diem.
  3. Article IV describes the structure of the executive branch of state government: "The executive department of the State shall consist of a governor, who shall be the chief executive officer of the State, a lieutenant-governor, secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office and attorney general." Each of these offices, except that of the secretary of state, is elected. Executive officers were originally given two-year terms of office with no restrictions on reelection.
  4. The judicial branch was organized in Article V, creating six levels of courts. These judges are elected directly, with terms of six years for the supreme court and the appeals courts, four years for the district courts, and two years for all other courts.
- E. **Education, Taxation, and Revenue – Article VII and VIII.**
1. Texas tradition since colonial days has been to encourage education, but there were questions about who should pay for the education.
    - a. Was education a state function or a local function? How much should the persons being educated contribute to the funding of their own education?
    - b. Delegates developed a "system of public free schools" similar to the one that had been in place before the Civil War, but with limits on the legislatures ability to pay for it.
  2. It also mandated the establishment of a university "of the first class." The drafters also provided for a method to fund the new university and the public schools with the Permanent School Funds and the Permanent University Fund (PUF).

- 3. The constitution created a State Board of Education composed of the governor, comptroller and secretary of state.
  - 4. Article VII, Section 10 created the University of Texas.
  - 5. Article VII, Section 13, made the Agricultural and Mechanical College, created by an act of the legislature in 1871 and located in Brazos County, a department of the University of Texas.
  - 6. The taxation and revenue article focuses primarily on the local property tax.
- F. Local Government – Articles IX and XI.** The article on county government is not very specific about the powers and structure of county government. Most of the structure of county government appears in Article V on the judiciary, primarily in the discussion of the county judge and the county commissioners' court. Article XI deals with municipal corporations, or incorporated cities.
- G. Additional Articles:**
- 1. Article X focuses on railroads, an important issue when the constitution was written in 1875. However, the article was largely repealed by an amendment approved by the voters in 1969. All that remains of the original Article X is Section 2 regulating the rates that railroads may charge.
  - 2. Article XII on private corporations likewise has been mostly repealed; it allowed for corporations to be created under general law.
  - 3. Article XV specifies the process of impeachment.
  - 4. Article XVI is the General Provisions Article, a virtual laundry list of items dealing with the legislature, the regulation of alcoholic beverages, dueling, bribery and corruption in state and local government, public printing and contracts, fences, livestock, vacancies in office, and competitive bidding on state contracts.
  - 5. Article XVII outlines the mode of amending the constitution of the state.

#### **IV. CHANGING THE TEXAS CONSTITUTION**

- A.** Constitutional changes may be made either by formal amendments or by a number of informal processes.
  - 1. Formal amendments change the letter of the constitution.
  - 2. The formal amending process is much more important in changing the Texas Constitution than it is in altering the United States Constitution. Tradition, practice, and procedure, do not effectively change the spirit of the Texas Constitution.
- B. Amending the Texas Constitution.** The amending process is outlined in Article XVII of the Texas Constitution.
  - 1. The process begins in the Texas legislature, during any regular biennial session. Two-thirds of all members of each chamber of the Texas legislature must approve any proposed amendments through a joint resolution.
  - 2. Once approved, the secretary of state's office writes explanatory statements that are then certified by the attorney general. The statements must be published twice in newspapers around the state, so that the proposed amendments are publicized before the voters must make their decision.
  - 3. To become part of the Texas Constitution, a majority of voters must vote in the affirmative.
  - 4. Constitutional amendments usually go before the voters in an election held in November of odd-numbered years. The date, however, is determined by the legislature. Turnout is usually very low.

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5. Amendments rejected by the voters may be proposed again by the legislature.
  6. Amendments may be proposed during special sessions of the legislature, but only if the amendment deals with the subject of the governor's call to special session.
  7. The Texas Constitution has been amended 439 times since it was ratified by voters in 1876.
    - a. Most changes have been minor.
    - b. The legislative branch is the target of most amendments.
    - c. Many amendments amend other amendments.
    - d. These amendments are incorporated in the text of the document and not appended as a list at the end of the document.
    - e. Texans have amended the Bill of Rights.
- C. **The Governor's Role in Amending the Constitution:** the governor is not formally involved in the amending process. He or she may publicize support or opposition to particular measures, but the constitution does not require that the governor indicate approval by signing a proposal.
- D. **Removing Provisions from the Constitution** is much more difficult than amending the constitution.

## V. REVISING THE TEXAS CONSTITUTION

- A. Revision is the work to redraft the entire document. Since 1876, there have been numerous attempts to revise the constitution, although to date the constitution remains unrevised (though heavily amended).
1. The first recorded legislative effort to call a constitutional amendment was the introduction of a joint resolution in 1887, which failed.
  2. The progressive movement of the early twentieth century spurred more discussion of constitutional revision as Progressives wanted to reform politics to counteract some of the societal problems caused by the rapid industrialization in the late 1900s.
  3. In 1917, Governor James Ferguson vetoed a referendum on a constitutional convention that had been approved by the legislature. Governor Ferguson, an opponent of prohibition, argued that the only way to change the constitution was through the amendment process.
  4. The period immediately after World War II saw a number of efforts to at least study the possibility of revising the Texas Constitution. These studies provided little meaningful change.
  5. Constitutional revision came closest to fruition in the 1970s.
    - a. In 1971, the Texas Legislature passed a resolution calling for the establishment of a constitutional revision commission. The resolution also specified that the legislature would meet as a constitutional convention in January 1974.
    - b. On November 7, 1972, voters approved the amendment that became Article XVII, Section 2, of the constitution.
    - c. In 1974, the legislature met as a constitutional convention to consider the commission's recommendations. Due to the influence of various political interests, the convention was unable to produce a new constitution to submit to the voters.

- d. In 1975, the legislature approved a new constitution in the form of eight amendments. The eight amendments were sent to the voters in November 1975, where all eight were defeated.
  - 6. Since the 1970s, constitutional revision has largely remained the subject of academics and editorial writers.
- B. **The Texas Constitution and Democracy**
- 1. Assessing the democratic nature of the Texas Constitution is difficult, in part because of its extreme length and obscure provisions, and in part because it was not really written to provide for a democracy.
  - 2. One basic principle of a constitution is that it should be easy for the people to read. It should be brief, concise, well-organized, and written in simple language.
    - a. The Texas Constitution fails in all respects.
    - b. It also is inflexible, requiring amendments to keep it up-to-date.
- C. **The Texas Constitution and the Scope of Government**
- 1. A constitution creates a structure of government and establishes limits on the operation of that government.
  - 2. The limits on Texas government are quite explicit and specific as listed in the Texas Constitution.
  - 3. The limits on the government are a significant part of the history of Texas as well as reflecting much of the early history of the state of Texas.
    - a. The present constitution was written by the farmers of Texas in order to control government spending.
    - b. A more flexible constitution may allow for greater government spending, but it is possible that additional government spending may be necessary to move Texas into the twenty-first century.

## **KEY TERMS AND CONCEPTS**

**Vertical federalism** – The relationship between the state governments and the federal government as described by the United States Constitution.

**Horizontal federalism** – The relationships that take place among the states and among local governments.

**Judicial federalism** – When a state court interprets its state constitution to provide more rights than are afforded by the United States Constitution.

## **TEACHING IDEAS: CLASS DISCUSSION AND STUDENT PROJECTS**

- Bring in copies of several other state constitutions, including Alabama. Read and compare specific sections of each document, such as the Preamble and Bill of Rights, etc. Have students choose which document they think is more clear, concise, and easier to understand.
- As a writing assignment, have students propose an amendment to the Texas Constitution. They should state the reasons this change is needed and how it will improve Texas government. Choose the top three amendment proposals and have the class vote on them.
- Divide the students into groups and have each group write a new draft Texas Constitution. Students can divide the work into sections. Each group should then provide a copy for the

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- class to read. Each proposal should be discussed by the class as a whole, and determine if any of the new measures would be adopted.
- Have students read the Texas Constitution. Each student should find at least two outdated sections or amendments in the document and explain why they are no longer needed. Compare this to the U.S. Constitution.
  - Compare the Texas Bill of Rights with the United States Bill of Rights. Discuss with students ways in which the Texas' Bill of Rights affords more or less protections than the U.S.
  - Bring information on The Grange to class so that students can learn the issues upon which the organization is based. Then decide what special interests groups today would influence any attempt at revision of the Texas Constitution.

## **BACKGROUND READING**

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McKay, Seth Shepard. Debates in the Texas Constitutional Convention of 1875. Austin: The University of Texas, 1930.

Texas Constitutional Convention. Journal of the Constitutional Convention of the State of Texas : Begun and Held at the City of Austin, September 6th, 1875. Galveston: Printed for the Convention at the "News" office, 1875.

Texas Constitutional Revision Commission. Informational booklet on the "Proposed 1976 Revision of the Texas Constitution: 64th Legislature." Austin: Texas Legislative Council, Office of Constitutional Research, 1976.

## **ONLINE RESOURCES AND MEDIA**

<http://www.tsha.utexas.edu/handbook/online/articles/DD/fda37.html>

Texas Handbook Online website provides history of Governor E.J. Davis and his impact on the Texas Constitution.

<http://texaspolitics.laits.utexas.edu/html/cons/index.html>

Website of Texas Politics at the University of Texas, which provides a comprehensive examination of all of the Texas constitutions and their history.

<http://www.tamu.edu/ccbn/dewitt/constit1824.htm>

This Texas A&M University site contains the 1824 Mexican Constitution.

## CHAPTER TWENTY-THREE: POLITICAL PARTIES, CAMPAIGNS, ELECTIONS, AND INTEREST GROUPS IN TEXAS

### PEDAGOGICAL FEATURES

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p. 746 ***Get Connected: Money in Campaigns***  
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### LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Understand one-party politics versus two-party politics.
- Describe the history and growth of the Democratic and Republican parties in Texas.
- Detail the role of the party-in-the-electorate and party-in-government.
- Analyze the political party structure in Texas.
- Understand the different types of elections in Texas including primary, general, local and special.
- Detail the history of limited voting rights in Texas with emphasis upon White primaries and poll taxes.
- Explain the difficulties in campaigning in Texas, especially the role of big money and the impact of the media.
- Understand the role of interest groups in shaping public policy through lobbying, electioneering, litigation, and appealing to the public directly.
- Describe the different major types of interest groups in Texas: economic, professional, equality and educational.

- Understand the overlapping role of political parties and interest groups in Texas and their effects on campaigns and elections within the state.

## CHAPTER OVERVIEW

### POLITICAL PARTIES IN TEXAS

In Texas there has traditionally been one-party rule; first the Democrats and now Republicans.

**One-party politics.** The period of Reconstruction shaped the future of Texas political parties for more than one hundred years as the short-lived control by Republicans became associated with the administration of Governor Edmund J. Davis, who was greatly disliked. More importantly, people throughout the South believed that the Republicans were the party of aggression, carpetbaggers, and occupation. The Republican Party was no longer a factor in Texas by the time the Constitution of 1876 was approved. For most of Texas history, the battle for office took place in the Democratic primaries, because whoever won the primaries was guaranteed to win the election. In the late 1800s and early 1900s other parties threatened the Democratic Party's dominance. In particular, the Populist Party, composed of small farmers, Blacks, and labor, gained considerable support. Democrats successfully diffused their competition by co-opting some of the issues driving the Populist Party. Democrats also passed laws, such as the poll tax, that targeted the poor and the Black voters; this resulted in decreasing their turnout, and costing third-party movements political support. **Yellow Dog Democrats** were loyal Democrats who would vote for a yellow dog if it ran for office under the Democratic Party label. Most Texans were socialized to be Democrats; it was part of their identity and tied one generation to another.

The Democratic Party became an amalgam of competing, often contradictory, factions, interests, and personal rivalries, trying to pull the party in different directions. The strongest rivalry began to emerge during the 1930s between the conservatives and liberals over President Franklin Roosevelt's New Deal policies. The conservative Democrats were the dominant faction in Texas politics for decades, typically defeating liberals in elections for office and for control of the state party. The division between liberals and conservatives in Texas increased after Roosevelt's death, as the conservatives increasingly saw the policies put forward by the national party running contrary to what they favored. In 1952 these differences caused Governor Allan Shivers and his supporters, called Shivercrats, to convince the state Democratic Party convention to endorse Dwight Eisenhower, the Republican candidate, for president. The 1950s marked the beginning of Texans voting Republican for president but continuing to vote Democrat for state and local offices, highlighting the gap Texans saw between the state Democratic Party and the national Democratic Party.

**Emergence of the Republican Party.** In the 1960 special election in Texas to fill the vacant Senate seat of Lyndon Johnson, John Tower, a Republican, became the first Republican statewide officeholder since Reconstruction. Infighting in the Democratic Party between liberals and conservatives drove turnout down and fractured the Democratic Party base. After John Tower, the next Republican to win a statewide election was Bill Clements, who was elected governor in 1978, to become the first Republican governor in Texas since Edmund Davis in 1874. Clements' victory in 1978 was in part the result of infighting among the Democrats. Many point to Clements' victory in 1978 as the turning point for the Republican Party. From that point, Republicans began to be more competitive in a variety of races, winning a number of them. In 1993, Kay Bailey Hutchison, a

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Republican, was elected in a special election to the U.S. Senate, making both Senate seats from Texas Republican. In the 1994 election, George W. Bush defeated Governor Richards, and several other Republicans won state offices as well. In 1996, the Republicans won a majority of seats in the state senate for the first time since Reconstruction, as well as a number of statewide races. In 2002, Republicans continued to win all statewide elections and won control of the House of Representatives for the first time since Reconstruction, giving them control over both houses of the legislature.

Republican victories are no longer the result of divisions within the Democratic Party but of the dominance of the Republican Party. One reason for the shift in the party's fortunes was the tremendous growth in the number of white-collar workers moving into the state from the Midwest and Northeast who were used to voting Republican. At the same time many longtime Democrats were becoming increasingly disaffected with their party. With the growth of the civil rights movement and the increase in minority suffrage, the liberal wing of the Democratic Party had gained more power and the conservative white Democrats in Texas felt increasingly displaced and their positions in the party threatened. After being accustomed to voting for Republican for president, these historically conservative voters began to feel more comfortable voting Republican for state offices as well.

**Party-in-the-electorate.** The result of the immigration from other states into Texas and the disenchantment of conservative Democrats with their party is reflected in the changes that have taken place in the number of people identifying with the Republican Party. By the middle of the 1990s the Republicans became slightly more numerous than Democrats and since then have expanded their lead over the Democrats. The number of independents has varied over the years but has consistently been a significant percentage of the population.

**Party-in-government.** In recent years a complete transformation has taken place in the state regarding the parties in government. The November 2006 election marks the fourth consecutive election in which a Republican has won the governorship. The Republicans control both houses of the legislature and all statewide offices, including all 18 judges on the Texas Supreme Court and the Texas Court of Criminal Appeals.

Because Texas has been ruled by one party for most of its history, the role of the party in Texas government has traditionally been very different than in the federal government. Because officeholders were of the same party, Texas government had not been marked with much partisanship, and party affiliation had not been an important variable in understanding the workings of Texas government. Instead of partisanship, the fighting between the governor and legislature or within the legislature was between liberal and conservative and urban and rural. As the Republican Party became more viable and control over different offices became more competitive, more partisanship crept into elections and into governing.

**Party organization.** Party organizations have traditionally been weak in Texas. As the Republicans became more competitive, both party organizations became more of a factor in recruiting candidates, raising money, and performing other tasks that help their parties' candidates win elections and control government.

The party organization begins with voters in the primaries. In addition to selecting the party nominees to run in the general election for various government offices, voters in primaries elect the party officials who make up the **permanent organization** of the party, and, if they want, voters can

participate in the **temporary organization** of the party as well. The permanent organization consists of elected party officials and committees at the local, county, and state level that perform party building activities throughout the year. The temporary organization is made up of conventions that occur every two years at each of these levels.

**Permanent organization.** The **precincts** are the smallest electoral districts in the state. In the primary, voters in the precinct elect a **precinct chair** who serves a two-year term. The chair is responsible for the party in the precinct. The next level is the **county executive committee**, which is made up of precinct chairs and the **county chair**, who is elected in the primary to a two-year term. The next level is the **state executive committee**, which consists of two representatives from each of the state's 31 senatorial districts plus the **state chair** and **vice chair**. They are elected at the state convention to two-year terms. Their primary responsibility is to plan and run the state convention, promote the party's candidates, raise money, and try to build the party throughout the state.

**Temporary Organization.** A **precinct convention** is held on the night of the primaries after the polls close. Anybody who voted in the party's primary is welcome to attend the party's precinct convention. At the precinct convention, the participants elect a convention chairperson and secretary, discuss issues, vote on resolutions to send to the county convention, and elect delegates to go to the **county or district convention**. Most counties have conventions, but those counties that have more than one state senator have senatorial district conventions instead. The county or district convention selects delegates and votes on resolutions to go to the state convention. The number of delegates that a precinct sends to the county convention and the number from each county that go to the state convention are determined by the percentage of the vote that the party's candidate for governor received within that precinct or county in the last election. Both Republicans and Democrats hold their **state conventions** in June of even-numbered years. Delegates to the state convention certify the candidates who won the primary as the official nominee of the party, adopt a **platform**, and elect a chair, vice chair, and a state executive committee. In presidential election years, the convention also selects delegates to go to the national convention, people to serve on the national party committee, and electors for the Electoral College. Very few people actually participate in the party structure and the conventions thus leaving most of the decision-making to party activists.

**The future of the parties in Texas.** Both parties have reason to hope for the future. Although the Democrats continue to lose elections and have little chance to regain power in the short-term, the biggest factor in their favor is that demographic trends in the state benefit Democrats. Studies show that Whites vote Republican and minorities vote Democrat. With an ever-increasing minority population in the state, Democratic voting numbers should rise. Hispanics who make up the largest portion of these minorities, however, have traditionally not been active in state politics. For now, therefore, the voting trends are clearly in the Republican's favor. More people in Texas identify themselves as Republicans than as Democrats, and this gap continues to widen each year. Republicans need to make a greater effort courting the Hispanic community than they traditionally have done.

## TYPES OF ELECTIONS

**Primary elections.** This Progressive reform was adopted in Texas in 1906. Originally, when the Democrats dominated state politics, winning the Democratic primary was the equivalent of winning the general election. Today primaries in Texas are held the second Tuesday in March of even-numbered years. The state requires that parties nominate their candidates through primary elections

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if their gubernatorial candidates won at least 20 percent of the vote in the previous general election. If a party's candidate won less than 20 percent of the vote, the party can use primaries or conventions to nominate their candidates.

There are two main kinds of primaries that states conduct. In **closed primaries** only people who registered to vote with a party can vote in the primary. **Open primaries**, on the other hand, do not require voters to register with the party beforehand and allow voters to decide the day of the election whether to vote in the Republican or Democratic primary. Texas primaries include elements of both closed and open primaries, but more closely align with the open primary. Texas does not require people to register under a party affiliation, like in closed primaries, but Texas does require voters to publicly disclose on election day which party primary they are going to vote in. Texas is one of ten states that require the nominee to win a majority of the votes cast in the primary. If no candidate wins a majority, the top two vote recipients run against each other in a **runoff election**, held a month later on the second Tuesday in April.

**General elections** pit the parties' nominees against one another on the first Tuesday after the first Monday in November of even-numbered years. The winning candidate does not have to win the majority, just more than anyone else in the race. Democratic and Republican party candidates must win their party's primary. For independent or third-party candidates for statewide office, the process can be more complicated. If an independent or third party candidate did not obtain at least one percent of the vote for that particular office in the last election, the candidate must get a petition signed by a number of registered voters equal to at least one percent of the total vote in the last gubernatorial election. To sign a candidate's petition a person must be a registered voter who did not vote in the primaries. Texas also has a sore loser law that prevents a candidate who lost in the primaries from running in the general election.

**Local elections.** Elections for most city councils, school boards, and special districts in Texas take place in May of odd-numbered years in most locales and are nonpartisan, meaning that no candidate runs under a party label. For most local races a candidate is required to win a majority of the votes cast or a runoff election is held between the two candidates who received the most votes.

**Special elections** are elections that are not regularly scheduled and are called for a specific purpose. The dates of special elections are established by whoever calls for the election. The governor can call special elections to fill vacancies in the state legislature and Congress, the state legislature can call them to vote on constitutional amendments, and local governments hold special elections for bond elections. The elections to fill vacancies have candidates from every party on the same ballot—there are no party primaries to narrow the list of candidates. To win, a candidate must receive a majority of the votes. If no candidate wins a majority, a runoff election is required between the top two vote recipients.

## SUFFRAGE IN TEXAS

Texas is one of those states that has a long history of trying to keep certain groups of people from voting. Indeed, one of the ways that conservative Democrats maintained their grip on power in Texas was controlling who votes.

**Women.** The arguments over women's suffrage in Texas followed the same lines that occurred in the country. In 1918 Texas passed a law allowing women to vote in primaries, and in 1919 Texas became the first southern state to ratify the **Nineteenth Amendment** to the U.S. Constitution.

**Minorities.** Two of the methods Texas used for decades to keep minority turnout low were the poll tax and the White primary. Both of these were instituted in the early 1900s in response to movements supported by minorities, the poor, and labor groups that threatened the Democratic Party's control over politics in Texas. The Democrats instituted a **poll tax** that required people pay \$1.75 each year to register to vote, which amounted to more than a day's wage at that time. The Twenty-fourth Amendment to the U.S. Constitution, adopted in 1964, outlawed the poll tax. Nevertheless, Texas argued that the amendment only applied to federal elections, and Texas continued the poll tax for state and local elections. The United States Supreme Court ruled the state poll tax unconstitutional in 1966, however.

In a **White primary**, only Whites could vote. Given that the only competitive elections in Texas and in the South took place in Democratic primaries, excluding Black voters from participating in primaries effectively eliminated their voting power. The U.S. Supreme Court heard four different cases regarding the White primaries in Texas. In 1927 the Supreme Court struck down the state law requiring White primaries as a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Texas then passed a law allowing the parties themselves to decide the qualifications of their members, and the Democratic Party decided only Whites could vote in the primaries. The Supreme Court ruled that this too was unconstitutional. In response the Democratic Party argued it was a private organization and could decide its membership. The Supreme Court in 1935 ruled the White primary was constitutional because the Fourteenth Amendment did not apply to a private organization like the Democratic Party. Finally, in 1944, the Supreme Court reversed itself and outlawed the White primary permanently as a violation of the Fifteenth Amendment to the U.S. Constitution that extends to African Americans the right to vote.

Restrictive registration requirements were another effective tool Texas used to keep voting down. These laws required people to register no later than January 31 each year, months before the primary and general elections. Federal courts struck down these restrictions in 1971. Today a person must be registered to vote at least 30-days before an election to vote, and voters no longer have to register each year but remain registered as long as they are qualified. It is also much easier to vote today. Not only can one vote the day of the election, but early voting is also provided, running for most elections from 17 days to four days before the election.

**Voter Turnout in Texas.** Despite the changes the state has made to make voting more accessible, Texas has one of the lowest turnouts in the nation, consistently ranking in the bottom ten.

## THE CAMPAIGN GAME

Texas is a large state, both in population and geographically, requiring candidates to spend a lot of money to run a statewide campaign. Thus the media is an essential component to their campaigns.

**Money and Campaigning.** Campaigns in Texas are expensive. In fact, some of the most expensive non-presidential campaigns in history have been Texas gubernatorial elections. This occurred most recently in 2002 when close to \$100 million was spent. The candidate who spends the most usually wins. One of the difficulties Democrats in Texas face in raising money is convincing potential contributors they have a chance of winning.

**Big money contributions.** Except for judicial elections, Texas has no limits on how much an individual or PAC can contribute to a campaign. With no limits, many contributions to candidates

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for statewide offices are very large. The main industries that individuals contributing more than \$100,000 came from are energy, construction, real estate, and health, and many are listed as lawyers/lobbyists. PACs are also an important source of funding in Texas elections. During the 2004 election cycle, PACs in Texas spent \$69 million, the most ever in a non-gubernatorial election in Texas.

**Media.** Because of the need to reach millions of potential voters, the media have become an important component to any campaign. Campaigns spend millions of dollars on commercials, and also try to get favorable coverage in the news media. The 1990 and 2002 gubernatorial campaigns are instructive in how the media can propel a candidate to the forefront. Clayton Williams in 1990 and Tony Sanchez in 2002 were both political neophytes who burst on the scene, spending millions of their own dollars to overwhelm their primary opponents and challenge a well-known politician in the general election. Despite outspending their opponents by several million dollars, Williams and Sanchez both lost in the general election. Often the blunders a candidate makes will override what the candidate is trying to do with commercials and in the campaign.

## INTEREST GROUPS IN TEXAS

Interest groups in Texas are powerful compared to the interest groups in other states because Texas has a political environment conducive to strong interest groups. Studies show that interest groups tend to be stronger in states that traditionally have had a one-party system, a low-level of professionalism in the legislature, and a fragmented executive branch. In Texas, interest groups have been able to play a key role in the policymaking process, in part because there have been few party mechanisms or efforts to enforce party rule, and party factions have struggled for supremacy. Texas also has a part-time legislature that meets once every other year for 140 days. With thousands of bills introduced each session and limited time to deal with them, legislators become dependent on lobbyists for information and help in shepherding bills through the legislative process. The plural executive and the fragmented nature of the Texas executive branch is a third reason for interest group power in Texas. Fragmented, decentralized government provides numerous access points for interest groups, with neither the governor nor anyone else exercising much control.

## HOW INTEREST GROUPS TRY TO SHAPE POLICY

**Lobbying** involves a variety of activities, ranging from providing information to policymakers to developing a strategy to help legislators pass or defeat a measure. To be classified as lobbyists one must meet certain compensation or expenditure criteria established by the Texas Ethics Commission. If they do, they must register with the Texas Ethics Commission as lobbyists and file periodic reports of their lobbying activity. The top lobbyists generally had previously worked in the legislature or the governor's office and all have been part of the network in Austin for many years. It is difficult to pinpoint how influential lobbyists are in the legislative process, because many other variables, such as party leaders, a legislator's personal philosophies, and constituency opinion, may explain why a legislator votes the way he does.

**Electioneering.** The best way for an interest group to gain access to an officeholder is to get someone in office who already agrees with its policy positions. Once a candidate is in office, a group's financial contributions and political support helps ensure the group will continue to have access. An interest group can help with campaigns in many ways. Interest groups often form PACs to contribute financially to a campaign. PACs can contribute as much money as they want to

an individual candidate, but they can also spend money on their own to buy advertising space, man phone banks, loan office equipment, or even provide personnel to help with a campaign.

**Litigation.** If an interest group is not successful in getting its way in the legislature or executive branch, it can try to affect change by taking the issue to court. Because the cost of pursuing an issue through the courts can be prohibitively expensive, many issues would never be addressed in the courts without interest groups providing the funding. Civil rights groups are among those that have been most effective at taking their issues to court, including such issues as how people are elected and education funding.

**Going Public.** Because policymakers to some extent are attentive to public opinion and to their constituencies, interest groups try to influence policymakers by influencing public opinion about the groups themselves and about their issues. To get their message across to the public, interest groups send out direct mailings, write columns in newspapers, take out advertisements in newspapers and magazines, post information on their websites, and buy billboard space and commercial time on radio and television stations.

## TYPES OF INTEREST GROUPS

**Economic interests** are characterized by a focus on issues that potentially affect the financial wellbeing of individuals, organizations, and businesses. These interest groups comprise a mixture of many interests, including business, agriculture, and labor. Business groups and trade associations are clearly the most powerful groups in Texas. Agricultural groups have had considerable influence in Texas politics. Labor groups in Texas and throughout the South do not have the clout that they have in other parts of the country. Texas is a right-to-work state, meaning that state law prohibits requirements that workers must join a union to hold a job.

**Professional Groups.** Some of the most powerful interest groups in Texas are professional groups consisting of doctors, dentists, lawyers, and other professionals that are often politically connected and have money and are willing to spend it to protect their profession and livelihood. The Texas Medical Association (TMA) and the Texas Trial Lawyers Association (TTLA) are two examples of powerful professional groups.

**Equality Interests.** Groups such as the NAACP, LULAC, and MALDEF agree on the general goals of promoting minority opportunities in education, government, politics, and the workplace. In Texas, they have been in the middle of battles over such issues as college and university admission standards, education funding, and voting rights. In some ways, minority groups have become more powerful in Texas politics as the people they represent have become a greater percentage of the population.

**Education.** Because education spending is the state's biggest expenditure and the future of the state hinges to some extent on the state's ability to educate its population, education policy is perhaps the most discussed and the most controversial policy in the state. Many groups, businesses, and citizens involve themselves in education policy. Interest groups represent public school teachers, school administrators, urban school districts, suburban school districts, and rural school districts. These groups lobby the legislature over issues ranging from pay and benefits to class size and standardized tests.

## **UNDERSTANDING PARTIES, INTEREST GROUPS, AND CAMPAIGNS AND ELECTIONS**

Political parties, interest groups, and, of course, campaigns and elections go right to the heart of the democratic process. It is through campaigns and elections that people choose the candidates they want in office and the directions they want government to go. Political parties run a slate of candidates, organize campaigns, articulate a message, and try to gain control of government so they can institute the policies they favor. Interest groups are also involved in campaigns, donating money, and mobilizing their membership on behalf of candidates they favor. After elections, parties and interest groups try to influence officeholders in what issues they push and how they vote.

With all of the money and tradition of limited voting rights and low voter turnout, one wonders who really runs Texas. In short, how much say does the public have in shaping public policy compared to interest groups and wealthy individuals, and what does this mean for the scope of government in Texas?

### **PARTIES, INTEREST GROUPS, CAMPAIGNS, ELECTIONS, AND DEMOCRACY**

In many ways Texas is more democratic today than it ever has been. The institutional efforts to keep minorities and other groups from voting have been eliminated. However, many Texans choose not to vote. Many more interest groups exist today than did before, reflecting the diversity of Texas' economy and interests. Not all groups and interests are equal, however. Some groups and people have more money than others, and those with money are heard more. Political parties have to appeal to the masses to win elections. But the party activists sometimes pull the party away from the views held by the rank-and-file members of the party or the public in general. Moreover, parties and their candidates are dependent on groups and individuals that give large amounts of money to their campaigns.

### **PARTIES, INTEREST GROUPS, CAMPAIGNS, ELECTIONS, AND THE SCOPE OF GOVERNMENT**

Power in Texas has traditionally been held by relatively few individuals and interest groups. Today more people are participating in the political process, more interest groups represent more people and more interests, and change in the party in power have altered the political dynamics in Austin. There is now more competition over policy. Yet, like before, the wealthy individuals and groups still have more power than others.

## **CHAPTER OUTLINE**

### **I. POLITICAL PARTIES IN TEXAS**

#### **A. One-Party Politics**

1. Period immediately following Civil War shaped future of Texas politics for years.
2. Short-lived period of Republican control during Reconstruction.
  - a. Short-lived, in part because of the hard feelings generated by the administration of Governor Edmund J. Davis, a Radical Republican.
  - b. People throughout the South believed that the Republicans were the party of aggression, carpetbaggers, and occupation.

3. The Republican Party was no longer a factor in Texas by the time the Constitution of 1876 was approved.
4. For most of Texas history, the battle for office took place in the Democratic primaries, because whoever won the primaries was guaranteed to win the election.
5. In the late 1800s and early 1900s, other parties threatened the Democratic Party's dominance.
  - a. In particular, the Populist Party, composed of small farmers, Blacks, and labor, gained considerable support.
  - b. Democrats successfully diffused their competition by co-opting some of the issues driving the Populist Party.
  - c. Democrats also passed laws, such as the poll tax, that targeted the poor and the Black voters; this resulted in decreasing their turnout, and costing third-party movements political support.
6. **Yellow Dog Democrats** were loyal Democrats who would vote for a yellow dog if it ran for office under the Democratic Party label. Most Texans were socialized to be Democrats; it was part of their identity and tied one generation to another.
7. There were challenges in being the only viable party in the state.
  - a. The Democratic Party became an amalgam of competing, often contradictory, factions, interests, and personal rivalries that tried to pull the party in different directions.
  - b. The strongest rivalry began to emerge during the 1930s between the conservatives and liberals over President Franklin Roosevelt's New Deal policies. Many conservative Democrats opposed his policies and the liberal direction of the national Democratic Party.
  - c. As the conservatives increasingly saw the policies put forward by the national party running contrary to what they favored, the split increased.
  - d. In 1952, these differences caused Governor Allan Shivers and his supporters, called Shivercrats, to convince the state Democratic Party convention to endorse Dwight Eisenhower, the Republican candidate, for president. The 1950s marked the beginning of Texans voting Republican for president but continuing to vote Democrat for state and local offices.

**B. Emergence of the Republican Party.**

1. In the 1960 special election in Texas to fill the vacant Senate seat of Lyndon Johnson, John Tower, a Republican, became the first Republican statewide officeholder since Reconstruction. Infighting in the Democratic Party between liberals and conservatives drove turnout down and fractured the Democratic Party base.
2. After John Tower, the next Republican to win a statewide election was Bill Clements, who was elected governor in 1978. He became the first Republican governor in Texas since Edmund Davis in 1874. Clements' victory in 1978 was in part the result of infighting among the Democrats. Many point to Clements' victory in 1978 as the turning point for the Republican Party.
3. From that point, Republicans began to be more competitive in a variety of races, winning a number of them.

- a. In 1993, Kay Bailey Hutchison, a Republican, was elected in a special election to the U.S. Senate, making both Senate seats from Texas Republican.
  - b. In the 1994 election, George W. Bush defeated Governor Richards, and several other Republicans won state offices as well.
  - c. In 1996, the Republicans won a majority of seats in the state senate for the first time since Reconstruction, as well as a number of statewide races.
  - d. In 2002, Republicans continued to win all statewide elections and won control of the House of Representatives for the first time since Reconstruction, giving them control over both houses of the legislature.
- 4. Republican victories are no longer the result of divisions within the Democratic Party but of the dominance of the Republican Party.
    - a. One reason for the shift in the party's fortunes was the tremendous growth in the number of white-collar workers moving into the state from the Midwest and Northeast who were used to voting Republican.
    - b. At the same time, many longtime Democrats were becoming increasingly disaffected with their party. With the growth of the civil rights movement and the increase in minority suffrage, the liberal wing of the Democratic Party had gained more power and the conservative white Democrats in Texas felt increasingly displaced and their positions in the party threatened. After being accustomed to voting Republican for president, these historically conservative voters began to feel more comfortable voting Republican for state offices as well.
- C. **Party-in-the-electorate.**
- 1. The result of the immigration from other states into Texas and the disenchantment of conservative Democrats with their party is reflected in the changes that have taken place in the number of people identifying with the Republican Party.
  - 2. In a 1952 survey, 66 percent of Texans identified themselves as Democrats and only six percent claimed to be Republican.
  - 3. By the middle of the 1990s the Republicans became slightly more numerous than Democrats and since then have expanded their lead over the Democrats.
  - 4. The number of independents has varied over the years but has consistently been a significant percentage of the population.
- D. **Party-in-government.**
- 1. In recent years, a complete transformation has taken place in the state regarding the parties in government.
  - 2. November 2006 marks the fourth consecutive election in which a Republican has won the governorship. The Republicans control both houses of the legislature and all statewide offices, including all 18 judges on the Texas Supreme Court and the Texas Court of Criminal Appeals.
  - 3. Because Texas has been ruled by one party for most of its history, the role of the party in Texas government has traditionally been very different than in the federal government.
    - a. Texas government had not been marked with much partisanship.
    - b. Party affiliation had not been an important variable in understanding the workings of Texas government.

- c. The fighting between the governor and legislature or within the legislature was between liberal and conservative and urban and rural.
  4. As the Republican Party became more viable and control over different offices became more competitive, more partisanship crept into elections and into governing. Now that Republicans are in power, they do not seem to want to accommodate the Democrats.
  5. Texas still is nowhere near as partisan as we see at the national level.
- E. **Party organization.**
1. Party organizations have traditionally been weak in Texas.
    - a. Republicans had a weak organization because they had little money, few quality candidates, and no chance of winning.
    - b. Democrats had a weak organization because they did not need a strong party machine to advance their agenda and get officials elected.
  2. The party organization begins with voters in the primaries.
    - a. Voters in primaries elect the party officials who make up the **permanent organization** of the party, and, if they want, voters can participate in the **temporary organization** of the party as well.
    - b. The permanent organization consists of elected party officials and committees at the local, county, and state level who perform party-building activities throughout the year.
    - c. The temporary organization is made up of conventions that occur every two years at each of these levels.
  3. **Permanent organization.**
    - a. The **precincts** are the smallest electoral districts in the state.
      - (1) In the primary, voters in the precinct elect a **precinct chair**, who serves a two-year term.
      - (2) The chair is responsible for the party in the precinct.
    - b. The next level is the **county executive committee**, which is made up of precinct chairs and the **county chair**, who is elected in the primary to a two-year term. The county executive committee is in charge of the county primary and the county conventions, receives the petitions and fees from candidates running for local office, and is responsible for putting the candidates' names on the ballot.
    - c. The next level is the **state executive committee**, which consists of two representatives from each of the state's 31 senatorial districts plus the **state chair** and **vice chair**.
      - (1) To comply with state law, the two positions of chair and vice chair must be filled by a combination of a woman and a man, as must the positions of the two representatives from each district.
      - (2) They are elected at the state convention to two-year terms. Their primary responsibility is to plan and run the state convention, promote the party's candidates, raise money, and try to build the party throughout the state.
      - (3) Candidates running for statewide office file petitions and fees with the state executive committee.
      - (4) Each party has its headquarters in Austin and has an executive director and staff to take care of the everyday activities of the party.

4. **Temporary organization.**
    - a. A **precinct convention** is held on the night of the primaries after the polls close.
      - (1) Anybody who voted in the party's primary is welcome to attend the party's precinct convention but very few do.
      - (2) At the precinct convention, the participants elect a convention chairperson and secretary, discuss issues, vote on resolutions to send to the county convention, and elect delegates to go to the **county or district convention**.
      - (3) Most counties have conventions, but those counties that have more than one state senator (Bexar, Dallas, Harris, and Tarrant counties) have senatorial district conventions instead.
    - b. The **county or district convention** selects delegates and votes on resolutions to go to the state convention. The number of delegates that a precinct sends to the county convention and the number from each county that go to the state convention are determined by the percentage of the vote that the party's candidate for governor received within that precinct or county in the last election. Because only a handful of people typically participate in precinct conventions, many precincts do not fill their allotment of seats at the county convention.
    - c. Both Republicans and Democrats hold their **state conventions** in June of even-numbered years.
      - (1) Delegates to the state convention certify the candidates who won the primary as the official nominee of the party, adopt a **platform** (a statement of the party's goals and policies), and elect a chair, vice chair, and a state executive committee.
      - (2) In presidential election years, the convention also selects delegates to go to the national convention, people to serve on the national party committee, and electors for the Electoral College.
  5. Because few people participate in the permanent or temporary party organization, those who do get involved have a disproportionate say in the direction of the party. Party activists often get issues on the platforms that the rank-and-file members of the party do not support.
- F. **The Future of the Parties in Texas.**
1. Both parties have reason to hope for the future.
  2. Although the Democrats continue to lose elections and have little chance to regain power in the short term, the biggest factor in their favor is that demographic trends in the state benefit Democrats.
    - a. Studies show that Whites vote Republican and minorities vote Democrat. With an ever-increasing minority population in the state, Democratic voting numbers should rise.
    - b. Hispanics, who make up the largest portion of these minorities, however, have traditionally not been active in state politics.
  3. For now, though, the voting trends are clearly in the Republicans' favor. More people in Texas identify themselves as Republicans than as Democrats, and this gap continues to widen each year. Republicans need to make a greater effort courting the Hispanic community than they traditionally have done.

## II. TYPES OF ELECTIONS

- A. The goal of the Democratic and Republican parties is to win elections. In Texas there are different kinds of elections in which voters can participate.
- B. **Primary Elections**
  1. In the late nineteenth and early twentieth centuries the progressive movement was sweeping the nation, calling for reforms of the political system and shifting power from the political elites to the masses. One of their proposals was to have **primaries** so that voters could select party nominees.
  2. Democrats in Texas adopted the primary system and put it into effect in 1906.
    - a. The advantage Democrats saw with the primary was that having voters select the party's nominees would create fewer disputes and infighting at the state conventions among various factions of the party.
    - b. Whoever won the nomination was assured of winning the general election.
  3. Today primaries in Texas are held the on the second Tuesday in March of even-numbered years.
    - a. The state requires that parties nominate their candidates through primary elections if their gubernatorial candidates won at least 20 percent of the vote in the previous general election.
    - b. If a party's candidate won less than 20 percent of the vote, the party can use primaries or conventions to nominate their candidates.
  4. There are two main kinds of primaries that states conduct.
    - a. In **closed primaries** only people who registered to vote with a party can vote in the primary.
    - b. **Open primaries**, on the other hand, do not require voters to register with the party beforehand and allow voters to decide the day of the election whether to vote in the Republican or Democratic primary.
  5. Texas primaries include elements of both closed and open primaries, but more closely align with the open primary.
    - a. Texas does not require people to register under a party affiliation, like in closed primaries, but Texas does require voters to publicly disclose on election day which party primary they are going to vote in.
    - b. Texas is one of ten states that require the nominee to win a majority of the votes cast in the primary.
      - (1) If no candidate wins a majority, the top two vote recipients run against each other in a **runoff election**, held a month later on the second Tuesday in April.
      - (2) People can vote in the party's runoff as long as they are registered and did not vote in the other party's primary.
    - c. Except for Oklahoma, the states that require a majority vote in primaries are all former Confederate states.
      - (1) Conservative Democrats instituted the majority requirement to prevent liberal candidates from winning the nomination.
      - (2) Runoff elections solved this problem by forcing the two who received the most votes, presumably at least one of them a conservative Democrat, to face each other.
  - C. **General elections** pit the parties' nominees against one another on the first Tuesday after the first Monday in November of even-numbered years.

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1. The winning candidate does not have to win the majority, just more than anyone else in the race.
  2. Candidates must meet certain obligations in order to get on the general election ballot.
    - a. Democratic and Republican party candidates must win their party's primary.
    - b. For independent or third-party candidates for statewide office, the process can be more complicated.
      - (1) If an independent or third party candidate did not obtain at least one percent of the vote for that particular office in the last election, the candidate must get a petition signed by a number of registered voters equal to at least one percent of the total vote in the last gubernatorial election.
      - (2) To sign a candidate's petition, a person must be a registered voter who did not vote in the primaries.
      - (3) In the 2006 race for governor, Kinky Friedman and Carole Keeton Strayhorn, running as independents, each had to obtain at least 45,540 signatures on their petitions, or one percent of the votes cast in the 2002 gubernatorial election, to get their names on the ballot.
      - (4) A person can sign only one candidate's petition.
      - (5) Texas also has a sore loser law that prevents a candidate who lost in the primaries from running in the general election.
- D. **Local Elections**
1. Elections for most city councils, school boards, and special districts in Texas take place in May of odd-numbered years in most locales and are nonpartisan, meaning that no candidate runs under a party label.
  2. Many favor the elections in odd-numbered years to avoid presidential and congressional campaign issues.
  3. For most local races a candidate is required to win a majority of the votes cast or a runoff election is held between the two candidates who received the most votes.
- E. **Special elections** are elections that are not regularly scheduled and are called for a specific purpose.
1. The dates of special elections are established by whomever calls for the election.
    - a. The governor can call special elections to fill vacancies in the state legislature and Congress
    - b. The state legislature can call them to vote on constitutional amendments, and local governments hold special elections for bond elections.
  2. The elections to fill vacancies have candidates from every party on the same ballot.
  3. To win, a candidate must receive a majority of the votes.
  4. If no candidate wins a majority, a runoff election is required between the top two vote recipients.
    - a. The requirement to win a majority of votes in special elections was instituted in 1957 by conservative Democrats.

- b. Conservatives feared liberal Democrat Ralph Yarborough would win the vacant Senate seat.

### III. SUFFRAGE IN TEXAS

#### A. Getting the right to vote in Texas.

- 1. Texas is one of those states that has a long history of trying to keep certain groups of people from voting.
- 2. **Women.**
  - a. The arguments over women's suffrage in Texas followed the same lines that occurred in the country.
  - b. In 1918, Texas passed a law allowing women to vote in primaries.
  - c. In 1919, Texas became the first southern state to ratify the **Nineteenth Amendment** to the U.S. Constitution.
- 3. **Minorities.** Two of the methods Texas used for decades to keep minority turnout low were the poll tax and the White primary.
  - a. Both of these were instituted in the early 1900s in response to movements supported by minorities, the poor, and labor groups that threatened the Democratic Party's control over politics in Texas.
  - b. Democrats instituted a **poll tax** that required people to pay \$1.75 (the state's portion was \$1.50 and counties could add 25 cents) each year to register to vote, which amounted to more than a day's wage at that time. It is estimated that the poll tax had the effect of dropping turnout among Blacks from about 100,000 in the 1890s to about 5,000 in 1906.
    - (1) The Twenty-fourth Amendment to the U.S. Constitution, adopted in 1964, outlawed the poll tax.
    - (2) Texas argued that the amendment only applied to federal elections, and Texas continued the poll tax for state and local elections.
    - (3) The United States Supreme Court ruled the state poll tax unconstitutional in 1966 and Texas amended its constitution to comply.
  - c. The **White primary** was another way the conservative Democrats discriminated against minority voters. In a White primary, only Whites could vote.
    - (1) In 1927, the Supreme Court struck down the state law requiring White primaries as a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.
    - (2) Texas then passed a law allowing the parties themselves to decide the qualifications of their members, and the Democratic Party decided only Whites could vote in the primaries.
    - (3) The Supreme Court ruled that this, too, was unconstitutional.
    - (4) In response, the Democratic Party argued it was a private organization and could decide its membership.
    - (5) The Supreme Court in 1935 ruled the White primary was constitutional because the Fourteenth Amendment did not apply to a private organization like the Democratic Party.
    - (6) Finally, in 1944, the Supreme Court reversed itself and outlawed the White primary permanently as a violation of the

Fifteenth Amendment to the U.S. Constitution that extends to African Americans the right to vote.

- d. Restrictive registration requirements were another effective tool Texas used to keep voting down. These laws required people to register no later than January 31 each year, months before the primary and general elections and long before people started thinking about the election.
  - (1) Federal courts struck these down, too.
  - (2) Today a person must be registered to vote at least 30 days before an election to vote, and voters no longer have to register each year but remain registered as long as they are qualified.
- e. It is also much easier to vote today, as early voting is also provided, running for most elections from 17 days to four days before the election.

B. **Voter turnout in Texas.**

- 1. Despite the changes the state has made to make voting more accessible, Texas has one of the lowest turnouts in the nation, consistently ranking in the bottom ten.
- 2. The turnout for primaries, combining both Republican and Democratic primaries, is usually not much higher than ten percent of the voting age population.
- 3. The general election turnout when the governor and most statewide officers are up for election is less than 30 percent and in the year the president runs is around 43 percent.

**IV. THE CAMPAIGN GAME**

A. Texas is a large state, both in population and geographically, requiring candidates to spend a lot of money to run a statewide campaign. Thus the media are essential to their campaigns.

B. **Money and Campaigning**

- 1. Campaigns in Texas are expensive. In fact, some of the most expensive non-presidential campaigns in history have been Texas gubernatorial elections. In 2002 close to \$100 million was spent.
- 2. The dollar amount is a sign of the importance attached to the office and also the competitiveness of the race.
- 3. The candidate who spends the most usually wins.
  - a. In 1978, for example, Bill Clements would not have become governor if he had not outspent his opponent by several million dollars to make voters aware of his candidacy.
  - b. The race for lieutenant governor was the race in 2002 where money was probably most instrumental in the outcome. Without Dewhurst spending more than \$24 million of his own money and more than \$29 million on the campaign, he may not have pulled out the victory.
- 4. The 2002 election also shows that in many cases the dollar amount is not a factor in an election but rather is a sign that those candidates are going to win, anyway. In the last few statewide elections all the Republican candidates won, regardless of how much they spent.
- 5. One of the difficulties Democrats in Texas face in raising money is convincing potential contributors they have a chance of winning.

C. **Big Money Contributions**

1. Except for judicial elections, Texas has no limits on how much an individual or PAC can contribute to a campaign. With no limits, many contributions to candidates for statewide offices are very large.
  2. The total contributions to Texas' state political committees and candidates for state offices in the 2004 election cycle was \$128 million.
  3. The main industries that individuals contributing more than \$100,000 came from are energy, construction, real estate, and health, and many are listed as lawyers/lobbyists.
  4. PACs are also an important source of funding in Texas elections.
    - a. During the 2004 election cycle, PACs in Texas spent \$69 million, the most ever in a non-gubernatorial election in Texas.
    - b. The 48 largest PACs together made up more than half of all PAC spending.
- D. **Media.**
1. Because of the need to reach millions of potential voters, the media have become an important component to any campaign.
  2. Campaigns spend millions of dollars on commercials, and also try to get favorable coverage in the news media.
  3. The 1990 and 2002 gubernatorial campaigns are instructive in how the media can propel a candidate to the forefront.
    - a. Clayton Williams in 1990 and Tony Sanchez in 2002 were both political neophytes who burst on the scene, spending millions of their own dollars to overwhelm their primary opponents and challenge a well-known politician in the general election.
    - b. They used their money to blanket the airwaves with television commercials and establish in the minds of the voters who they were and what issue positions they espoused, and shaped what people thought of their opponents.
    - c. Both rank among the most negative in tone.
    - d. Both campaigns also showed that candidates need more than money to win an election. Despite outspending their opponents by several million dollars, Williams and Sanchez both lost in the general election.
    - e. Both candidates were hurt by negative media coverage of their statements and personal lives.

## V. INTEREST GROUPS IN TEXAS

- A. Interest groups in Texas are powerful compared to the interest groups in other states because Texas has a political environment conducive to strong interest groups.
1. Studies show that interest groups tend to be stronger in states that traditionally have had a one-party system, a low-level of professionalism in the legislature, and a fragmented executive branch.
  2. Few party mechanisms or efforts to enforce party rule exist, and party factions have struggled for supremacy.
  3. Texas also has a part-time legislature that meets once every other year for 140 days. With thousands of bills introduced each session and limited time to deal with them, legislators become dependent on lobbyists for information and help in shepherding bills through the legislative process.

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4. The plural executive and the fragmented nature of the Texas executive branch is a third reason for interest group power in Texas as it allows more avenues of access.
- B. **How Interest Groups try to Shape Policy**
1. **Lobbying**
    - a. Lobbying involves a variety of activities, ranging from providing information to policymakers to developing a strategy to help legislators pass or defeat a measure.
    - b. Lobbyists are not classified as such unless they meet certain compensation or expenditure criteria established by the Texas Ethics Commission.
    - c. If they do, they must register with the Texas Ethics Commission as lobbyists and file periodic reports of their lobbying activity. In 2005, there were 1,525 registered lobbyists in Texas, with 6,593 paid lobbying contracts.
    - d. The top lobbyists generally had previously worked in the legislature or the governor's office and all have been part of the network in Austin for many years.
    - e. It is difficult to pinpoint how influential lobbyists are in the legislative process, because many other variables, such as party leaders, a legislator's personal philosophies, and constituency opinion, may explain why a legislator votes the way he does.
  2. **Electioneering.**
    - a. The best way for an interest group to gain access to an officeholder is to get someone in office who already agrees with its policy positions.
    - b. An interest group can help with campaigns in many ways.
      - (1) Interest groups often form PACs to contribute financially to a campaign. PACs can contribute as much money as they want to an individual candidate, but they can also spend money on their own to buy advertising space, man phone banks, loan office equipment, or even provide personnel to help with a campaign.
      - (2) Some interest groups' public endorsements can also be highly desired by candidates.
      - (3) More than other groups in the last 20 years, the Texas Medical Association (TMA) has been recognized for its electioneering efforts and successes.
  3. **Litigation.**
    1. If an interest group is not successful in getting its way in the legislature or executive branch, it can try to affect change by taking the issue to court.
    2. Because the cost of pursuing an issue through the courts can be prohibitively expensive, many issues would never be addressed in the courts without interest groups providing the funding.
    3. Civil rights groups are among those that have been most effective at taking their issues to court, including such issues as how people are elected and education funding.

4. The NAACP, for example, pushed the four cases challenging the constitutionality of White primaries in Texas, which led to the U.S. Supreme Court striking down White primaries in Texas.
  4. **Going Public.**
    1. Because policymakers to some extent are attentive to public opinion and their constituencies, interest groups try to influence policymakers by influencing public opinion about the groups themselves and about their issues.
    2. Interest groups send out direct mailings, write columns in newspapers, take out advertisements in newspapers and magazines, post information on their websites, and buy billboard space and commercial time on radio and television stations.
    3. In 2003, numerous groups together spent more than \$18 millions trying to influence how people voted on Proposition 12, the proposed constitutional amendment aimed at tort reform.
- C. **Types of Interest Groups**
1. **Economic Interests.**
    - a. Economic interests are characterized by a focus on issues that potentially affect the financial wellbeing of individuals, organizations, and businesses.
    - b. These interest groups comprise a mixture of many interests, including business, agriculture, and labor.
    - c. Business groups and trade associations are clearly the most powerful groups in Texas. Business groups and trade associations are likely more powerful in Texas than they are in national politics. The only impediment that keeps business groups from being more powerful is that not all business groups agree with each other.
    - d. Agricultural groups have had considerable influence in Texas politics. Agricultural groups and their members have a reputation for being politically knowledgeable and skilled and have been effective at getting their voices heard.
    - e. Labor groups in Texas and throughout the South do not have the clout that they have in other parts of the country. Texas is a right-to-work state, meaning that state law prohibits requirements that workers must join a union to hold a job.
      - (1) The state's laws are relatively anti-labor when it comes to workers' compensation, unemployment insurance payments, and forcing unions to disclose virtually all their major activities.
      - (2) Unions have traditionally been allied with the weaker liberals in the Democratic Party.
  2. **Professional Groups.**
    - a. Some of the most powerful interest groups in Texas are professional groups, consisting of doctors, dentists, lawyers, and other professionals who are often politically connected and have money and are willing to spend it to protect their profession and livelihood.
    - b. The Texas Medical Association (TMA) and the Texas Trial Lawyers Association (TTLA) are two examples of powerful professional groups.

3. **Equality Interests.**
  - a. The NAACP, LULAC, and MALDEF have made their presence felt over the years in Texas. These groups agree on the general goals of promoting minority opportunities in education, government, politics, and the workplace.
  - b. In some ways, minority groups have become more powerful in Texas politics as the people they represent have become a greater percentage of the population.
4. **Education.**
  1. Because education spending is the state's biggest expenditure and the future of the state hinges to some extent on the state's ability to educate its population, education policy is perhaps the most discussed and the most controversial policy in the state.
  2. Many groups, businesses, and citizens involve themselves in education policy, and there are of course interest groups that represent various components of the education establishment.
  3. Interest groups represent public school teachers, school administrators, urban school districts, suburban school districts, and rural school districts. These groups lobby the legislature over issues ranging from pay and benefits to class size and standardized tests.
  4. Interest groups representing education, however, do not have the influence one might expect. They often do not have the same goals and interests and at times are competing against one another for credit.

## **VI. UNDERSTANDING PARTIES, INTEREST GROUPS, AND CAMPAIGNS AND ELECTIONS**

- A. Political parties, interest groups, and, of course, campaigns and elections go right to the heart of the democratic process.
- B. Although parties, interest groups, and campaigns and elections are part of the democratic process, with all the money interest groups and wealthy individuals spend in trying to get their preferred candidates into office and lobbying them once they are in office, one wonders who really runs Texas.
- C. **Parties, Interest Groups, Campaigns, Elections and Democracy**
  1. In many ways Texas is more democratic today than it ever has been. The institutional efforts to keep minorities and other groups from voting have been eliminated.
  2. However, many Texans choose not to vote.
  3. Moreover, the government has tried to keep turnout intentionally low in some instances. For example, in 2003, the state legislature proposed 22 constitutional amendments to be voted on by the voters and set a special election for September.
  4. The interest group situation today is in some ways more democratic than it was in the past. Many more interest groups exist today than did before, reflecting the diversity of Texas' economy and interests.
  5. Not all groups and interests are equal, however. Some groups and people have more money than others, and those with money are heard more. The large contributors have more influence on policy once their candidates are elected to office.

6. Political parties have to appeal to the masses to win elections. But the party activists sometimes pull the party away from the views held by the rank-and-file members of the party or the public in general.
- D. **Parties, Interest Groups, Campaigns, Elections and the Scope of Government**
1. Power in Texas has traditionally been held by relatively few individuals and interest groups.
  2. Today more people are participating in the political process, more interest groups represent more people and more interests, and change in the party in power have changed the political dynamics in Austin.
  3. Yet, like before, the wealthy individuals and groups still have more power than others.

## **KEY TERMS AND CONCEPTS**

**Yellow Dog Democrats:** loyal Democratic Party voters.

**Permanent organization:** elected party officials and committees that operate throughout the year trying to build the party.

**Temporary organization:** conventions held every two years that allow the rank-and-file members of the party to participate in party activities.

**Precinct:** the smallest electoral districts in the state.

**Precinct chair:** elected by primary voters in the precinct. The chair is responsible for the party in the precinct.

**County executive committee:** the party leadership team at the county level that is in charge of running the county primary and the county conventions. The committee consists of precinct chairs and county chair.

**County chair:** elected by primary voters in the county. The chair is responsible for the party at the county level.

**State executive committee:** plans and runs the state convention and builds the party throughout the state, among other things. The committee consists of two representatives from each senatorial district plus a state chair and vice chair.

**State chair:** elected by delegates at the state convention. The chair is responsible for the party at the state level.

**Vice chair:** elected by delegates at the state convention.

**Precinct convention:** meeting in which people who voted in the party's primary are invited to meet the night of the primary in their precinct to participate in party activities.

**County or District convention:** meeting in which delegates selected from the precinct conventions vote on which delegates and resolutions to send to the state convention.

**State convention:** meeting of party delegates every two years in June to certify the candidates who won the party primary, adopt a platform, and select a party chair, among many other things.

**Platform:** statement of the party's goals and policies approved by the delegates at the convention.

**Primaries:** elections in which voters decide who the party will nominate to run in the general election.

**Closed primaries:** elections to select party nominees in which only people who have registered in advance with the party can vote in that party's primaries.

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**Open primaries:** elections to select the party nominees in which voters can decide on election day whether they want to vote in the Democratic or Republican primaries.

**Runoff election:** held one month after the primary between the top two vote recipients if no candidate received a majority of the vote in the primary.

**General election:** election held the first Tuesday after the first Monday in November every two years between the nominees of each party.

**Nonpartisan elections:** elections in which candidates do not run under a party label.

**Special election:** elections that are not regularly scheduled and are called for a specific purpose.

**Nineteenth Amendment:** amendment to the U.S. Constitution that guarantees women the right to vote.

**Poll tax:** a small tax people had to pay in order to register to vote each year. The Twenty-fourth Amendment to the U.S. Constitution in 1964 made the poll tax illegal.

**White primary:** primary elections in which only white voters could participate. Declared unconstitutional by the U.S. Supreme Court in 1944.

## TEACHING IDEAS:

- Find the Texas Democrat and Republican party platforms and have students compare the two documents. How are they similar and how do they contrast? Compare them to the national party platforms as well.
- Have students research and compare the elections for governor in Texas, including campaign costs for the years 1978, 1982, 2002 and 2006.
- Assign students to research the purpose, organization, fundraising and campaign contributions of major Texas interest groups. Students could present these in class and then discuss which are the most successful and why.
- For a class discussion, have students suggest ways to increase voter turnout.
- Use the [www.tpj.org](http://www.tpj.org) site of Texans for Public Justice to start a discussion of the role of PACs in Texas politics. Compare Texas spending to that of the national level. Ask students how they would reduce spending on campaigns in Texas.
- Run a mock election for “Class Governor” in class. Divide students into groups and let them form parties, write platforms and buy advertising time. Set campaign spending limits.
- Assign students to interview local and state officeholders about how they were elected. If it is during election season, allow students to volunteer on a campaign for credit.
- If it is during an election season, have students run a “voter information” booth on campus, and allow them to pass out voter registration cards.
- Have students discuss the pros and cons of online voting. What would be the security issues?
- Assign students to write a short essay on “mandatory” voting. Have them research such laws in Australia and decide if they could work in Texas. Is mandatory voting a good solution to low voter turnout?

## **BACKGROUND READING**

Barr, Alwyn. Reconstruction to Reform: Texas politics, 1876–1906. Austin, TX: The University of Texas Press, 1971.

Kinch, Sam with Susan Borreson Brewer for Campaigns for People. Crapshoot Justice: Politics, Money, and the Texas Judiciary. Austin, TX: Eakin Press, 2003.

Knaggs, John R. Two-party Texas: The John Tower Era, 1961–1984. Austin, TX: Eakin Press, 1985.

Miller, Char, and Heywood Sanders. Urban Texas: Politics and Development. College Station, TX: Texas A & M University Press, 1990.

Winkler, Ernest William. Platforms of Political Parties in Texas. Austin, TX: The University of Texas Press, 1916.

## **ONLINE SOURCES AND MEDIA**

Stekler, Paul Jeffrey. Last man standing politics, Texas style. Docurama (Firm), New Video Group, 2004. If the down-home cowboy politics of George W. Bush are a blueprint for success in Washington, what are they like back in the Lone Star state of Texas? Find out in a lively, behind-the-scenes portrait of two unpredictable, post-millennial elections.

<http://www.sos.state.tx.us/elections/historical/index.shtml>

The Texas Secretary of State website historical elections section provides election results in Texas history.

<http://www.ttara.org/>

Website for Texas Taxpayers and Research Association tracks issues and bills that affect taxpayers in the state, especially in key policy areas and campaign financing.

<http://www.texmed.org/>

Website for the powerful Texas Medical Association.

<http://www.maldef.org/>

Website for Mexican-American Legal Defense Fund, which provides information about ongoing litigation as well as issues that are important to Hispanics.

<http://www.tsta.org/>

Website for the Texas State Teachers Association that lobbies for issues in education and on behalf of teachers in the state.

<http://www.ethics.state.tx.us/>

Texas Ethics Commission website that provides forms for submitting campaign financial statements and lobbying reports.

## CHAPTER TWENTY-FOUR: THE TEXAS LEGISLATURE

### PEDAGOGICAL FEATURES

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### LEARNING OBJECTIVES

After studying this chapter, students should be able to:

- Outline the structure of the bicameral Texas legislature, including sessions, terms, and compensation.
- Explain the Texas legislative session including biennial session and special sessions.
- List the qualifications for office in the legislature and the typical membership characteristics.
- Explain Texas redistricting and analyze the issues that accompany redistricting
- List the legislative leaders and their responsibilities.
- Describe the legislative committees and their role in decision making.
- Explain the types of legislation.
- Explain how a bill becomes law in Texas.

### CHAPTER OVERVIEW

#### CONSTITUTIONAL FRAMEWORK OF THE LEGISLATURE

**Bicameral Legislature.** Like all but one other state, Texas has a bicameral, or two-house legislature. As in Congress and most states, the lower house is the House of Representatives and the upper house is the Senate. Both houses must approve a bill before it is sent to the governor for

approval or rejection. The Texas House of Representatives has 150 members and the Senate has 31. Compared to other legislatures, the Texas House of Representatives has more members than average. The Senate terms are longer and the Senate has almost five times fewer members than the House. All revenue bills must originate in the House, and the Senate votes to confirm gubernatorial appointments. Only the House has the power to impeach, or to bring charges against, a public official with a majority vote, and only the Senate tries that person and can convict and remove that person from office with a two-thirds vote of the Senate. Differences also exist between House members and senators in their terms in office and the qualifications for office.

**Legislative Sessions.** The Texas Constitution calls for **biennial sessions** (sessions every two years) beginning the second Tuesday in January of every odd-numbered year. The sessions can last no longer than 140 days, and the legislature cannot extend the session nor can it call itself into another session. When the legislature fails to complete its work or if a special need arises, a **special session** can be called only by the governor. The governor dictates the issues that will be addressed and the session can only last 30 days, although the governor can call as many as are needed. Special sessions take place quite often, with 27 occurring since 1981 for an average of about one per year. Although the governor can theoretically call as many special sessions as he or she wants, there are political risks in calling special sessions. Repeated special sessions also highlight the legislature's and the governor's inability to get the things done.

**Length of Legislators' Terms.** The length of legislators' terms differs, depending on whether they are in the House or the Senate. Members of the House of Representatives serve two-year terms and senators serve four-year, staggered terms, meaning that about half of the 31 Senate seats are up for election every two years. The exception to this rule occurs every ten years after redistricting when new districts are drawn and each Senate seat is up for election.

**Compensation.** The Texas Constitution sets the base pay for members of the House and Senate and their presiding officers at \$7,200 per year, among the lowest in the nation. Any increase to the annual salary for Texas legislators must be approved by the voters and voters have not approved a pay raise since 1975. Voters in 1991, however, did approve an amendment to the Texas Constitution that created the State Ethics Commission and placed the Commission in charge of suggesting to the voters legislative pay increases and establishing a per diem for state legislators. The Commission has not suggested any increase in annual salary, but it has consistently raised the per diem. In 2005 the per diem had reached \$128 a day, which is among the highest in the nation.

Legislators are also the beneficiaries of a generous retirement package that was established by the legislature and not subject to voter approval. The retirement benefits are computed based on the salaries of state district judges (whose salaries are set by the legislature), a legislator's age at retirement, and the number of years they served in the legislature. The percentage of a district court judge salary that a legislator will receive each year in retirement is set by multiplying the number of years in the legislature by 2.3.

Despite the retirement benefits and the high per diem allowance, the low annual salary prevents many people from serving in the legislature. The low salary limits the kind of people who can serve in the legislature to those who are wealthy or have jobs that allow them the flexibility to attend legislative sessions, while keeping their regular jobs.

## MEMBERSHIP AND REDISTRICTING

**Qualifications for Office.** The minimum qualifications to be a member of the Texas House of Representatives are that a person be a qualified voter, a Texas resident for at least two years, a resident of the district represented for at least one year, and be at least 21 years old. The minimum requirements to serve in the Senate are similar but a bit more restrictive. The minimum requirements are for a person to be a qualified voter, a Texas resident for at least five years, a resident of the district represented for at least one year, and be at least 26 years old.

**Membership Characteristics.** In practice, the legislature clearly does not represent a cross-section of the state's population. Instead the typical legislator has traditionally been white, male, middle-aged, Protestant, college-educated, with a job as a lawyer or in business, and until recently a Democrat. There have been significant changes in the makeup of legislators over the last 30 years. The biggest shift in the legislature's makeup over the last few decades is the change in party identification from Democratic domination to Republican. The numbers of women and racial minorities serving in the legislature have also increased since the 1970s. Even though women and racial minorities have made inroads in the legislature, their membership remains far less than their percentage of the state population.

Almost all legislators have at least some college education and have professional careers. About one-third of the legislators are lawyers and about one-half are in business. The low salary ensures that legislators will be either wealthy or have careers that allow them the flexibility to leave their jobs for weeks at a time to serve in the legislature.

**Redistricting.** The process by which district lines are drawn is called **redistricting**. Every 10 years, after the census is taken, state legislatures across the nation redraw the lines of the state legislative districts and the congressional districts within their states. Redistricting is about political power: Who has it and who is likely to have it in the future. Because of what is at stake, redistricting often leads to **gerrymandering**, which means drawing legislative district lines to benefit a certain side or political interest, such as a political party or incumbents.

“Packing” (also called stacking) and “cracking” (also called splintering) are the tools of gerrymandering. Packing is concentrating as many like-minded voters into as few legislative districts as possible, so that their candidate overwhelmingly wins the election. Cracking is splitting up like-minded voters so that they do not have enough voters in any one district to win. Whether through packing or cracking or the combination of both, the goal is to ensure that a particular interest does not get the number of seats in the legislature that their population indicates they should have. Gerrymandering most often occurs when one party controls state government and is able to draw the lines in such a way as to make it more likely for their party’s candidates to win.

Until recently redistricting issues mainly focused on the fight between urban and rural representation in Texas. Urban areas have traditionally been underrepresented in the legislature. The 1876 Constitution established this rural priority by requiring that no county could have more than one senator. In 1936, this rural supremacy was heightened by the addition of an amendment that limited the number of representatives per county. The legislature failed to redistrict from 1921 to 1951. As a result, an amendment was added to the Texas Constitution in 1948 that created the Legislative Redistricting Board (LRB). The LRB consists of the lieutenant governor, the speaker of the House, the attorney general, the comptroller of public accounts, and the land commissioner and has the authority to redistrict the legislative districts if the legislature fails to do so.

For most of the nation’s history, the U.S. Supreme Court looked upon redistricting as a political matter and refused to get involved. In the 1960s, the Supreme Court reversed itself, however, and in

a number of decisions dramatically changed the way redistricting was done in the United States. In the first of these cases, *Baker v. Carr* (1962), the Supreme Court ruled that redistricting was a justiciable issue, meaning that courts have jurisdiction over redistricting. The court also ruled that “as nearly as practicable, one man’s vote would be equal to another’s.” Two years later, in *Wesberry v. Sanders* (1964), the U.S. Supreme Court ruled each district needed to be as equal in population as possible. This became known as the one person, one vote principle. That same year, the Supreme Court, in *Reynolds v. Sims* (1964), applied the one person, one vote principle to state legislatures, ruling that each house of the state legislature had to be apportioned by population. A year later a federal district court in Texas struck down as unconstitutional the parts of the Texas Constitution that limited the number of representatives a county could have and ordered the legislature to redraw the districts in both the House and the Senate to be as close in population as possible (*Kilgarlin v. Martin*).

**Redistricting State Legislative Districts in Texas.** The latest version of redistricting the state legislative districts in Texas occurred in 2001. In 2001, the Democrats still controlled the House of Representatives and the Republicans controlled the Senate and the governorship. Democrats in the House drew up one map and Senate Republicans came up with another. Republicans saw no reason to compromise with Democrats because they knew if the legislature failed to reach an agreement, the responsibility of coming up with a redistricting map fell to the LRB, which consisted of four Republicans and a lone Democrat. After the 2002 election, the first election in which the newly drawn districts were in place, Republicans picked up three additional seats in the Senate and added 16 more seats in the House of Representatives and gained control of the House for the first time since Reconstruction.

**Redistricting Texas Congressional Districts.** In addition to drawing the lines for state legislative districts, state legislatures are also responsible for the redistricting of congressional districts within their states. Following the 2000 census, Texas picked up two additional seats in the United States House of Representatives to bring the total to 32. The legislature did not agree on a map for congressional redistricting; however, the LRB has no authority to redistrict congressional districts. Thus a panel of three federal judges, borrowing heavily from the district lines used in the 1990s, drew the map that was in place for the 2002 congressional elections. In the 2002 election, 17 Democrats were elected, giving the Democrats the majority of the Texas congressional delegation once again. Republicans argued that the outcome was not representative of the desires of most Texas voters. Armed with a brand new Republican majority in the Texas House of Representatives, and the Senate and the governor remaining in Republican hands, the legislature in the 2003 regular session took the highly unusual step of taking up redistricting again, just two years after the lines had been drawn.

As Republicans neared a vote in the legislature on their new plan, House Democrats fled to Oklahoma in order to prevent a quorum and thus a vote from occurring. If the Democrats had remained in the state, the Speaker could have had them arrested and brought to the House chambers to cast a vote. The standoff lasted about a week and by the time the Democrats returned, it was too late in the session to have a vote on the issue.

Soon after the legislative session ended, Governor Perry called a special session for the purpose of redistricting, the first special session since 1993. This time Senate Democrats stymied the Republican redistricting plan by preventing it from coming to the Senate floor, but the lieutenant governor, who presides over the Senate, said he would override the two-thirds rule, so that the bill

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could come to the Senate floor in the second special session Governor Perry called. As a result, 11 Senate Democrats fled to Albuquerque and denied the Senate a quorum. They stayed in Albuquerque into the middle of the third special session until one of the Democrats decided to come back to Texas, which provided the Republicans the numbers they needed for the Senate to meet. Thus in the third special session the Republicans approved a new redistricting map. After surviving court challenges the new districts were in place for the 2004 election, where Republicans picked up 21 of the 32 seats in Texas.

The battle over Texas redistricting was still not over, though. The Democrats and various interest groups continued to press the issue through the courts. They argued it was unconstitutional to redistrict in mid-decade for nothing more than to give a party a political advantage and that Republicans violated the Voting Rights Act of 1965 by using race in consideration of how they drew the lines, a claim Republicans denied. Eventually the U.S. Supreme Court heard the case and issued a ruling June 28, 2006 which upheld most of the Republican's arguments. The Supreme Court ruled that redistricting can take place in the middle of a decade and that all but one of the congressional districts were constitutional.

## LEGISLATIVE LEADERSHIP

Because of the short legislative session, legislative leaders in Texas are given great powers.

**Speaker of the House.** The speaker is a member of the House of Representatives who is chosen by a majority of fellow House members to be the speaker. He is able to reward his supporters with benefits, ranging from a prized committee chairmanship to better office space, and punish those who oppose him by giving them poor committee assignments and ignoring their bills.

**Lieutenant Governor and the Senate.** The lieutenant governor is the leader of the Senate and is elected to that position by voters in a statewide election. Unlike the vice president and president of the United States, the Texas lieutenant governor does not run as a team with the governor. Senate rules confer the lieutenant governor with substantive powers by which he controls the Senate. Many political observers call the lieutenant governor the most powerful politician in the state.

**Powers of the Presiding Officers in the Legislative Process.** Both the speaker and the lieutenant governor are given substantial powers to run their respective chambers. The speaker of the House and the lieutenant governor, among other things, appoint all committee chairs, appoint committee members, refer all bills to committees, and preside over all sessions, giving them the power to recognize those who want to speak, interpret the rules, decide when a vote takes place, and decide the outcome of a voice vote. The speaker remains a representative of the district that elected him and thus is able to cast a vote, although most of the time the speaker refrains in an effort to appear fair, objective, and bipartisan. The lieutenant governor, on the other hand, is not elected to represent a particular district and cannot vote in the Senate except to break a tie. Ultimately, the power of the leaders depends in large part on their individual skills.

## Committees

Committees do most of the work in any legislature. Different committees have different responsibilities and jurisdiction, which makes the work more manageable and more efficient than if the entire legislature were doing everything.

**Types of committees.** **Standing committees** are created by the legislature to deal with a particular policy area or responsibility. The standing committees remain in existence from session to session.

The most common kind of standing committees is the substantive committees that deal with policies and issues. The other kind of standing committees is the procedural committees that help the legislature function better, such as with the flow of legislation and the passing of resolutions. The House Rules committee is an example of this second type.

After a bill is introduced into one of the chambers, the presiding officer assigns the bill to a committee. Most bills die in committee because of a lack of time or interest in the bill. The committee may also make changes to the bill. Many of these standing committees have **subcommittees**, which are subunits of the committees. Subcommittees have a specialization within the broader topic that the committee is responsible for and help share the workload of the committee. Some subcommittees in the Senate are permanent standing committees, but most are ad hoc or temporary.

**Conference committees** are ad hoc committees organized to reconcile different versions of a bill passed by the House and the Senate. Conference committees can only deal with the one bill to which they are assigned. Each conference committee consists of five House members appointed by the speaker and five senators appointed by the lieutenant governor. To reach agreement in the conference committee, three of the five House members and three of the five senators must agree on a bill. The conference committee then sends the bill back to the House and Senate for an up or down vote of the bill the conference committee approved.

**Interim committees** are standing committees appointed by the presiding officer to meet when the legislature is not in session to investigate issues, problems, and proposals for the next legislative session. With short legislative sessions that only meet every other year, interim committees are important and meet frequently in Texas.

**Select or special committees** are ad hoc committees formed for a specified period to examine a problem or issue and to come up with recommendations on what the state should do.

Some committees are more prestigious than others because of their differing responsibilities or subject matters and members compete over committee chairmanships and committee assignments. Presiding officers of both houses make the committee assignments, although in the House the seniority system plays a role in committee assignments as well. The leaders consider the committee assignments a legislator wants, a legislator's ideological bent or policy preferences, the leader's desire to have a geographical, racial, and urban-rural representation in positions of power, and the goals the presiding officer has for the session.

**Committee chairs.** Committee chairs are powerful and have considerable control over the success or failure of a bill. The committee chair may decide he does not want a bill to pass so he may refuse to hold hearings on the bill, may send it to a subcommittee he knows will kill the bill, and may even prevent a bill from getting out of committee when the majority of committee members want the bill passed.

## LEGISLATIVE PROCESS IN THE TEXAS LEGISLATURE

**Types of legislation.** Bills may actually be any of the following types of legislation:

- 1) House Bills, indicated by the abbreviation HB, are the primary pieces of legislation introduced in the House. Similar bills in the Senate are called Senate Bills (SB).
- 2) House Concurrent Resolutions (HCR) are a type of legislation that requires passage by both chambers and usually require action by the governor. This type of resolution conveys the sentiment of the legislature and may provide a commendation, memorial, statement of

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- congratulations, or a request for action by another government entity, such as the United States Congress.
- 3) House Joint Resolutions (HJR) and Senate Joint Resolutions (SJR) are pieces of legislation that propose changes to the Texas Constitution.
  - 4) House and Senate committees regularly rewrite bills that have been referred to them. These altered bills are called Committee Substitute House Bills (CSHB) and Committee Substitute Senate Bills (CSSB).

## THE LEGISLATIVE PROCESS IN THE HOUSE

Only a House member can introduce a bill into the House, but outside individuals and organizations can provide input or make suggestions. House members (and Senators) may introduce bills only during the first 60 days of the 140-day regular legislative session. At the end of the 60-day period, the introduction of any bill other than a local bill or a bill dealing with an emergency declared by the governor requires the approval of at least four-fifths of the members present and voting in the House. Bills that increase taxes or raise money for use by state government, for example, must be introduced in the House first. The bill is introduced, given a number, and then the Speaker assigns it to a committee. House rules allow a committee to meet in a public hearing where testimony is heard and the committee takes official action on the legislation. Committees also may meet in work sessions to discuss legislation without taking official action. After considering a bill, the committee may choose to take no action or it may issue a report on the bill. The committee's report outlines its recommendation for further action on the bill. A detailed bill analysis, complete with a **fiscal impact statement**, if necessary, also appears in the report. A copy of the committee report is provided to each member of the House of Representatives. The bill is then sent to the Committee on Calendars or the Committee on Local and Consent Calendars to be scheduled for action by the full House. When the bill is considered by the full House, it receives its second reading. The bill's caption is read and then debated by the full membership of the House. During this period of consideration, any House member may offer an amendment to the bill. After this amending process, the full House membership votes to pass the bill. The bill is then considered on third reading and final passage. After third reading and the adoption of any amendments, the bill is considered for final passage by the House. The bill may be passed by a voice vote or a recorded vote. If a bill receives a simple majority of the vote during final passage, it is considered passed. The bill is then **engrossed**, and the engrossed House Bill goes to the Senate for that chamber's consideration.

**Legislative Process in the Senate.** The legislative process in the Senate is very similar to the process in the House. When the bill arrives in the Senate, it is read for the first time and then referred to committee by the lieutenant governor. The Senate committee examines the bill and can make changes to it. The committee writes a report outlining its recommendations. In the Senate, local and non-controversial bills are placed on the calendar by the Senate Administration Committee. All other bills are considered by the full Senate in the order in which the bills are reported from Senate committees. The bill is read for a second time, debated, and subject to amendment by a majority vote. After all amendments have been considered, the bill is voted on to pass to the third reading. After the bill is read for a third time, amendments may be approved by a two-thirds vote. The bill is then considered for final passage by a majority vote. The bill is sent back to the originating chamber, in this case the House of Representatives.

**The Bicameral Legislative Process.** If a bill passed both chambers in an identical format, it is printed in its final form, signed by the lieutenant governor and the speaker, and then sent to the governor. If a bill returns to the originating chamber with amendments, the originating chamber

may vote to agree to the amendments or it can request a conference committee to negotiate the differences between the two versions. If the amendments are agreed to, the bill is put in its final form, signed by the lieutenant governor and the speaker, and sent to the governor.

**Gubernatorial Action.** The governor has ten days (excluding Sundays) to decide whether to sign the bill, veto it, or allow it to become law without a signature. If the governor signs a bill, it becomes law and takes effect either immediately or at the time specified in the bill. If a governor vetoes a bill and the legislature is still in session, the bill is returned to chamber in which it originated, accompanied by a statement of the governor's objections. A two-thirds vote of the members of both chambers can override the governor's veto. If a bill is sent to the governor within ten days of the end of the legislative session, and just about every bill passes the legislature in the final days of the session, the governor has 20 days after final adjournment to take action on the bill or to let it become law without a signature.

## UNDERSTANDING THE STATE LEGISLATURE

**The State Legislature and Democracy.** In a number of ways, the state legislature is a democratic institution. Its members are elected from the districts they represent and remain in office by running for reelection. Texas also does not have term limits so voters can vote for a legislator and keep her in office for as long as they want. The Texas Constitution tried to make the legislature democratic by keeping the legislators as much like the people they represent as possible. It does this with biennial sessions and low pay. However, the low pay actually insures that most representatives are not average Texans. In addition, high campaign costs further contribute to keeping ordinary Texans from running for office. The large amounts of money that some individuals and groups contribute to campaigns and use to hire lobbyists may also make the workings of the legislature less democratic.

Redistricting also does not always promote democracy. The party in power may draw the districts to benefit legislators and candidates in their party by limiting the competition their candidates receive. This is one of the reasons that most state legislative races in Texas are not competitive.

**The State Legislature and the Scope of Government.** Biennial sessions and low legislative pay are a reflection of the anti-government sentiment held by the framers of the Texas Constitution and traditionally found in Texas.

## CHAPTER OUTLINE

### I. CONSTITUTIONAL FRAMEWORK OF THE LEGISLATURE

#### A. Bicameral Legislature

1. Texas has a **bicameral legislature**, that is, a legislature divided into two houses.
  - a. The lower house is the House of Representatives and the upper house is the Senate.
  - b. Both houses must approve a bill before it is sent to the governor for approval or rejection.
2. The Texas House of Representatives has 150 members and the Senate has 31. Compared to other legislatures, the Texas House of Representatives has more members than average.

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3. Like Congress, in the state legislature the Senate is considered more prestigious than the House of Representatives.
    - a. The Senate terms are longer and the Senate has almost five times fewer members than the House.
    - b. All revenue bills must originate in the House, and the Senate votes to confirm gubernatorial appointments.
    - c. Only the House has the power to impeach, or to bring charges against, a public official with a majority vote, and only the Senate tries that person and can convict and remove that person from office with a two-thirds vote of the Senate.
- B. **Legislative Sessions**
1. The Texas Constitution calls for **biennial sessions** (sessions every two years) beginning the second Tuesday in January of every odd-numbered year. The sessions can last no longer than 140 days, and the legislature cannot extend the session nor can it call itself into another session.
  2. When the legislature is unable to get everything done that it needs to address in a regular session or an issue arises that needs attention before the next regular session, a **special session** may be called.
    - a. Only the governor can call a special session, and the governor dictates the issues that the legislature will address during a special session.
    - b. These sessions can last no longer than 30 days, but the governor can call as many as he or she deems necessary.
    - c. Special sessions take place quite often, with 27 occurring since 1981 for an average of about one per year.
    - d. Although the governor can theoretically call as many special sessions as he or she wants, there are political risks in calling special sessions.
    - e. Repeated special sessions also highlight the legislature's and the governor's inability to get the things done.
- C. **Length of Legislator's Terms**
1. Members of the House of Representatives serve two-year terms.
  2. Senators serve four-year, staggered terms, meaning that about half of the 31 Senate seats are up for election every two years. The exception to this rule occurs every ten years after redistricting when new districts are drawn and each Senate seat is up for election. After the election, staggered terms begin and senators draw lots to determine which Senate seats are up for election in two years and which Senate seats get the full four-year term.
  3. There are no term limits in Texas.
- D. **Compensation.**
1. The Texas Constitution sets the base pay for members of the House and Senate and their presiding officers at \$7,200 per year, among the lowest in the nation.
  2. The main reason Texas legislative pay is lower than most states is that any increase to the annual salary for Texas legislators must be approved by the voters and voters have not approved a pay raise since 1975.
    - a. Voters in 1991 did approve an amendment to the Texas Constitution that created the State Ethics Commission and placed the Commission in charge of suggesting to the voters legislative pay increases and establishing a per diem for state legislators.

- b. The Commission has not suggested any increase in annual salary, but it has consistently raised the per diem.
- c. In 2005, the per diem was \$128, among the highest in the nation and in part making up for the low annual salary.
- 3. Legislators are also the beneficiaries of a generous retirement package that was established by the legislature and not subject to voter approval. The retirement benefits are computed based on the salaries of state district judges (whose salaries are set by the legislature), a legislator's age at retirement, and the number of years they served in the legislature.
  - a. One of the controversies in the 2005 regular session and then in the two special sessions that followed was the proposal to increase the salaries of district judges.
  - b. The legislature eventually passed a measure raising the salaries of district court judges by about 23 percent, from \$101,700 to \$125,000.
  - c. The percentage of a district court judge salary that a legislator will receive each year in retirement is set by multiplying the number of years in the legislature by 2.3.
- 4. The low annual salary prevents many people from serving in the legislature.
  - a. Most Texans cannot leave their regular jobs for a minimum of 140 days every two years, nor can they afford to quit their jobs to serve full-time in the legislature.
  - b. The low salary limits the kind of people who can serve in the legislature to those who are wealthy or have jobs that allow them the flexibility to attend legislative sessions, while keeping their regular jobs.

## **II. MEMBERSHIP AND REDISTRICTING**

### **A. Qualifications for Office**

- 1. The minimum qualifications to be a member of the Texas House of Representatives are that a person be a qualified voter, a Texas resident for at least two years, a resident of the district represented for at least one year, and be at least 21 years old.
- 2. The minimum requirements to serve in the Senate are similar but a bit more restrictive. The minimum requirements are for a person to be a qualified voter, a Texas resident for at least five years, a resident of the district represented for at least one year, and be at least 26 years old.

### **B. Membership Characteristics**

- 1. In practice the legislature clearly does not represent a cross-section of the state's population.
- 2. The typical legislator has traditionally been white, male, middle-aged, Protestant, college educated, with a job as a lawyer or in business, and until recently a Democrat.
- 3. There have been significant changes in the makeup of legislators over the last 30 years.
  - a. The biggest shift in the legislature's makeup over the last few decades is the change in party identification. The Republicans are the majority party in both houses.
  - b. The numbers of women and racial minorities serving in the legislature have also increased since the 1970s.

- c. Even though women and racial minorities have made inroads in the legislature, their membership remains far less than their percentage of the state population.
  - 4. Almost all legislators have at least some college education and have professional careers. About one-third of the legislators are lawyers and about one-half are in business.
- C. **Redistricting.**
- 1. Another important factor in determining who is in the legislature is the shape the legislative districts take. Some districts favor certain kinds of candidates more than others.
  - 2. The process by which district lines are drawn is called **redistricting**. Every 10 years, after the census is taken, state legislatures across the nation redraw the lines of the state legislative districts and the congressional districts within their states.
  - 3. Redistricting often leads to **gerrymandering**, which means drawing legislative district lines to benefit a certain side or political interest, such as a political party or incumbents.
  - 4. “Packing” (also called stacking) and “cracking” (also called splintering) are the tools of gerrymandering.
    - a. Packing is concentrating as many like-minded voters into as few legislative districts as possible, so that their candidate overwhelmingly wins the election.
    - b. Cracking is splitting up like-minded voters so that they do not have enough voters in any one district to win.
    - c. Whether through packing or cracking or the combination of both, the goal is to ensure that a particular interest does not get the number of seats in the legislature that their population indicates they should have.
  - 5. Gerrymandering most often occurs when one party controls state government and is able to draw the lines in such a way as to make it more likely for their party’s candidates to win.
  - 6. Because Democrats dominated Texas politics for most of Texas history, partisan gerrymandering has not been an issue in Texas until recently.
  - 7. Much of the battle over redistricting has been between rural and urban populations and interests, with the urban population for much of Texas history not getting the representation its numbers indicated it should have.
    - a. Much of the underrepresentation of the urban population resulted from provisions in the Texas Constitution of 1876.
    - b. The Constitution specified that House districts and Senate districts should be as equal in population as possible, except that no county could have more than one senator.
    - c. In 1936, voters ratified an amendment to the Texas Constitution that led to further underrepresentation of the urban population by limiting the number of representatives in the House of Representatives a county could have to seven, until the county reached a population of 700,000, when the county could have one more representative for each additional 100,000 in population.
    - d. The underrepresentation of urban areas caused by these constitutional restrictions was worsened by the legislature failing to agree on a redistricting plan from 1921 to 1951.

8. An amendment was added to the Texas Constitution in 1948 that created the Legislative Redistricting Board (LRB).
  - a. The LRB consists of the lieutenant governor, the speaker of the House, the attorney general, the comptroller of public accounts, and the land commissioner.
  - b. The LRB has the authority to redistrict the legislative districts if the legislature fails to do so.
9. With the threat that the LRB would draw the lines if the legislature did not act, the legislature redrew the lines in 1951, and more closely reflected the changes that had taken place in the population so that the districts were closer to equal population than they were before.
10. For most of the nation's history, the U.S. Supreme Court looked upon redistricting as a political matter and refused to get involved. In the 1960s the Supreme Court reversed itself.
  - a. *Baker v. Carr* (1962), the Supreme Court ruled that redistricting was a justiciable issue, meaning that courts have jurisdiction over redistricting. Furthermore the Court said that the disparity in population among districts denied voters "equal protection of the law," as stated in the Fourteenth Amendment of the United States Constitution, and ruled that "as nearly as practicable, one man's vote would be equal to another's."
  - b. *Wesberry v. Sanders* (1964), the U.S. Supreme Court ruled that the unequal populations in Georgia's congressional districts were unconstitutional and that each district needed to be as equal in population as possible. This became known as the one person, one vote principle.
  - c. In *Reynolds v. Sims* (1964), applied the one person, one vote principle to state legislatures, ruling that each house of the state legislature had to be apportioned by population.
  - d. A year later a federal district court in Texas struck down as unconstitutional the parts of the Texas Constitution that limited the number of representatives a county could have and ordered the legislature to redraw the districts in both the House and the Senate to be as close in population as possible (*Kilgarlin v. Martin*).

D. **Redistricting State Legislative Districts in Texas.**

1. The latest version of redistricting the state legislative districts in Texas occurred in 2001. Based on the 2000 census, each House district needed to consist of a population of 139,012, and each Senate district a population of 672,639.
2. In 2001, the Democrats still controlled the House of Representatives and the Republicans controlled the Senate and the governorship.
3. Republicans saw no reason to compromise with Democrats because they knew if the legislature failed to reach an agreement, the responsibility of coming up with a redistricting map fell to the LRB, which consisted of four Republicans and a lone Democrat.
4. The LRB lived up to Republican expectations, approving a map that everyone believed increased the odds of Republicans gaining seats in the legislature. After the 2002 election, the first election in which the newly drawn districts were in place, Republicans picked up three additional seats in the Senate to

expand their majority to 19 out of 31, and Republicans added 16 more seats in the House of Representatives and gained control of the House for the first time since Reconstruction.

E. **Redistricting Texas Congressional Districts**

1. State legislatures are also responsible for the redistricting of congressional districts within their states.
2. Following the 2000 census, Texas picked up two additional seats in the United State House of Representatives to bring the total to 32.
3. The LRB has no authority to redistrict congressional districts. Thus a panel of three federal judges in Tyler, borrowing heavily from the district lines used in the 1990s, drew the map that was in place for the 2002 congressional elections.
4. In the 2002 election, 17 Democrats were elected, giving the Democrats the majority of the Texas congressional delegation once again. Republicans argued that the outcome was not representative of the desires of most Texas voters.
5. Armed with a brand new Republican majority in the Texas House of Representatives, and the Senate and the governor remaining in Republican hands, the legislature in the 2003 regular session took the highly unusual step of taking up redistricting again, just two years after the lines had been drawn.
6. As the Republicans were coming close to an agreement on a redistricting plan near the end of the regular session, 51 House Democrats prevented the redistricting bill from being voted on when they bolted to Ardmore, Oklahoma, and denied the House a quorum, the number needed for the House to have in order to convene, and House business came to a stop.
7. The stand-off ended after about a week when the House Democrats returned to Austin after it was too late in the legislative calendar to introduce new legislation (in this case a redistricting plan).
8. Soon after the legislative session ended, Governor Perry called a special session for the purpose of redistricting, the first special session since 1993.
9. This time Senate Democrats stymied the Republican redistricting plan by preventing it from coming to the Senate floor, but the lieutenant governor, who presides over the Senate, said he would override the two-thirds rule, discussed later in the chapter, so that the bill could come to the Senate floor in the second special session Governor Perry called.
10. As a result, 11 Senate Democrats fled to Albuquerque and denied the Senate a quorum. They stayed until the third special session when one Democrat returned to Texas and the Republican plan was passed.
11. After surviving court challenges, the new districts were in place for the 2004 election, where Republicans picked up 21 of the 32 seats in Texas.
12. The Democrats and various interest groups continued to press the issue through the courts. They argued it was unconstitutional to redistrict in mid-decade for no other reason than to give a party a political advantage. They also asserted that Republicans violated the Voting Rights Act of 1965 by using race in consideration of how they drew the lines, a claim Republicans denied.
13. Eventually the U.S. Supreme Court heard the case and issued a ruling June 28, 2006 which upheld most of the Republican's arguments. The Supreme Court ruled that redistricting can take place in the middle of a decade and that all but

one of the congressional districts were constitutional. The Court ruled that that district (the 23rd congressional district that stretched from San Antonio to Laredo) unconstitutionally minimized Hispanic voting clout by splitting Laredo into two districts. As a result, that district had to be redrawn.

### **III. LEGISLATIVE LEADERSHIP**

#### **A. Speaker of the House.**

1. The speaker is a member of the House of Representatives who is chosen by a majority of fellow House members to be the speaker.
2. Members who want to be speaker try to get fellow members to sign pledges of support long before the actual vote takes place.
3. He is able to reward his supporters with benefits, ranging from a prized committee chairmanship to better office space, and punish those who oppose him by giving them poor committee assignments and ignoring their bills.
4. A day after the 2002 election, when it became clear that Republicans would be the majority party in the House for the first time since Reconstruction, Tom Craddick, a Republican from Midland, stunned the political establishment when he announced he had enough pledges from House members to make him the next speaker. He had begun gathering pledges more than a year earlier.

#### **B. Lieutenant Governor and the Senate.**

1. The lieutenant governor is the leader of the Senate and is elected to that position by voters in a statewide election.
2. It is possible to elect a lieutenant governor from a different political party or one with a different agenda than the governor.
3. Senate rules confer the lieutenant governor with substantive powers by which he controls the Senate.
4. Many political observers call the lieutenant governor the most powerful politician in the state.

#### **C. Powers of the Presiding Officers in the Legislative Process.**

1. The speaker of the House and the lieutenant governor, among other things, appoint all committee chairs, appoint committee members, refer all bills to committees, and preside over all sessions, giving them the power to recognize those who want to speak; they interpret the rules, decide when a vote takes place, and decide the outcome of a voice vote.
2. The speaker remains a representative of the district that elected him and thus is able to cast a vote, although most of the time the speaker refrains in an effort to appear fair, objective, and bipartisan.
3. The lieutenant governor, on the other hand, is not elected to represent a particular district and cannot vote in the Senate except to break a tie.
4. The amount of influence they are able to exercise is dependent upon how skillfully they use these powers.
5. Members will give their leaders power as long as they approve of the use of the power.
  - a. In the speaker's case, the House would likely vote to change speakers rather than strip the position of its power.
  - b. Because the lieutenant governor is elected independently in a statewide election, senators cannot change leaders. However, they can change the powers they give to the lieutenant governor to run the Senate.

#### IV. COMMITTEES

- A. The brunt of the work in any legislature is done in committees, and it is no different in Texas. Different committees have different responsibilities and jurisdiction.
- B. **Types of committees.**
  - 1. **Standing committees** are created by the legislature to deal with a particular policy area or responsibility.
    - a. The standing committees remain in existence from session to session.
    - b. The most common kind of standing committee is the substantive committee that deals with policies and issues. The House Committee on Higher Education, for example, has jurisdiction over “education beyond high school; the colleges and universities of the state of Texas.
    - c. The other kind of standing committees is the procedural committee that helps the legislature function better, such as with the flow of legislation and the passing of resolutions.
    - d. After a bill is introduced into one of the chambers, the presiding officer assigns the bill to a committee. The committee has almost life or death control of bills.
      - (1) Most bills die at this stage.
      - (2) Some of the bills will be given a hearing and legislators, staffers, lobbyists, and others will gather and distribute information about the bill and try to influence the final shape the bill takes.
  - 2. Many of these standing committees have **subcommittees**, which are subunits of the committees.
    - a. In the Senate some of the subcommittees are standing subcommittees, meaning they are permanent. The chairs of standing subcommittees are chosen by the lieutenant governor.
    - b. Other subcommittees, in both the House and the Senate, are ad hoc or temporary committees, organized for a specific bill or set of issues.
  - 3. **Conference committees** are ad hoc committees organized to reconcile different versions of a bill passed by the House and the Senate.
    - a. Conference committees can only deal with the one bill to which they are assigned.
    - b. Each conference committee consists of five House members appointed by the speaker and five senators appointed by the lieutenant governor.
    - c. To reach agreement in the conference committee, three of the five House members and three of the five senators must agree on a bill.
    - d. The conference committee then sends the bill back to the House and Senate for an up or down vote of the bill the conference committee approved.
  - 4. **Interim committees** are standing committees appointed by the presiding officer to meet when the legislature is not in session to investigate issues, problems, and proposals for the next legislative session.
    - a. Given the relative brevity of the legislative sessions in Texas, much work needs to be done in between sessions so legislators can be better prepared to take advantage of the time when the legislature is in session.

- b. The interim committees submit a report to the presiding officer of the house they are in (speaker or lieutenant governor) and frequently include recommendations and draft legislation to consider in the next legislative session.
5. **Select or special committees** are ad hoc committees formed for a specified period to examine a problem or issue and to come up with recommendations on what the state should do.
6. Some committees are more prestigious than others because of their differing responsibilities or subject matters and members compete over committee chairmanships and committee assignments.
  - a. Presiding officers of both houses make the committee assignments, although in the House the seniority system plays a role in committee assignments as well.
  - b. In the House, in order of seniority, each legislator can select one committee he wants to be on as long as half of the committee slots on that committee are not already filled by seniority.
7. The presiding officers are careful in whom they select for different committees and as committee chairs. They consider the committee assignments a legislator wants; a legislator's ideological bent or policy preferences; the leader's desire to have geographical, racial, and urban-rural representation in positions of power; and the leaders' goals for the session and what committee chairs and committee assignments will help achieve those goals.

C. **Committee Chairs**

1. Committee chairs are powerful and have considerable control over the success or failure of a bill.
2. The committee chair may decide he does not want a bill to pass so he may refuse to hold hearings on the bill, may send it to a subcommittee he knows will kill the bill, and may even prevent a bill from getting out of committee when the majority of committee members want the bill passed.
3. The selection of committee chairs is one of the important decisions presiding officers make.

**V. THE LEGISLATIVE PROCESS IN THE TEXAS LEGISLATIVE**

A. **Types of Legislation**

1. House Bills, indicated by the abbreviation HB, are the primary pieces of legislation introduced in the House. Similar bills in the Senate are called Senate Bills (SB).
2. House Concurrent Resolutions (HCR) are a type of legislation that requires passage by both chambers and usually require action by the governor. This type of resolution conveys the sentiment of the legislature and may provide a commendation, memorial, statement of congratulations, or a request for action by another government entity, such as the United States Congress. These bills are called Senate Concurrent Resolutions (SCR) in the Senate.
3. House Joint Resolutions (HJR) and Senate Joint Resolutions (SJR) are pieces of legislation that propose changes to the Texas Constitution. Joint resolutions must be approved by two-thirds of the members of the House and two-thirds of the members of the Senate and approved by a majority of Texas voters before they become amendments to the Texas Constitution.

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4. House and Senate committees regularly rewrite bills that have been referred to them. These altered bills are called Committee Substitute House Bills (CSHB) and Committee Substitute Senate Bills (CSSB).
  5. Bills also can be classified by subject. *Local bills* are limited to a specific geographical area of the state, such as cities, counties, or school districts. *Special bills* are pieces of legislation that deal with a select or special individual or entity. All other bills are considered *general bills*.
- B. **Legislative Process in the House.**
1. Anyone can write a piece of legislation, but only members of the House of Representatives may introduce the bill in the House.
    - a. The representative who wishes to introduce a bill will often get assistance from the Texas Legislative Council, a legislative agency that provides bill drafting services and research assistance.
    - b. Representatives of organized interests often write pieces of legislation and ask members of the Texas House and Senate to introduce the bills.
  2. After the bill has been written, the representative introduces the bill in the House.
    - a. House members (and Senators) may introduce bills only during the first 60 days of the 140-day regular legislative session.
    - b. At the end of the 60-day period, the introduction of any bill other than a local bill or a bill dealing with an emergency declared by the governor requires the approval of at least four-fifths of the members present and voting in the House.
  3. When the bill is introduced, it is assigned a number and read the first time. The Speaker of the House then assigns the bill to a committee.
  4. The chair of each committee controls the agenda of that committee. House rules allow a committee to meet in a public hearing where testimony is heard and the committee takes official action on the legislation. Committees also may meet in work sessions to discuss legislation without taking official action. House rules specify that the minutes of every committee meeting must be filed with the House clerk within a prescribed number of days.
  5. After considering a bill, the committee may choose to take no action or it may issue a report on the bill.
    - a. A detailed bill analysis complete with a **fiscal impact statement**, if necessary, also appears in the report. A copy of the committee report is provided to each member of the House of Representatives. The bill is then sent to the Committee on Calendars or the Committee on Local and Consent Calendars to be scheduled for action by the full House.
    - b. Committees may write reports that recommend unfavorable action on the bill.
  6. When the bill is considered by the full House, it receives its second reading. The bill's caption is read and then debated by the full membership of the House.
    - a. During this period of consideration, any House member may offer an amendment to the bill. The amendment must be approved by a majority of the members present and voting.
    - b. After this amending process, the full House membership votes to pass the bill.

7. After this amending process, the full House membership votes to pass the bill. The bill is then considered on third reading and final passage. A bill may be amended during third reading, but such an amendment must be approved by a two-thirds vote of the members present and voting.
8. After a third reading and the adoption of any amendments, the bill is considered for final passage by the House. The bill may be passed by a voice vote or a recorded vote.
9. If a bill receives a simple majority of the vote during final passage, it is considered passed. The bill is then **engrossed**, and a new copy is printed incorporating any amendments approved on the floor of the House. The engrossed House Bill goes to the Senate for that chamber's consideration.

**C. Legislative Process in the Senate.**

1. The legislative process in the Senate is very similar to the process in the House. When the bill arrives in the Senate, it is read for the first time and then referred to committee by the lieutenant governor.
2. The Senate committee examines the bill and can make changes to it. In the Senate, testimony may be heard and official action may be taken during any meeting of a committee or subcommittee.
3. The committee writes a report outlining its recommendations.
4. In the Senate, local and noncontroversial bills are placed on the calendar by the Senate Administration Committee. All other bills are considered by the full Senate in the order in which the bills are reported from Senate committees.
5. The bill is read for a second time, debated, and subject to amendment by a majority vote. After all amendments have been considered, the bill is voted on to pass to the third reading.
6. After the bill is read for a third time, amendments may be approved by a two-thirds vote. The bill is then considered for final passage by a majority vote. The bill is sent back to the originating chamber, in this case the House of Representatives.

**D. Bicameral Legislative Process**

1. If a bill passes both chambers in an identical format, it is printed in its final form, signed by the lieutenant governor and the speaker, and then sent to the governor.
2. If a bill returns to the originating chamber with amendments, the originating chamber may vote to agree to the amendments or it can request a conference committee to negotiate the differences between the two versions. If the amendments are agreed to, the bill is put in its final form, signed by the lieutenant governor and the speaker, and sent to the governor.
3. After negotiating, the conference committee writes a report of the new language in the bill. If the report is approved by both chambers, the presiding officers sign it and it is sent to the governor.

**E. Gubernatorial Action**

1. The governor has ten days (Sundays excepted) to decide whether to sign the bill, veto it, or allow it to become law without a signature.
2. If the governor signs a bill, it becomes law and takes effect either immediately or at the time specified in the bill.

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3. If a governor vetoes a bill and the legislature is still in session, the bill is returned to chamber in which it originated, accompanied by a statement of the governor's objections.
  4. A two-thirds vote of the members of both chambers can override the governor's veto.
  5. If a bill is sent to the governor within ten days of the end of the legislative session, and just about every bill passes the legislature in the final days of the session, the governor has twenty days after final adjournment to take action on the bill or to let it become law without a signature.
- F. **The Legislative Process Illustrated**
1. Examining a bill that went through the legislative process during the 79th Legislature in 2005 allows for a deeper understanding of the realities of the process. Shortly after the regular session ended in June 2005, Representative Scott Hochberg (D-Houston) reflected on three bills he introduced.
  2. One of the bills Hochberg introduced originated with a constituent concern. A constituent contacted him for help collecting a mail-in rebate he was due for purchasing some computer equipment from a national computer retailer. Representative Hochberg decided that "there ought to be a law" regulating the processing of mail-in rebates, so he began the work to introduce one.
  3. On January 20, 2005, he introduced his bill on rebates, the 511th bill submitted during the session. For this reason, it is numbered House Bill 511 (HB 511). Hochberg's bill set a time limit for processing a rebate and required a company to notify the rebate filer of any problems with the submission.
  4. After being revised by the Legislative Council and checked to make sure it still met Representative Hochberg's consent, HB 511 was referred to the Committee on Business and Industry on February 7, 2005.
  5. A lobbyist from Reliant Energy, a company that typically offers rebates to new customers, contacted him about the issue. Reliant wanted its type of rebate program removed from the bill's requirements because it is not really a mail-in rebate.
  6. A second round of lobbyists visited Representative Hochberg on February 10. The lobbyists represented the American Electronics Association. They made a threat that if the bill were enacted as introduced, companies would stop offering rebates to Texas consumers. The representative and his staff agreed only to make some technical changes.
  7. On February 17, the representative was given five days notice that the Committee on Business and Industry would allow a presentation on HB 511 at the committee's next hearing. At the February 22 hearing, the bill received a favorable response.
  8. During the weeks that followed the hearing, the representative and his staff worked to get a draft from the Legislative Council that incorporated the changes requested by Reliant Energy.
  9. On March 22, the revised House Bill 511 was brought for a committee vote. It passed unanimously.
  10. About a week after the committee voted to report the bill, Representative Hochberg had not heard from the Committee on Calendars, which would schedule the bill for a vote by the full House. His staff checked to determine the reason for the delay and found that the committee's minutes had not been

submitted to the House clerk in the prescribed time, a violation of House rules.

11. All bills passed by the committee on March 22 would have to be passed by the committee again so that the minutes could be properly submitted to the House clerk. The committee passed the bill again on April 4. It then took 11 days for HB 511 to be reported by the committee, printed and distributed to every House member, and received by the Committee on Calendars.
12. The Committee on Calendars considered the bill for the first time on April 25. The members of the committee voted to put the bill on the House calendar for floor consideration.
13. The bill was presented to the House floor for second reading on April 27, where it passed with no questions, objections, or amendments.
14. On April 28, the bill was presented again for third reading. There were no objections and the bill was engrossed by the House. It was sent to the Senate on April 28, 2005, with just about one month remaining in the legislative session.
15. On May 1, the lieutenant governor referred the bill to the Senate's Committee on Business and Commerce.
16. Senator Leticia Van de Putte (D-San Antonio), a member of the Senate Business and Commerce Committee agreed to sponsor the bill.
17. Unfortunately, HB 511 arrived in the Senate at a period when House and Senate leaders were arguing with each other about how many of the other chamber's bills were passed in their chambers.
18. HB 511 received a hearing in the Senate Business and Commerce Committee on May 17, only two weeks before the end of the session. The committee met again the next day, considered the bill, and passed the bill on a unanimous vote.
19. At this point, one of the parts of the legislative process that does not appear in textbooks occurred. Representative Hochberg relates, "one member of the AEA is not willing to let the matter drop. Intuit, the maker of 'Turbo Tax,' hires a contract lobbyist for a few days simply to get two technical changes made to the bill."
20. On May 25, the last day allowed for Senate consideration of House Bills, HB 511 was presented for second and third reading. It passed without objection. Since no amendments were added by the Senate, the bill did not have to be resubmitted to the House for any additional consideration.
21. It was sent to Governor Rick Perry for his signature on June 2. Governor Perry vetoed the bill on June 17, 2005, one of nineteen bills from the 79th Legislature turned down by Perry.

## VI. UNDERSTANDING THE STATE LEGISLATURE

### A. The State Legislature and Democracy

1. In a number of ways the state legislature is a democratic institution.
2. The Texas Constitution tried to make the legislature democratic by keeping the legislators as much like the people they represent as possible.
3. Yet the reality is that members are different in many ways from the average Texan. The low pay has instead discouraged many people from running for the state legislature because they cannot afford to be a legislator and take

- several weeks off from work at a time in order to serve. Campaign costs are high and prove prohibitive to many potential candidates.
  - 4. The large amounts of money that some individuals and groups contribute to campaigns and use to hire lobbyists may also make the workings of the legislature less democratic.
  - 5. Redistricting also does not always promote democracy. With most districts not hosting competitive races, legislative races are not as democratic as they could be.
- B. **The State Legislature and the Scope of Government**
- 1. Biennial sessions and low legislative pay is a reflection of the anti-government sentiment held by the framers of the Texas Constitution.
  - 2. Many Texans believe, or at least hope, that biennial sessions are a good thing, resulting in fewer laws being passed and fewer taxes being raised.
  - 3. Given the number of bills that are passed in a regular session, however, the legislature does not seem to have a shortage of time to pass laws.

## **KEY TERMS AND CONCEPTS**

**Bicameral legislature:** A legislature divided into two houses.

**Biennial sessions:** legislative sessions that take place once every two years.

**Special sessions:** legislative sessions called by the governor for whatever purpose the governor designates. Can last no longer than 30 days.

**Redistricting:** process through which district lines are drawn.

**Gerrymandering:** drawing districts in such a way as to benefit a particular interest, such as a political party.

**Standing committees** A committee created by the legislature to deal with a particular policy area or responsibility.

**Subcommittees:** subunits of a committee.

**Conference committees:** a committee organized to work out the differences in bills passed by the House and the Senate.

**Interim committees:** standing committees that meet between legislative sessions to study issues, problems, and proposals in a particular policy area.

**Select or special committees:** established for a specified period to examine problems or issues and develop recommendations on what the state should do.

**Fiscal impact statement:** also known as a fiscal note; an indication of the costs to state and local government if the bill becomes law.

**Engrossed:** the printed version of a bill as it has passed either the House of Representatives or the Senate.

**Blocking bill:** unimportant bill introduced in the Texas Senate that is the first bill reported out of committee; Senate rules require that all other bills have the support of two-thirds of the Senate before they may be debated on the floor.

## **TEACHING IDEAS**

- If the class is taking place during a legislative session, assign students specific bills and have them track their particular bill through the session and report at the end of the semester on its status.
- Divide students into groups and have each group draft a bill and present it to the class as a whole. The class should debate the bill and vote for or against it.
- Have students write their representative or state senator about an issue. See which students receive replies and compare them in class.
- Assign students to research various members of the state House and Senate. They should learn about committee assignments and pieces of legislation that they have sponsored.
- Compare the number of representatives and senators in each of the states. Try to determine why a small state like New Hampshire has so many representatives. What is the benefit of having a large number of representatives? What is the negative?
- Discuss the fight over the 2003 redistricting plan in Texas. The minority Democrats ultimately fled to Oklahoma to try and prevent a vote on the plan in the legislature. Ask students if this action was justifiable? Have students compare the redistricting map and the subsequent redrawing of this map. Are they fair? Should redistricting be conducted more often than the standard ten years? Why or why not?
- Bring in a list of legislative pay for other states and compare to Texas. Discuss with students if the Texas pay is fair. Remember how few days they are in session. If the students want to change the pay rate, have them develop a fair pay rate so that anyone could serve.

## **BACKGROUND READING**

House of Representatives Research Organization. How a Bill Becomes Law: 79th Legislature. Austin, TX: House Research Organization, Texas House of Representatives, 2005.

Jones, Nancy Baker. Capitol Women: Texas Female Legislators, 1923–1999. Austin, TX: The University of Texas Press, 2000.

Presiding Officers of the Texas Legislature, 1846–1995. Austin, TX: The Council, 1995.

Spaw, Patsy McDonald. The Texas Senate. College Station, TX: Texas A & M University Press, 1990.

Secretary of the Senate. Members of the Texas Congress, 1836–1845; Members of the Texas Legislature, 1846-2004. Austin, TX: Senate Engrossing and Enrolling: Senate Publications, 2005.

## **ONLINE RESOURCES AND MEDIA**

<http://www.fyi.legis.state.tx.us/>

Website used to find who is your representative in the Texas Legislature.

<http://www.legis.state.tx.us/Search/BillSearch.aspx>

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State website that allows one to search for bills with specific actions, authors, sponsors, committees, etc.

To view Senate journals, go to <http://tlo2.tlc.state.tx.us/sjrn1/home.htm>

To view House journals, go to <http://tlo2.tlc.state.tx.us/hjrnl/home.htm>

<http://www.house.state.tx.us/welcome.php>

Website for the Texas House of Representatives.

<http://www.senate.state.tx.us/>

Website for the Texas State Senate.

<http://www.tlc.state.tx.us/>

Website for the Texas Legislative Council, which provides bill drafting, computing, research, publishing, and document distribution services to the Texas Legislature and legislative agencies

# CHAPTER TWENTY-FIVE: THE GOVERNOR AND BUREAUCRACY OF TEXAS

## PEDAGOGICAL FEATURES

- p. 783      *Table 25.1: Texas Governors*  
 p. 783      *Why It Matters #1: Elections and Power*  
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 p. 793      *Texas in Perspective: Lieutenant Governors Across the Nation*  
 p. 795      *Young People and Politics: The Fight for Tax-Free Textbooks in Texas*  
 p. 796      *How You Can Make a Difference: The Adopt-A-Beach program*  
 p. 798      *Why It Matters #3: What's in a Name?*  
 p. 800      *You Are the Policymaker: Should Intelligent Design Be Taught in Texas Schools?*  
 p. 801      *Table 25.2: Examples of Appointed Boards and Commissions in Texas*  
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 p. 806      *Get Connected: Being Informed*  
 p. 806      *Further Reading*

## LEARNING OBJECTIVES

*After studying this chapter, students should be able to:*

- Describe the type of person who typically serves as Texas' governors.
- Describe the compensation and means of electing governors.
- Detail the powers of the governor including legislative, budgetary, judicial and appointment.
- Explain and detail the elected executive officials in Texas and their powers.
- Explain and detail the levels of appointed officials in Texas.
- Analyze the difference between the types of officials in Texas.
- Understand the methods used to try and control the bureaucracy in Texas.

## CHAPTER OVERVIEW

### THE GOVERNOR

The office is highly sought after and carries with it the prestige of being the leader of Texas.

**Who They Are.** The constitutional requirements to be governor: be an American citizen, a resident of the state for at least five years preceding the election, and be at least 30 years old. In practice, the characteristics of Texas' governors fit a far more narrow profile. All Texas governors have been White Protestants and all but two (Miriam Ferguson and Ann Richards) have been men. Most have been well-to-do, and over half have been lawyers.

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**Compensation.** Until 1954, the governor's salary was set by the Constitution and salary increases were subject to voter approval. Thus the governor's pay was low. An amendment to the Constitution, however, was passed in 1953, allowing the legislature to set gubernatorial pay. Since then, the governor's salary has usually been among the highest in the nation. In addition to salary, the state provides the governor with a mansion, a car, the use of state-owned planes, security detail, travel expenses, and office and personal staff.

**How They Got There.** The constitutional (and most common) method of selecting the governor is through elections. The other method is for the lieutenant governor to become governor when the governor is not able to complete the term, either through resignation, death, or impeachment and removal from office.

**Elections.** The election for governor and most other elections for statewide office are held on the even-numbered years when the president of the United States is not running. For most of Texas history the governors served a two-year term. A constitutional amendment passed in 1972 changed the length of term to four-years, beginning in 1974. There are no term limits in Texas.

**Succession and Impeachment.** If a vacancy occurs in the governorship, the lieutenant governor becomes the governor. This has happened five times in Texas history: three times the governor resigned to take another office; once the governor died in office; and one governor, James Ferguson, resigned in 1917 after he was impeached and was going to be removed from office. The impeachment process in Texas is similar to how it occurs at the national level. The process begins in the House of Representatives, where a majority vote is needed to impeach the governor. After the impeachment, the case goes before the Senate for a trial; a two-thirds vote of the senators present is necessary to convict and remove the governor from office. The state constitution does not specify what constitutes an impeachable offense.

## GUBERNATORIAL POWER

**Legislative Powers.** One of the most important relationships the governor has is with the legislature. The Constitution has given the governor a number of important legislative powers that make him a powerful actor in the legislative process. One of these powers is to deliver a message to the legislature at the beginning of each legislative session on the condition of the state, called the **State of the State address**. It highlights the fact that the governor, more than other politicians in the state, is able to give speeches, hold press conferences, and issue press releases to keep his issues in the public eye and on the legislative agenda. Ultimately, the **veto** is what makes the governor a powerful part of the legislative process. When the legislature passes a bill, the governor has ten working days to sign the bill, veto the bill, or let the bill become law without his signature. If the legislature adjourns during this ten-day period, the time the governor has to consider the bill is extended to 20 days from the time the legislative session ends. Unlike the president, the Texas governor does not have a pocket veto, so a bill will become law unless the governor vetoes it. The legislature can override a veto with a two-thirds vote of both the House and the Senate. The legislature almost never overrides a veto in Texas, because most vetoes occur after the legislature adjourns. Because the veto is almost absolute, the governor uses the threat of the veto to persuade legislators to change a bill so it is more acceptable to the governor.

The Texas governor (as do the governors in 42 other states) has the **item veto** as well. The item veto allows governors to veto portions, or lines, of a bill without having to negate the entire bill. In Texas, the item veto can only be used on appropriation bills. This affords the governor the ability to

delete lines of a bill while allowing the remainder of the appropriations to go into effect. Governors have complained about the legislature's efforts to limit the governor's use of the item veto by grouping programs together and not showing a line item for the programs.

Another legislative power the governor has is calling a **special session**. Only the governor can call a special session, and the governor is the one who sets the agenda for the special session.

**Appointment Power.** During a four-year term, the governor makes about 3,000 appointments. Many of these appointments are to the more than 200 administrative boards and commissions. The governor also has the power to fill vacancies to elected positions if the vacancies take place between elections. These appointments are in effect until the next election. The appointment power not only affords the governor the opportunity to try to shape policy, but it also provides an opportunity to reward campaign contributors, friends, and supporters.

A number of restrictions on the governor's appointment power limit the governor's ability to use appointments to influence policy. One restriction is the governor's removal power. The governor is unable to fire his predecessor's appointees and can only remove his own appointees with the approval of two-thirds vote of the Senate. The inability to fire his predecessor's appointees is worsened because members of most of the boards and commissions have six-year staggered terms so that one third of the members' terms expires every two years.

Another check on the governor's appointment power is that his appointees must be confirmed by two-thirds of the Senate. Moreover, **senatorial courtesy**, a custom that allows the senator from the district the governor's nominee is from to block the governor's selection, forces the governor to check with the relevant senator before making a nomination.

**Budgetary Powers.** The Texas governor has weak budgetary powers compared to the president of the United States and the governors in most other states, because the Legislative Budget Board (LBB) is the one wielding the clout in developing the budget, more than the governor. The LBB is a permanent joint committee of the legislature. The most powerful tool the governor has in the budget process is the item veto.

**Judicial Powers.** The Texas governor by himself does not have the power to commute sentences. Instead Texas has limited the governor so he can only act upon the recommendations of the seven-member Board of Pardons and Paroles to grant reprieves, commutations, and pardons. The only formal power the Texas governor has to stop an execution is to issue a 30-day stay of execution. At one time the governor did have clemency power, but a constitutional amendment in 1936 stripped the governor of these powers.

**Staff Support.** To help them fulfill their responsibilities and take advantage of political opportunities, the Texas governors have extensive staff support that provides information and advice, and performs various tasks. Governors have discretion in whom they hire and how they want to organize their staffs. The governor hires a legislative liaison, press secretary, ethics advisor, general counsel, and chief of staff, among many others. Staffers help the governor with his schedule, speeches, budget recommendations to the legislature, legal advice, economic development and tourism, to touch on just a few of the myriad of responsibilities the governor has.

**Gubernatorial Power in Perspective.** The constitutional powers of the Texas governor are weak in comparison with other governors. Yet how weak is subject to debate. Comparing gubernatorial power solely by the constitutional powers of governors does not give the full picture of gubernatorial

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power. Similar to presidential power, much of gubernatorial power is dependent upon the situation and context from which the governor operates. Although some Texas governors have had a passive approach to governing, recent governors have come into office focused on their agendas and have worked to get their priorities passed.

Governor Bush was generally considered an effective governor because he had the political skills to take advantage of a favorable political and economic climate. He had the good fortune of governing during an era of economic prosperity when tough decisions about budget cuts and tax increases could be avoided. Bush also faced a majority of legislators who were either Republican or conservative Democrats and predisposed to favor many of his proposals. Governor Perry came into office with a different set of circumstances and initially was in a tougher political position than Bush had been. Perry was not elected governor but rather became governor when Bush resigned, landing him in a battle over redistricting. The 2002 election, however, changed the context from which Perry had to operate. The election also resulted in the Republicans gaining control of the House of Representatives and consequently becoming the majority party in both houses of the legislature for the first time since Reconstruction. Democrats were largely left out of the legislative process and complained about the increased partisanship in Austin under Perry's watch.

## HOW THE TEXAS BUREAUCRACIES ARE ORGANIZED

The plural executive and the creation of numerous boards and commissions have led to a decentralized and fragmented bureaucracy that can be confusing to understand. The Texas bureaucracy is broken into five basic types.

### Elected Executive Officials

All elected executive officials are elected to four-year terms and there are no limits on the number of terms they can serve. Framers of the Texas Constitution wanted these officials accountable to the people.

**The lieutenant governor** does not preside over an executive department, but instead is in the unique position of being part of both the executive and legislative branches. As in most other states, the lieutenant governor succeeds the governor if the governor is not able to finish his term in office. The lieutenant governor also serves as governor temporarily when the governor is out of the state. The lieutenant governor's power stems from his position in the Senate where he presides, appoints all committee chairs, refers bills to committees, and interprets and enforces Senate rules, among other things. The lieutenant governor also sits on several boards and councils, including the Legislative Redistricting Board, the Legislative Budget Board, the Legislative Council, the Legislative Audit Committee, and the Legislative Education Board.

**Attorney General.** The attorney general is the chief lawyer for the state. This means that whenever Texas is a party to a case, the attorney general is responsible for representing the state. The Texas attorney general primarily deals with civil law.

Often the governor, the legislature, or a state agency will ask the attorney general to issue an opinion on the legality of a law, an agency's ruling, or some other action. Once the attorney general issues an advisory opinion, it carries the weight of law, unless it is changed or overruled by statute, judicial decision, or a later attorney general. Because some of the cases the attorney general handles are highly publicized, at times even nationally, the attorney general is usually the highest profile official in state government next to the governor.

**Comptroller of Public Accounts.** The comptroller is the state's chief tax administrator, collector, accountant, and revenue estimator, and plays a critical role in the legislative budget process. Texas has a balanced budget requirement that prohibits the legislature from passing a budget that exceeds expected revenue. As a result, before the budget can go into effect, the comptroller must certify that the budget the legislature passed will not exceed expected revenue. Legislators and others often criticize the comptroller's office for its economic and budget projections because legislators want more flexibility in how much money they can spend.

**Land Commissioner.** The Texas General Land Office, headed by the **land commissioner**, manages 20.4 million acres of state lands and mineral-right properties. The General Land Office leases land for oil and gas production, mining, and grazing. The revenue generated from leasing drilling rights for oil and gas production goes to the state's Permanent School Fund. The land office also manages the Veterans Land Program, which provides low interest loans to veterans to buy land and houses.

**Agriculture Commissioner.** The main responsibility of the agriculture commissioner and the Texas Department of Agriculture is to enforce agriculture laws and promote and protect the agricultural interests of the state. The department carries out a variety of programs and initiatives, such as promoting Texas agricultural products and rural economic development, regulating pesticides and herbicides, and ensuring the accuracy of all weights and measures (like grocery scales or gas pumps).

### **Appointed Executives**

The **secretary of state** is the only constitutional officer appointed by the governor, and is confirmed with a two-thirds vote of the Senate. The secretary of state is best known for administering the state's election laws. This includes training county election officials and ensuring that election laws are applied and interpreted uniformly throughout the state, and maintaining the voter registration records of the state. The office produces the final, official tallies and certifies the election. The secretary of state's responsibilities also include protection of the seal of the state of Texas and attest to the governor's signature. The secretary of state also maintains records related to Texas corporations, state laws and regulations, and publication of the *Texas Register*, which is the official record of state rules, meetings, opinions, and proclamations.

The governor also appoints other executive branch officials, such as the commissioner of education, commissioner of the Department of Health and Human Services, and the executive director of the Office of State-Federal Relations.

### **Boards and Commissions**

Most of the administrative agencies in the state are headed up by boards and commissions.

**Elected Board and Commission.** The Railroad Commission and the State Board of Education are the only executive agencies headed by an elected board or commission, rather than an individual. The **Railroad Commission** was created in 1891 and it originally was established to regulate railroads in Texas. The responsibility of regulating trucks and oil and gas production was added later. The regulating of trucking and railroads, other than rail safety, has been assumed by the federal government, but the Railroad Commission remains a powerful agency within the state because it oversees the oil and gas industry. Its responsibilities include the regulation of gas utilities, oil and gas pipelines, drilling and pumping, and surface mining of coal and uranium. The Commission is charged with caring for the rights of different interest owners, protecting the

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environment, and preventing waste of the state's natural resources. The Commission consists of three members elected in statewide elections to six year, staggered terms.

**The State Board of Education** (SBOE) consists of 15 members elected to four year, staggered terms. Each member is elected from and represents one of the 15 districts in the state. The governor selects one of the members to serve as chair. The board's responsibility is to monitor and coordinate programs and services of primary and secondary public education in Texas, and the board oversees the Texas Education Agency (TEA). The TEA is in charge of developing the statewide curriculum, administering the statewide assessment tests, collecting data on public schools, rating school districts, distributing state and federal funds to schools, and overseeing the textbook adoption process, among other things. The TEA is made up of the commissioner of education and agency staff. The commissioner is appointed by the governor, with the approval of the Senate, from three people recommended by the SBOE.

At times the elections have become heated between candidates from the religious right and the public education establishment who present very different views of what should be taught on issues ranging from sex education to evolution. Much of the controversy over what should be taught and how it should be taught has centered on textbook adoption.

**Ex Officio Boards.** Ex officio boards are composed of members who belong to the board because of another office they hold, such as lieutenant governor or speaker of the House. Ex officio members are on the boards because their office gives them either an expertise or an interest in the area over which the board presides.

**Appointed Boards and Commissions.** Most of the state bureaucracy is headed by boards and commissions whose members are appointed by the governor and confirmed with a two-thirds vote of the Senate. Most members of these boards and commissions are not paid and most serve six-year, staggered terms. The boards hire an executive director to take care of the everyday activities of the agency.

## UNDERSTANDING THE GOVERNOR AND BUREAUCRACY

The decentralized and fragmented nature of the Texas bureaucracy is a reflection of the desire of the framers of the Texas Constitution to protect against the concentration of political power. What this has done, however, is make the bureaucracy more powerful than it otherwise would be because there is no single person or institution responsible for the Texas bureaucracy.

**Bureaucracy and Democracy.** There are a number of things that Texas does to try to exercise democratic control of the bureaucracy. For one thing, Texas voters have more involvement in trying to control the bureaucracy than voters do with the federal government and in many other states. Voters elect the governor, lieutenant governor, attorney general, comptroller of public accounts, land commissioner, agriculture commissioner, and members of the Railroad Commission and the State Board of Education. These officers' concern with reelection keeps these departments aware of what the public wants and of their need to do a good job.

**Governors Try To Control the Bureaucracy.** Talk about gubernatorial power in Texas usually centers on its weakness. These limitations are evident in the governor's ability to control the bureaucracy. The plural executive precludes what would be some of the governor's most important appointments. In addition, the power the governor has to make thousands of appointments is

constrained by the need to get Senate approval, senatorial courtesy, staggered terms in office, and the governor's inability to fire his predecessor's appointees, as well as the difficulty in getting rid of his own. The item veto makes the governor a player in the budget process, with the ability to eliminate different programs and in negotiations to influence the appropriations. The governor can also issue orders that can change the bureaucracy and bureaucratic behavior.

**State Legislature tries to control the Bureaucracy.** The state legislature has similar levers of control over the bureaucracy that Congress has. The Senate influences appointments because it confirms gubernatorial appointments. Agencies, other than those established in the Constitution, are subject to the legislature. The legislature can eliminate or reorganize an agency or can pass laws to change an agency's responsibilities and functions. The legislature controls the purse strings and can reward agencies with bigger budgets that carry out programs the legislature likes.

The **sunset process** is another way the legislature controls the bureaucracy. The Sunset Advisory Commission was created by the legislature in 1977 with the goal of eliminating waste and inefficiency in state agencies. The commission consists of 12 members chosen by the lieutenant governor and speaker of the House, as well as an extensive staff. The commission is mandated to review most state agencies every 12 years. Once the Sunset Advisory Commission is done with the evaluation, it submits a report to the legislature with its recommendations on what to do with the agency. The recommendations may be to abolish the agency, continue the agency, or continue the agency but with changes. The legislature does not have to follow the recommendations of the commission.

**The Public Tries to Control the Bureaucracy.** Public attention to an agency or an issue can be one of the most important democratic controls of the bureaucracy. When the media shine the light of scrutiny on an agency and the agency appears incompetent, inefficient, or corrupt, public pressure can often build on the agency or on elected political actors to make changes to the agency.

Another way the public, as well as government officials, can hold the bureaucracy accountable is through the state's tough **open records** and **open-meetings laws**. Texas has some of the strongest open meetings and open records laws in the nation. These laws hold that what the government does is the public's business and therefore its meetings and its records should be open to the public. Texas' open-meetings laws require meetings of government at all levels in the state to be open to the public. The Texas attorney general is the arbiter when there is conflict between the public's right to know and the government's desire to keep information off limits.

### **The Executive Branch and the Scope of Government**

Traditionally people in Texas have preferred limited government. Government has not been expected to do much in Texas. The public's desire for limited government is supported by the structure of Texas government. The plural executive and the decentralized structure of Texas government have made it difficult for large-scale programs to be adopted and almost ensures that government will rarely provide more than a piecemeal approach to policy problems.

**Whistleblower Protection.** Bureaucrats themselves can check the bureaucracy by reporting wrongdoings or mistakes in their agency. Texas has a whistleblower protection law, however, that protects public employees from recrimination for reporting mistakes or wrongdoings in their agencies to their supervisors. If an employee is subject to reprisals afterwards, the employee is able to sue the agency.

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**Revolving Door Restrictions.** The revolving door is the exchange of personnel between state agencies and those industries they regulate. This occurs when an employee of a state agency gains experience and contacts through his work and then quits the agency to get a better-paying job with the industry that his former agency regulated. The revolving door can also swing the other way, when people who work in industry quit and work for the agency that regulates the industry they were in.

# CHAPTER OUTLINE

## I. The Governor.

- A. Who can become governor?
  - 1. Be an American citizen, a resident of the state for at least five years preceding the election, and be at least 30 years old
  - 2. All Texas governors have been White Protestants and all but two (Miriam Ferguson and Ann Richards) have been men.
  - 3. Most have been well-to-do, and over half have been lawyers.
  - 4. The last four governors have differed from the profile of the typical Texas governor.
    - a. Three have been Republicans.
    - b. One was a woman.
- B. Compensation.
  - 1. Until 1954, the governor's salary was set by the Constitution and salary increases were subject to voter approval and thus low.
  - 2. A constitutional amendment in 1953 allowed the legislature to set gubernatorial pay. Since then, the governor's salary has usually been among the highest in the nation.
- C. How can one become governor?
  - 1. Elections
    - a. The election for governor and most other elections for statewide office are held on the even-numbered years when the president of the United States is not running.
    - b. For most of Texas history, the governor was elected to a two-year term.
    - c. A constitutional amendment passed in 1972 changed the length of term to four years, beginning in 1974.
    - d. Only Governor George W. Bush in 1998 and Governor Rick Perry in 2006 have been reelected to four-year terms.
    - e. There are no term limits in Texas, so the governor can serve for as long as he and the public want.
  - 2. Succession and Impeachment
    - a. If a vacancy occurs in the governorship, the lieutenant governor becomes the governor. This has happened five times in Texas history.
    - b. The impeachment process in Texas is similar to how it occurs at the national level.
      - (1) The process begins in the House of Representatives, where a majority vote is needed to impeach the governor.

- (2) After the impeachment, the case goes before the Senate for a trial; a two-thirds vote of the senators present is necessary to convict and remove the governor from office.
- (3) The state constitution does not specify what constitutes an impeachable offense.
- (4) In Governor Ferguson's case, charges that he misappropriated funds led to his impeachment. However, the calls for his impeachment only began after he angered many legislators by vetoing the University of Texas' appropriations, a retaliation against the university because it had refused Ferguson's demand to fire several professors.
- (5) The current governor, Rick Perry, first became governor because he was the lieutenant governor when George W. Bush resigned in 2000 to become president of the United States.

## II. GUBERNATORIAL POWERS

### A. Legislative Powers

- 1. One of the most important relationships the governor has is with the legislature.
- 2. The Constitution has given the governor a number of important legislative powers that make him a powerful actor in the legislative process.
- 3. One of these powers is to deliver the **State of the State address** and is similar to the State of the Union address the president gives to Congress each year.
  - a. The governor sets out his priorities and goals and tries to focus the legislature and the public on the issues he cares about.
  - b. It also highlights the fact that the governor, more than other politicians in the state, is able to give speeches, hold press conferences, and issue press releases to keep his issues in the public eye and on the legislative agenda.
- 4. The **veto** is what makes the governor a part of the legislative process and a force to be reckoned with.
  - a. When the legislature passes a bill, the governor has ten working days to sign the bill, veto the bill, or let the bill become law without his signature.
  - b. If the legislature adjourns during this ten-day period, the time the governor has to consider the bill is extended to 20 days from the time the legislative session ends.
  - c. The Texas governor does not have a pocket veto, so a bill will become law unless the governor vetoes it.
  - d. The legislature can override a veto with a two-thirds vote of both the House and the Senate.
  - e. The legislature almost never overrides a veto in Texas, because most vetoes occur after the legislature adjourns.
  - f. Because the veto is almost absolute, the governor uses the threat of the veto to persuade legislators to change a bill so it is more to the governor's liking.
  - g. Governors can overuse this power and thus be seen as weak. Perry set a record for a Texas governor by vetoing 82 bills in one session, including 78 in one day.

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5. The Texas governor, as do the governors in 42 other states, has the **item veto** as well.
    - a. The item veto allows governors to veto portions, or lines, of a bill without having to negate the entire bill.
    - b. In Texas, the item veto can only be used on appropriation bills.
    - c. Most major appropriations bills are passed at the end of a legislative session and most of the item vetoes take place after the legislature adjourns.
  6. Another legislative power the governor has is calling a **special session**.
    - a. Only the governor can call a special session.
    - b. The governor is the one that sets the agenda for the special session.
    - c. These special sessions can last for no longer than 30 days but the governor can call as many as he deems necessary.
- B. Appointment Power
1. During a four-year term the governor makes about 3,000 appointments.
  2. Many of these appointments are to the more than 200 administrative boards and commissions.
  3. The governor also has the power to fill vacancies to elected positions if the vacancies take place between elections.
  4. It also provides an opportunity to reward campaign contributors, friends, and supporters.
  5. Recent governors have made a greater effort to appoint people from groups that traditionally have been underrepresented.
  6. A number of restrictions on the governor's appointment power limit the governor's ability to use appointments to influence policy.
    - a. The governor is unable to fire his predecessor's appointees and can only remove his own appointees with the approval of two-thirds vote of the Senate.
    - b. Members of most of the boards and commissions have six-year staggered terms so that one third of the members' terms expires every two years.
    - c. Another check on the governor's appointment power is that his appointees must be confirmed by two-thirds of the Senate.
    - d. **Senatorial courtesy**, a custom that allows the senator from the district the governor's nominee is from to block the governor's selection, forces the governor to check with the relevant senator before making a nomination.
- C. Budgetary Powers
1. The Texas governor has weak budgetary powers compared to the president of the United States and the governors in most other states, because the Legislative Budget Board (LBB) is the one wielding the clout in developing the budget, more than the governor.
    - a. The LBB is a permanent joint committee of the legislature.
    - b. It consists of five members of the House and five members of the Senate, including the Speaker of the House and the lieutenant governor, who serve as co-chairs of the LBB.
    - c. The LBB's proposal usually is the beginning point for the legislature and has more influence in setting the parameters of the budget debate.

2. The most powerful tool the governor has in the budget process is the item veto.
  3. Because of changes and emergencies that take place over Texas' two-year budget cycle, some budget categories will run a surplus, while others may not have enough money. When this occurs, either the governor or the LBB can propose a reduction in spending or a transfer of money in between legislative sessions. Before spending cuts or money transfers occur, however, both the governor and the LBB must agree to them.
- D. Judicial Powers
1. The Texas governor by himself does not have the power to commute sentences.
    - a. Instead Texas has limited the governor so he can only act upon the recommendations of the seven-member Board of Pardons and Paroles to grant reprieves, commutations, and pardons.
    - b. The only formal power the Texas governor has to stop an execution is to issue a 30-day stay of execution.
  2. At one time the governor did have clemency power, but a constitutional amendment in 1936 stripped the governor of these powers. The amendment was in reaction to Governor Miriam A. (Ma) Ferguson who pardoned more than 2,000 persons.
- E. Staff Support
1. Texas governors have extensive staff support that provides information and advice, and performs various tasks. Governors have discretion in whom they hire and how they want to organize their staffs.
  2. The governor hires a legislative liaison, press secretary, ethics advisor, general counsel, and chief of staff, among many others.
  3. Staffers help the governor with his schedule, speeches, budget recommendations to the legislature, legal advice, economic development and tourism, to touch on just a few of the myriad of responsibilities the governor has.
  4. Governors also organize their staffs differently from one another. Some have highly centralized offices and channel information and access to the governor through a strong chief of staff, while others have a more open-door policy.
  5. Although early Texas governors had only a handful of staffers, the staff size for Perry was 266 in 2004.
- F. Gubernatorial Power in Perspective
1. The constitutional powers of the Texas governor are weak in comparison with other governors.
  2. Yet how weak is subject to debate. Different indexes have been created to compare the formal powers of governors.
  3. These studies and others differ in how they categorize governors' powers because their conclusions depend on what they look at and how much emphasis they place on each item.
  4. Much of gubernatorial power is dependent upon the situation and context from which the governor operates. While much of this context is beyond the governor's control, some governors are more effective than others at exercising power and taking advantage of opportunities that arise.

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5. Governor Bush was generally considered an effective governor because he had the political skills to take advantage of a favorable political and economic climate.
  - a. His large election victories proved to legislators his personal popularity and also gave an indication of the public's support for the issues for which he campaigned.
  - b. He had the good fortune of governing during an era of economic prosperity when tough decisions about budget cuts and tax increases could be avoided.
  - c. Bush also faced a majority of legislators who were either Republican or conservative Democrats and predisposed to favor many of his proposals.
  - d. Bush focused on the four main issues he campaigned for when he was elected: improving the public schools, welfare reform, tort reform, and on toughening up the penalty for juvenile offenders. Bills were passed in all four of these areas.
  - e. Many Democrats agreed with Bush's policy proposals and were willing to work with him.
6. Governor Perry came into office with a different set of circumstances and initially was in a tougher political position than Bush had been.
  - a. Perry was not elected governor but rather became governor when Bush resigned, landing him in a battle over redistricting.
  - b. The 82 vetoes he cast show that he did not develop as strong a relationship with legislative leaders and legislators as Bush had. These vetoes also reflect his difficulty and, some would say, unwillingness to work with the legislature.
  - c. The 2002 election, however, changed the context from which Perry had to operate. Perry was no longer an unelected governor. The election also resulted in the Republicans gaining control of the House of Representatives and consequently becoming the majority party in both houses of the legislature.
  - d. Democrats were largely left out of the legislative process and complained about the increased partisanship in Austin under Perry's watch.
  - e. Long-time observers said there had never been such partisan rancor in Austin and many placed the blame on Perry.
  - f. Perry called a special session in 2004 to deal with reforming school finance, the major issue hanging over the 2005 regular session, and Perry called two special sessions in the summer of 2005, all to no avail.

### III. HOW TEXAS BUREAUCRACIES ARE ORGANIZED

- A. The plural executive and the creation of numerous boards and commissions have led to a decentralized and fragmented bureaucracy that can be confusing to understand. The Texas bureaucracy is broken into five basic types: elected executives, appointed executives, elected boards and commissions, ex officio boards, and appointed boards and commissions.
- B. **Elected Executive Officials.** All elected executive officials are elected to four-year terms and there are no limits on the number of terms they can serve.

1. **Lieutenant Governor.**
  - a. Unlike the other elected executive officials in this section, the **lieutenant governor** does not preside over an executive department, but instead is in the unique position of being part of both the executive and legislative branches.
  - b. The lieutenant governor succeeds the governor if the governor is not able to finish his term in office.
  - c. The lieutenant governor also serves as governor temporarily when the governor is out of the state.
  - d. Most of the lieutenant governor's power stems from his position in the Senate where he presides, appoints all committee chairs, refers bills to committees, and interprets and enforces Senate rules, among other things.
  - e. The lieutenant governor also sits on several boards and councils, including the Legislative Redistricting Board, the Legislative Budget Board, the Legislative Council, the Legislative Audit Committee, and the Legislative Education Board.
2. **Attorney General.**
  - a. The attorney general **is the chief lawyer for the state.**
  - b. The attorney general is responsible for representing the state, whether defending the state, state agencies, or its employees in court or representing the state or a state agency when it sues an individual or organization that is not following state laws or regulations.
  - c. The Texas attorney general primarily deals with civil law.
  - d. Often the governor, the legislature, or a state agency will ask the attorney general to issue an opinion on the legality of a law, an agency's ruling, or some other action. Once the attorney general issues an advisory opinion, it carries the weight of law, unless it is changed or overruled by statute, judicial decision, or a later attorney general.
  - e. The attorney general is usually the highest profile official in state government next to the governor. His role is often nationally recognized.
3. **Comptroller of Public Accounts.**
  - a. The comptroller is the state's chief tax administrator, collector, accountant, and revenue estimator, and plays a critical role in the legislative budget process.
  - b. Texas has a balanced budget requirement that prohibits the legislature from passing a budget that exceeds expected revenue.
  - c. Before the budget can go into effect, the comptroller must certify that the budget the legislature passed will not exceed expected revenue.
  - d. Projecting the economic outlook of the state and how much revenue the state will raise for a two-year budget cycle is difficult. Different calculations and forecasts produce different estimates of what the legislature can spend.
  - e. At the beginning of the 2003 legislative session, Carole Keeton Strayhorn, the comptroller at the time, estimated a budget shortfall of \$9.9 billion, which forced state legislators to come up with budget cuts and revenue increases to make up the difference.

- f. After the legislature struggled to agree on a budget that balanced, Strayhorn miffed Republicans by briefly threatening to not certify the new state budget. She further alienated Republican legislators and the governor by criticizing the budget cuts and the fee increases they had passed.
  - g. Recent comptrollers have tried to use this office as a springboard to higher elective office with mixed success.
  4. **Land Commissioner.** The Texas General Land Office, headed by the **land commissioner**, manages 20.4 million acres of state lands and mineral-right properties.
    - a. The General Land Office leases land for oil and gas production, mining, and grazing.
    - b. The revenue generated from leasing drilling rights for oil and gas production goes to the state's Permanent School Fund.
    - c. The land office also manages the Veterans Land Program, which provides low interest loans to veterans to buy land and houses.
  5. **Agriculture Commissioner.** The main responsibility of the agriculture commissioner and the Texas Department of Agriculture is to enforce agriculture laws and promote and protect the agricultural interests of the state.
    - a. The department promotes Texas agricultural products and rural economic development, regulating pesticides and herbicides, and ensuring the accuracy of all weights and measures (like grocery scales or gas pumps).
    - b. The Texas Department of Agriculture has cracked down on childhood obesity by restricting the kinds of food and drinks that can be sold in schools or used at class parties.
- C. Appointed Executives
1. The **secretary of state** is the only constitutional officer appointed by the governor, and is confirmed with a two-thirds vote of the Senate.
    - a. The secretary of state is best known for administering the state's election laws.
    - b. This includes training county election officials and ensuring that election laws are applied and interpreted uniformly throughout the state, and maintaining the voter registration records of the state.
    - c. The office produces the final, official tallies and certifies the election.
    - d. Less public are the secretary of state's responsibilities to protect the seal of the state of Texas and attest to the governor's signature.
    - e. The secretary of state also maintains records related to Texas corporations, state laws and regulations, and publication of the *Texas Register*, which is the official record of state rules, meetings, opinions, and proclamations.
  2. The governor also appoints other executive branch officials, such as the commissioner of education, commissioner of the Department of Health and Human Services, and the executive director of the Office of State-Federal Relations.
- D. Most of the administrative agencies in the state are headed up by boards and commissions. Two of these boards and commissions are elected but the rest are appointed.
1. **Elected Board and Commission**

- a. **The Railroad Commission** was created in 1891 and is the oldest regulatory agency in the state.
    - (1) It originally was established to regulate railroads in Texas. The responsibility of regulating trucks and oil and gas production was added later.
    - (2) The regulating of trucking and railroads, other than rail safety, has been assumed by the federal government, but the Railroad Commission remains a powerful agency within the state because it oversees the oil and gas industry.
    - (3) Its responsibilities include the regulation of gas utilities, oil and gas pipelines, drilling and pumping, and surface mining of coal and uranium. The Commission is charged with caring for the rights of different interest owners, protecting the environment, and preventing waste of the state's natural resources.
    - (4) The Commission consists of three members elected in statewide elections to six-year, staggered terms.
  - b. **The State Board of Education** (SBOE) consists of 15 members elected to four-year, staggered terms.
    - (1) Each member is elected from and represents one of the 15 districts in the state. The governor selects one of the members to serve as chair.
    - (2) The board's responsibility is to monitor and coordinate programs and services of primary and secondary public education in Texas, and the board oversees the Texas Education Agency (TEA).
    - (3) The TEA is in charge of developing the statewide curriculum, administering the statewide assessment tests, collecting data on public schools, rating school districts, distributing state and federal funds to schools, and overseeing the textbook adoption process, among other things.
    - (4) The TEA is made up of the commissioner of education and agency staff. The commissioner is appointed by the governor, with the approval of the Senate, from three people recommended by the SBOE.
    - (5) At times the elections have become heated between candidates from the religious right and the public education establishment who present very different views of what should be taught on issues ranging from sex education to evolution.
    - (6) Much of the controversy over what should be taught and how it should be taught has centered on textbook adoption.
    - (7) An example of how difficult textbook adoption can be occurred when the state decided to replace 11-year old health textbooks with new ones. Two of the major controversies over the health textbooks were sex education and, to a lesser extent, the definition of marriage.
2. Ex Officio Boards
    - a. Ex officio boards are composed of members who belong to the board because of another office they hold, such as lieutenant governor or speaker of the House.

- b. Ex officio boards can consist either entirely or partly of ex officio members.
- c. The Texas Bond Review Board, for example, is made up entirely of ex officio members: governor, lieutenant governor, speaker of the House, and comptroller.
- E. Appointed Boards and Commissions
  - 1. Most of the state bureaucracy is headed by boards and commissions whose members are appointed by the governor and confirmed with a two-thirds vote of the Senate.
  - 2. Most members of these boards and commissions are not paid and most serve six-year, staggered terms.
  - 3. The boards hire an executive director to take care of the everyday activities of the agency.

#### **IV. UNDERSTANDING THE GOVERNOR AND BUREAUCRACY**

- A. The decentralized and fragmented nature of the Texas bureaucracy is a reflection of the desire of the framers of the Texas Constitution to protect against the concentration of political power. What this has done, however, is make the bureaucracy more powerful than it otherwise would be because there is no single person or institution responsible for the Texas bureaucracy.
- B. Bureaucracy and Democracy
  - 1. There are a number of things that Texas does to try to exercise democratic control of the bureaucracy.
  - 2. For one thing, Texas voters have more involvement in trying to control the bureaucracy than voters do with the federal government and in many other states. Voters elect the governor, lieutenant governor, attorney general, comptroller of public accounts, land commissioner, agriculture commissioner, and members of the Railroad Commission and the State Board of Education.
  - 3. Most agencies are led by unelected officials, and of those that are elected most people do not know who they are and what their agencies are doing.
- C. Governors Try to Control Bureaucracy
  - 1. These limitations are evident in the governor's ability to control the bureaucracy. Although the governor has similar powers to control the bureaucracy as the president, the powers are not as strong.
  - 2. The plural executive precludes what would be some of the governor's most important appointments. In addition, the power the governor has to make thousands of appointments is constrained by the need to get Senate approval, senatorial courtesy, staggered terms in office, and the governor's inability to fire his predecessor's appointees, as well as the difficulty in getting rid of his own. During his term, the governor makes appointments to about 3,000 positions, and can put his people into these positions.
  - 3. The budgetary power of the governor is not as strong as that of the president or most other governors, but the item veto makes the governor a player in the budget process, with the ability to eliminate different programs and in negotiations to influence the appropriations.
- D. State Legislature Tries to Control Bureaucracy
  - 1. The Senate influences appointments because it confirms gubernatorial appointments.

2. Agencies, other than those established in the Constitution, are subject to the legislature. The legislature can eliminate or reorganize an agency or can pass laws to change an agency's responsibilities and functions.
  3. The legislature controls the purse strings and can reward agencies with bigger budgets that carry out programs the legislature likes.
  4. Because the legislature is part-time and meets in biennial sessions, the legislature spends less time on oversight of different programs and agencies and allows agencies more discretion and leeway in their operations.
  5. The **sunset process** is another way the legislature controls the bureaucracy.
    - a. The Sunset Advisory Commission was created by the legislature in 1977 with the goal of eliminating waste and inefficiency in state agencies.
    - b. The commission consists of 12 members chosen by the lieutenant governor and speaker of the House, as well as an extensive staff.
    - c. The commission is mandated to review most state agencies every 12 years. About 150 state agencies are subject to the sunset process and between 20 and 30 agencies are reviewed for each legislative session.
    - d. Once the Sunset Advisory Commission is done with the evaluation, it submits a report to the legislature with its recommendations on what to do with the agency.
    - e. The recommendations may be to abolish the agency, continue the agency, or continue the agency but with changes.
    - f. The legislature does not have to follow the recommendations of the commission.
    - g. Supporters of the sunset process point out that between 1982 and 2003, it led to 47 agencies being eliminated and 11 being consolidated for an estimated savings to the state of \$736.9 million.
    - h. Critics of the sunset process argue that it is not as effective as its proponents claim.
- E. The Public Tries to Control the Bureaucracy
1. Public attention to an agency or an issue can be one of the most important democratic controls of the bureaucracy.
  2. When the media shine the light of scrutiny on an agency and the agency appears incompetent, inefficient, or corrupt, public pressure can often build on the agency or on elected political actors to make changes to the agency.
  3. A good example of the media's and the public's role in influencing the bureaucracy was the public's outrage with Child Protective Services (CPS) when stories came to light about mistakes CPS had made that led to the severe abuse and even death of some children.
  4. Another way the public, as well as government officials, can hold the bureaucracy accountable is through the state's tough **open-records** and **open-meetings laws**.
    - a. Texas has some of the strongest open-meetings and open records laws in the nation.
    - b. Texas open-meetings laws require meetings of government at all levels in the state to be open to the public.
    - c. There are exceptions, though. Governmental entities can hold closed-door meetings when discussing real estate transactions, personnel

- issues, or their involvement in litigation, although any formal action is to be open to the public.
  - d. Texas' open-records laws force government to provide access to public records.
  - e. In 2005 the legislature passed a law, pushed by Abbott, requiring public officials at every level of government to be trained on the state's open-meetings and public information laws.
- F. The Executive Branch and the Scope of Government
- 1. Traditionally people in Texas have preferred limited government. Government has not been expected to do much in Texas, as reflected in the state's spending compared to other states.
  - 2. The plural executive and the decentralized structure of Texas government have made it difficult for large-scale programs to be adopted and almost ensures that government will rarely provide more than a piecemeal approach to policy problems.
  - 3. Whistleblower Protection
    - a. Bureaucrats themselves can check the bureaucracy by reporting wrongdoings or mistakes in their agency.
    - b. Texas has a whistleblower protection law, however, that protects public employees from recrimination for reporting mistakes or wrongdoings in their agencies to their supervisors.
  - 4. The **revolving door** is the exchange of personnel between state agencies and those industries they regulate.
    - a. This occurs when an employee of a state agency gains experience and contacts through his work and then quits the agency to get a better-paying job with the industry that his former agency regulated.
    - b. The revolving door can also swing the other way, when people who work in industry quit and work for the agency that regulates the industry they were in.
    - c. Many recognize the revolving door as a problem, and Texas has put in place some revolving door restrictions.

## **KEY TERMS AND CONCEPTS**

**Plural executive:** a structure of government in which independently elected officeholders make up the executive branch.

**State of the State address:** a speech given by the governor at the beginning of a new legislative session.

**Veto:** constitutional power of the governor to reject a bill passed by the legislature. A veto can be overridden with a two-thirds vote of both houses of the legislature.

**Item veto:** allows governors to veto portions of an appropriations bill without rejecting the bill entirely. The item veto can be overridden with a two-thirds vote of both houses of the legislature.

**Special session:** legislative sessions other than the regularly scheduled 140-day biennial sessions. Only the governor can call special sessions and they can last no longer than 30 days.

**Senatorial courtesy:** a custom in the state Senate, whereby the senator who represents the district from which the governor's nominee is selected, can block the governor's nominee from being confirmed.

**Lieutenant governor:** succeeds the governor if a vacancy occurs before the governor's term is up; presides over the Texas Senate.

**Attorney general:** represents the state in court whenever the state is party to a case.

**Comptroller:** the state's chief tax administrator, collector, accountant, and revenue estimator; plays a critical role in the budget process.

**Land commissioner:** in charge of the General Land Office and manages state lands and mineral-right properties.

**Agriculture commissioner:** promotes and protects the agricultural interests of the state and enforces agriculture laws.

**Secretary of state:** the state's chief election administrator.

**Sunset process:** a process in which most state agencies are evaluated every 12 years. If the legislature fails to reauthorize the agency after the review, the agency expires.

**Open meetings:** state laws require government meetings to be open to the public.

**Open records:** state laws require government records and data to be open to the public.

**Revolving door:** exchange of personnel between state agencies and those industries they regulate.

## **TEACHING IDEAS**

- Assign students to research a Texas governor. Students should make a short presentation on their governor and provide pertinent information about his/her accomplishments and/or failures.
- Discuss with students the impeachment of Governor "Pa" Ferguson. Compare his removal with attempts to remove American presidents such as Andrew Johnson or William Clinton.
- Texas has had more than one female governor. Especially examine the governorship of "Ma" Ferguson. Discuss with students why Texas can have a female chief executive but the United States has not yet chosen to do so.
- Discuss with students how many American presidents have served as governors of states previously. Does serving as a governor better prepare a person to serve as president?
- Go to the National Governor's Association. Find several policy issues on the site then compare the Texas governor's stance on these issues. Do they agree with the national association?
- Discuss with students the last five Lieutenant Governors of Texas, particularly William Hobby. Talk about how important these individuals have been in Texas government. Why are they usually less well known but more powerful than the governors?

## **BACKGROUND READING**

Alter, Judy. Miriam "Ma" Ferguson: First Woman Governor of Texas. Abilene, TX: State House Press, 2006.

Conn, Jerry Douglas. Preston Smith: The Making of a Texas Governor. Austin, TX: Jenkins Publishing Company, 1972.

Crawford, Bill. Please Pass the Biscuits, Pappy: Pictures of Governor W. Lee "Pappy" O'Daniel. Austin, TX: The University of Texas Press, 2004.

Gregson, Susan R. Sam Houston: Texas Hero. Minneapolis, MN: Compass Point Books, 2006.

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Hughes, Libby. George W. Bush: From Texas to the White House. New York: Franklin Watts, 2003.

Lubbock, Francis Richard and Cadwell Walton Raines. Six Decades in Texas, or, Memoirs of Francis Richard Lubbock, Governor of Texas in War Time, 1861–63 a Personal Experience in Business, War, and Politics. Ann Arbor, MI: University Microfilms International, 1999.

Siegel, Dorothy Schainman. Ann Richards: Politician, Feminist, Survivor. Springfield, NJ: Enslow Publishers, 1996.

## **ONLINE SOURCES AND MEDIA**

<http://www2.tsl.state.tx.us/trail/agencies.jsp>

Website of TRAIL that has records of Texas State Agencies.

[http://records.txdps.state.tx.us/dps\\_web/Portal/index.aspx](http://records.txdps.state.tx.us/dps_web/Portal/index.aspx)

Website for Texas Department of Public Safety Criminal Records service.

<http://www.texashomelandsecurity.org/>

Website for Texas Homeland Security division.

<http://www.twc.state.tx.us/>

Website for the Texas Workforce Commission.

# CHAPTER TWENTY-SIX: THE TEXAS COURT SYSTEM

## PEDAGOGICAL FEATURES

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- p. 824      ***Texas in Perspective: Texas Leads the Nation in Executions***
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- p. 829      ***Young People and Politics: Take a Community College to Court***
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- p. 834      ***Internet Resources***
- p. 835      ***Getting Connected: Elected or Appointed Judges***
- p. 835      ***Further Reading***

## LEARNING OBJECTIVES:

*After studying this chapter, students should be able to:*

- Detail the various levels of courts in Texas with their jurisdictions from municipal courts through the Supreme Court.
- Explain the methods by which judges are chosen in Texas.
- Analyze the benefits and problems of the way judges are chosen in Texas.
- Understand the various attempts at judicial reform in Texas.
- List the qualifications for judges.
- Understand the various types of law.
- Detail the criminal justice system.
- Explain how a trial works in Texas.
- Understand the various levels of punishment.
- Differentiate between civil and criminal law.
- Understand the role of juries.
- Explain the politicization of the judicial system in Texas.

## **CHAPTER OVERVIEW**

### **STRUCTURE OF THE TEXAS JUDICIARY**

It can be something of misnomer to consider the Texas courts as part of a system. The Texas court system is vast and complex. No single entity oversees the judicial branch of Texas government. In addition, the office of court administration is not very powerful and can only provide advice.

The Texas court system has been described as one of the most complex in the United States. The system consists of both trial courts and appellate courts. The trial courts are broken down into the inferior courts, the county courts, and district courts. The inferior courts are further divided into the justice of the peace courts and municipal courts. There is no uniform jurisdiction among the courts at each level. The appellate courts consist of two levels: the intermediate appellate courts, consisting of the courts of appeals, and the state highest appellate courts, which includes the Court of Criminal Appeals and the Supreme Court, or the two courts of last resort. To further complicate this structure, the county courts also serve as an appeals court for the inferior courts.

**Jurisdiction.** Each level of court in the Texas court system has a specific jurisdiction assigned either by the Texas Constitution or specific statutes. **Jurisdiction** is “the power of a court to consider and decide a particular type of case.” Courts that originally hear a case exercise original jurisdiction while appeals courts exercise appellate jurisdiction. Courts with original jurisdiction hear the facts of a case and apply the law to decide the outcome of the case. Several courts in the Texas court system have original jurisdiction.

#### **Inferior Courts**

The inferior court system is the lowest level of the trial court system, and handles the majority of cases in Texas. The inferior court system persists today as the foundation of the Texas judicial system structure. Two separate court systems make up the inferior courts: the justice of the peace courts and the municipal courts. The Texas Constitution requires each county to maintain between one and eight justice of the peace precincts, depending on the county’s population. Each of these precincts must include one or two justice of the peace courts, also dependent on the precinct’s population. **Justice of the peace** courts have original jurisdiction in misdemeanor criminal cases and in civil matters below a certain value, in addition to other responsibilities. In criminal cases, punishment consists of a fine and/or jail time of less than one year. For civil cases, the courts have exclusive jurisdiction when the amount in controversy does not exceed \$200 and concurrent jurisdiction with county courts when the amount in controversy is more than \$200 but less than \$5,000.

The justice of the peace courts also operate as small claims courts. A small claims court hears cases when the amount of money involved in the case is less than \$5,000. This type of court is not a **court of record**, so appeals must be heard *de novo* by the county courts or the district court. The justice of the peace also serves as a magistrate, issuing warrants for the apprehension and arrest of persons charged with felony or misdemeanor offenses. As a magistrate, the justice of the peace holds preliminary hearings, and may discharge the accused or remand the accused to jail and set bail. The justice of the peace serves as the coroner in counties that do not have a medical examiner and may perform marriage ceremonies. Justices of the peace are elected in partisan elections and serve four-year terms.

The Texas legislature has used its constitutional powers to create municipal courts in the incorporated cities in the state. **Municipal courts** have original and exclusive jurisdiction over criminal violations of municipal **ordinances**. Most of the cases heard by municipal courts involve traffic violations. Municipal courts also have concurrent jurisdiction with justice of the peace courts in certain misdemeanor criminal cases. Municipal court judges also serve as magistrates of the state of Texas. Some municipal courts in the state's largest cities are courts of record, meaning that they employ a court reporter who maintains a transcript of the cases heard by the court. Most municipal courts do not keep a record of their cases. Since only 23 cities have created municipal courts of record, cases heard in most of the municipal courts must be appealed *de novo* to county and district courts. Most municipal court judges are appointed by the governing body of the municipality; others are elected by the voters in a city.

### **County-level Courts**

The next level above the inferior courts is that of the county-level courts. The Constitution established a county-level trial court in each of the 254 counties in the state, with judges who are elected to four-year terms. The **constitutional county courts** hear appeals from the inferior courts, and have jurisdiction over higher-level misdemeanors, probate matters, and civil claims in which the amount in controversy is between \$200.01 and \$5,000. This civil jurisdiction overlaps with the justice of the peace courts. The county judge also serves a legislative function as the presiding officer of the county commissioners' court and an executive function exercising power over all county business.

The legislature established county **courts-at-law** in certain counties. As of March 1, 2006, 218 county courts-at-law had been established in 84 counties and 17 statutory **probate courts** were operating in ten counties to relieve the county judge of some judicial functions. Statutory county courts have either civil or criminal jurisdiction, as determined by the legislative act that established them. Civil jurisdiction is over cases involving less than \$100,000. Criminal jurisdiction includes serious misdemeanors with a punishment of a jail sentence or a fine over \$500. Qualifications for becoming a statutory county judge depend on the statute that created the court and usually include at least four years experience as a practicing attorney. Statutory county court judges are elected to four-year terms.

### **District Courts**

The **district courts** are the chief trial courts of the state. The names of the courts and their jurisdictions vary across the state. As of September 1, 2005, there were 432 district courts in Texas. Each court has one judge, who must be at least 25 years of age, a resident of the district for at least two years, a citizen of the United States, and a licensed practicing attorney or judge for four years. District judges are elected to four-year terms. District courts have general jurisdiction over felony criminal cases and misdemeanors involving official misconduct, divorce cases, election contests. They also have jurisdiction over civil cases in which the matter of controversy exceeds \$200. Civil cases constitute most of the district courts' workload, with felony cases accounting for only one-third of the workload. The geographic area of most district courts is one county. Some of the more populous counties have many district courts, however, and some judicial districts in sparsely-populated areas include more than one county.

### **Appellate Courts**

The appellate-level courts are divided into the courts of appeals, the Texas Court of Criminal Appeals, and the Supreme Court. The first of these, which make up the intermediate appellate courts, are the fourteen courts of appeals. The **courts of appeals** hear appeals in both civil and

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criminal cases from the district- and county-level courts in their region, with the exception of death penalty cases. The state is divided into fourteen districts, each with a court of appeals with a chief justice and at least two other justices. Each justice serves a four-year term. There are currently 80 justices serving on the 14 intermediate courts of appeals. Over half of the appeals came from the state's five largest counties: Harris, Dallas, Tarrant, Bexar, and Travis.

There are two appellate courts of last resorts in Texas: the Court of Criminal Appeals and the Supreme Court. The **Court of Criminal Appeals** hears appeals from death-penalty convictions and denials of bail. It has discretion to review decisions in criminal cases appealed from the courts of appeal, but the Court has the right to refuse to hear an appeal without explanation. Decisions of the Court of Criminal Appeals may be appealed to the United States Supreme Court; however, there is no procedure for appealing to the Texas Supreme Court from the Court of Criminal Appeals. The presiding judge and eight associate judges serve staggered six-year terms.

The Texas **Supreme Court** is the court of last resort in civil and juvenile cases. A constitutional amendment approved by voters in 1980 also gave the Court the authority to regulate the legal profession in the state. The Court's caseload is directly affected by the structure and jurisdiction of Texas' appellate court system. Since the 14 courts of appeals handle most of the criminal and civil appeals from the district- and county-level courts, and the Court of Criminal Appeals handles all criminal appeals from the Courts of Appeals, the Supreme Court's jurisdiction is limited to civil and juvenile cases. The Court's chief justice and eight justices are elected in statewide elections to staggered six-year terms.

## JUDICIAL SELECTION AND REMOVAL

There are three primary methods of judicial selection utilized in the states: election, appointment, or merit selection. Except for some municipal court judges, Texas judges are selected in partisan elections. This reliance on partisan elections makes Texas unique among the states.

### Elected Judges

All judges in the state of Texas, with the exception of municipal court judges in a few cities, are selected in partisan elections. Texas, like many other states that fill judicial offices by election, sometimes encounters a situation known as "**elective-appointive**", whereby judges will retire or resign their seats before their term expires, allowing for a replacement to be appointed. With the growing influence of the Texas Republican Party, more judicial elections were contested because the Republican Party was able to run candidates. The increased competition made judicial campaigns more costly. In response to the rising costs of campaigns, the Texas Legislature passed the **Judicial Campaign Fairness Act** in 1995. This act limits individual contributions to candidates in statewide judicial campaigns to \$5,000 from individuals and \$30,000 from law firms.

### Appointed Judges

While the majority of judges in the Texas judicial system are selected by partisan elections, some positions and some occasions call for the appointment of judges. Municipal judges are frequently appointed by the local governments that they serve, although some cities do still use elections to select judges. In addition, the governor can make appointments to fill vacancies in the district and appellate courts. Similar to the process for federal judges, the governor nominates candidates who then must be approved by the consent of the Senate. Supporters of the appointment method of selecting state judges argue that the governor is better positioned to gauge the qualifications of potential judges. Opponents posit that the governor will appoint only his or her friends or wealthy

campaign contributors, whether or not the potential judge has the qualifications necessary to serve effectively.

**Merit selection**, the third method of selecting state judges, is a hybrid of the other two selection methods, combining gubernatorial appointment with elections. This method is used in a number of states, but not in Texas.

### **Reforming Judicial Selection**

Public opinion indicates the declining support in Texas for an elected judiciary and only slightly stronger support for changing judicial selection. Public opinion polls regularly find that many people, in and out of the judicial system, believe that the judicial system is corrupted by campaign contributions. Despite the concern about partisan judicial elections, the various reform movements that have emerged in the latter decades of the twentieth century have been largely unsuccessful in enacting any changes.

Since the 1980s, these criticisms of judicial selection in Texas have spurred various reform proposals. In 1986, Chief Justice John Hill formed a Committee of 100 to examine judicial selection and judicial campaign financing in Texas. The committee developed a proposal called the “Texas Plan.” The proposal called for a merit system of selection to be used for *all* judges in the Texas judiciary that was the same as the Missouri Plan. The Texas Plan drew strong opposition. Chief Justice Thomas Phillips, Hill’s successor on the Court and a Republican, was an outspoken advocate of reforming the judicial selection process in Texas. Chief Justice Phillips continued the call for changes in the judicial selection process in Texas. He argued that a system including gubernatorial appointment and retention elections would be the best solution. A number of pieces of legislation were introduced in the Texas legislature during the latter years of the twentieth century. The bills all died in the legislature.

### **Retirement and Removal of Judges**

Automatic retirement for old age and judicial removal provisions were added to the Constitution in 1965. District court judges and judges and justices of the appellate courts must retire when they reach age 75. Judges may be removed from office, suspended, censured, or disciplined by the State Commission on Judicial Conduct for incompetence, violation of the Code of Judicial Conduct, violation of the rules of the Texas Supreme Court, or actions that discredit the judiciary or the administration of justice.

## **JUDGES AND JUSTICES IN THE TEXAS JUDICIARY**

### **Qualifications**

The Texas Constitution establishes most of the formal qualifications to serve on the bench. Additional qualifications are stated in the statutes that created the specific court, and thus there is great variety in the qualifications across the entire judicial system. Justices and judges in the appeals courts of Texas must have been licensed to practice law for at least ten years, be citizens of the United States and of Texas, and be at least 35 years old. District judges must have been licensed to practice law in Texas for at least four years, be residents of the judicial district in which they serve for at least two years, and be citizens of the state. Statutory county court judges and probate judges are governed by the statutes that created the courts, but generally must be licensed to practice law. Most also must be residents of the county they will serve and have some experience as practicing attorneys. They also must be at least 25 years of age. In contrast, most constitutional county court judges are not attorneys. The Constitution only requires that they have knowledge of the law.

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Interestingly, there are *no* constitutional or statutory qualifications to serve as a justice of the peace. All judges of municipal courts of record must be licensed attorneys, but judges in other municipal courts do not need to be licensed to practice law. Informal qualifications to serve as a judge or justice include age and experience. The mean age of judges varies little across courts, ranging from 51 to 64 years of age. The judges also have had long careers in law.

### Diversity in the Texas Judiciary

Even though the Texas judiciary is becoming more diversified, it remains largely composed of men (70 percent) and Caucasians (82 percent). Women and members of minority groups are underrepresented in the judicial branch. This has changed somewhat over the last 20 years, and the number of women serving in the Texas judiciary has been growing faster than the number of minority members of the bench. Sharon Keller, the presiding judge of the Court of Criminal Appeals, is the highest ranking Texas state judge. First elected in 1994, she was the first woman to serve on the Court. In 2000, she was elected the Court's presiding judge.

Despite the increase in the number of women judges and judges from minority communities, about 85 percent of all judges in the state of Texas are white. This is the result of the election of judges. In order to be elected judge, a person must be well connected and well established in legal circles. Finally, the partisan composition of the Texas judiciary reflects the rest of Texas government. The courts have become increasingly Republican, especially at the higher-level courts.

## THE LAW AND LEGAL PROCESS

The law in Texas is a unique combination of Spanish and Mexican legal traditions grafted on to Anglo-American legal principles. Most Spanish law can be found in the area of family property law. Texas laws also have to follow any requirements established by federal law. Laws are produced by the political process and enforced by the criminal justice system. In Texas, crimes are defined primarily by the legislature and enforced by local law enforcement.

There are two types of law. Criminal law deals with activities that have been prohibited by the government, and can range from a parking violation up to murder. Punishments may include imprisonment, monetary fines, or, in cases of murder, the death penalty. Civil law deals with private disputes and is based in large part on English common law. These disputes could be between individuals, corporations, or government agencies. Damages may be awarded, but jail or criminal punishment is not an issue. The family is protected by civil law, along with community property rights, common law marriage and the homestead protection.

### Criminal Justice System

Crimes are defined by legislatures, including the Congress, the state legislatures, county commissioner court, and the city council. Criminal law is adaptable, changing as society changes and reacting to society's changing needs. Political culture in Texas favors swift punishment for offenses against the law. Given the high rate of crime in Texas, there also is some concern about the course of justice in prosecuting crimes and protecting society.

The Texas criminal justice system can be divided into three components. The front line in the criminal justice system is law enforcement and criminal prosecution. Law enforcement consists primarily of municipal police, county sheriffs, and the Texas Department of Public Safety. Criminal prosecution functions are performed by district attorneys' offices. The second component in the system is the criminal trial and appeals process involving the court system, public defenders, juries,

and other court activities. Finally, criminal justice involves punishment. In Texas, this is the work of the Texas Department of Criminal Justice and can include incarceration, parole, and capital punishment.

**Crime.** Despite the fact that crime is an issue in national political debate, most crimes are defined by state or local authorities. There are two types of crimes: felonies, which are serious crimes including murder, robbery, burglary, and larceny; and misdemeanors, which are minor crimes. The rules of criminal procedure and the penal code in Texas are written by the legislature and are rarely updated. The Texas Code of Criminal Procedure was last substantially revised in 1965.

**Trial.** Before a serious criminal case, a felony, for example, comes to trial, the accused must be indicted for the crime. In Texas, indictments are determined by grand juries. A prosecuting attorney prepares a formal accusation charging a person or persons with a specific crime and presents it to a grand jury. The grand jury decides if enough evidence exists to merit a trial. If there is enough evidence, the grand jury will issue an indictment. If the grand jury does not believe there is enough evidence, the accused is released.

If a person is indicted, he or she may request to be released from custody for the duration of the trial. He/she can be released on personal recognizance or bail, a monetary guarantee that the accused will appear for trial.

Before a case goes to trial, the accused is asked to enter a plea. An accused person may plead guilty, avoid the trial, and go directly to the penalty phase of the case. A defendant may also plead guilty to a lesser charge, in order to avoid the more severe punishment he or she would have received if found guilty of the more severe charge. By pleading *nolo contendere* (no contest), the accused can avoid a trial and assumes no guilt, but still receives some form of punishment. If the defendant pleads not guilty, the case proceeds to a trial.

The first step in a trial is the selection of a jury. The jury is then presented with the indictment. Opening statements are made by both sides and then the state (the prosecution) presents its case. The defense makes its case and both sides are allowed to present testimony that challenges the testimony presented by the other side. When both sides finish presenting their cases, the judge instructs the jury and the jury moves to the jury room to deliberate. If the jury finds that the state proved beyond a reasonable doubt that the defendant committed the offense charged, the trial then proceeds to the punishment phase. If the defendant is found not guilty, he or she is free to go.

**Punishment.** If the defendant is found guilty or has entered a plea bargain, the convicted person could be assessed a monetary fine, incarceration in a correctional facility, or both. Misdemeanors carry a fine only or both a fine and incarceration, depending on the crime. A person convicted of a misdemeanor will serve no more than a year in the county jail. Felonies have fines of up to \$10,000 and a range of incarceration from 180 days to two years in state jail facilities, two years to life in state penitentiaries, or the death penalty.

Two other possible punishments include community supervision (formerly known as “probation”) and deferred adjudication. Under **community supervision**, a convicted person may be allowed to live in his or her home as long as he or she complies with court-ordered terms of probation. The maximum period of community supervision is ten years in a felony case and two years in a misdemeanor case. The advantage presented by community supervision is that the convicted person remains a contributing member of society while serving his or her sentence for committing a crime,

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while the state saves money by not incarcerating the person. **Deferred adjudication** occurs when the defendant enters a plea of guilty but there is no finding of guilt by a court. The person must comply with conditions similar to those of a person under community supervision. If the defendant successfully completes the supervision period, the judge dismisses the proceedings and the defendant is released.

**Parole** is early release from prison before a full sentence has been served. A prisoner can earn time off his or her sentence through the award of “good conduct time.” Prisoners released on parole remain under the supervision of the Parole Division of the Texas Department of Criminal Justice and are subject to be sentenced to prison if the terms of the parole are not met. The decision whether to grant parole is made by the Texas Board of Pardons and Paroles.

## Civil Law in Texas

A civil lawsuit is brought by a plaintiff, the person allegedly harmed by the actions of the defendant. The plaintiff outlines the complaint in the lawsuit and the type of remedy sought. The defendant then must respond to the plaintiff’s claims in a written pleading. The defendant has the opportunity to make counterclaims and even ask for damages. After the exchange of pleadings, the case moves into the discovery phase. In discovery, the plaintiff and defendant ask for and receive information about the incident or incidents at controversy in the suit. The end result of a civil trial is a finding of whether or not the defendant was negligent in dealing with the plaintiff and how much reimbursement the defendant may owe to the plaintiff for that negligence.

## Appeals

An appeal generally occurs after a conviction when the defendant asks a higher court to determine whether errors were committed during the trial. The results of civil trials also may be appealed. The appellate courts do not decide guilt or innocence, but instead decide, without a jury, questions of procedure about the prior trial. If the court finds errors were committed during the trial, the original conviction is thrown out and a new trial ordered. Appeals in criminal cases may end up in the Court of Criminal Appeals, the state’s court of last resort, for appeals in criminal cases. Civil appeals are heard by the Texas Supreme Court.

## Jury Duty

Jury service is an important duty exercised by American citizens, because juries are one of the foundations of American democracy. Jury service begins with a summons from the county sheriff to report on the specified day to the county courthouse. Failure to answer a jury summons may result in being held in contempt of court. Names are randomly selected for a particular jury pool from a list of registered voters and people who have registered their cars. To be eligible to serve as a juror, a person must be a citizen of the United States and of the state of Texas, be at least 18 years of age, reside in the county of jury service, be able to read and write, and be of sound mind. The process of selecting the jurors is called *voir dire*. Through a process of questioning, both sides of the case try to eliminate jurors they believe may be prejudiced toward the parties or have some connection with the parties in the case. The attorneys also may ask jurors about their opinions on certain issues like drug use or the death penalty. Each side in the case may strike a certain number of jurors, until a proper jury is selected. Jury service can be a burden to some people. Employers are not required to pay people while they miss work to serve on a jury, but employers are not allowed to fire a person just for missing work to serve on a jury.

## **UNDERSTANDING THE TEXAS COURT SYSTEM**

The judicial branch of a government typically is considered the weakest branch. It also can be the branch that is the least democratic and distant from the people.

### **Democracy and Reforming the Texas Court System**

While the judges who serve on courts in Texas are democratically elected, they are not representative of the population of the state. Many Texans are concerned that campaign financing, party affiliation, and name recognition are the primary factors in determining whether a person is elected to a judgeship. The funding of judicial campaigns in the state of Texas has received national attention. Money is becoming a more significant factor in who is elected. In short, campaigns for Texas courts resemble campaigns for the Texas legislature. There is concern that the at-large system of electing judges also prevents adequate representation by making it difficult for qualified minority candidates to be elected to the bench.

There have been numerous attempts to change the method of selecting judges. All of these proposals have been rejected. Public opinion surveys regularly find that Texas residents believe the state's judicial system has significant flaws.

### **The Texas Judiciary and Policymaking**

The federal judiciary has a much more extensive, and apparent, role in policymaking than the Texas judiciary does. In fact, candidates for Texas judicial positions often campaign on their unwillingness to use their positions to enact policy positions.

The Texas Supreme Court outlined its standards for interpreting the Texas Constitution in a number of decisions starting with the famous 1989 school financing case *Edgewood v. Kirby*. The Court began by stating that the Constitution derives its force from the people of Texas. The Texas Supreme Court has increasingly played an active role in shaping broader public policies and addressing significant constitutional issues. The *Edgewood v. Kirby* school financing case is one of the more famous examples of the Court taking a more active role in policymaking. In this ruling, the Court ordered major, fundamental changes in financing public education to provide more equity between rich and poor districts, but it ordered the democratically elected Texas Legislature to find the solution.

## **CHAPTER OUTLINE**

### **I. THE STRUCTURE OF THE TEXAS JUDICIARY**

- A. The Texas court system is outlined in Article V of the Texas Constitution. The Constitution provides that judicial power "shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in Commissioners Courts, in courts of Justices of the Peace and in such other courts as may be provided by law."
- B. The Texas court system is vast and complex.
  - 1. No single entity oversees the judicial branch of Texas government.
  - 2. The Texas court system has been described as one of the most complex in the United States.
  - 3. The system consists of both trial courts and appellate courts.

- a. The trial courts are broken down into the inferior courts, the county courts, and district courts.
- b. The inferior courts are further divided into the justice of the peace courts and municipal courts.
- c. The appellate courts consist of two levels: the intermediate appellate courts, made up of the courts of appeals, and the State Highest Appellate Courts, which includes the Court of Criminal Appeals and the Supreme Court, or the two courts of last resort.

C. **Jurisdiction.**

1. Each level of court in the Texas court system has a specific jurisdiction assigned either by the Texas Constitution or specific statutes.
2. **Jurisdiction** is “the power of a court to consider and decide a particular type of case.”
3. Courts that originally hear a case exercise original jurisdiction while appeals courts exercise appellate jurisdiction.
4. Courts with original jurisdiction hear the facts of a case and apply the law to decide the outcome of the case.
5. In several instances, two different types of courts have original jurisdiction in the same type of case, a situation described as concurrent jurisdiction.

D. **Inferior Courts**

1. The inferior court system is the lowest level of the trial court system, and handles the majority of cases in Texas. The inferior court system persists today as the foundation of the Texas judicial system structure.
2. **Justice of the peace** courts have original jurisdiction in misdemeanor criminal cases and in civil matters below a certain value, in addition to other responsibilities.
  - a. The Texas Constitution requires each county to maintain between one and eight justice of the peace precincts, depending on the county’s population. Each of these precincts must include one or two justice of the peace courts, also dependent on the precinct’s population.
  - b. Misdemeanor criminal cases punishment consists of a fine and/or jail time of less than one year.
  - c. For civil cases, the courts have exclusive jurisdiction when the amount in controversy does not exceed \$200, and concurrent jurisdiction with county courts when the amount in controversy is more than \$200 but less than \$5,000.
  - d. The justice of the peace courts operate as small claims courts.
  - e. This type of court is not a **court of record**, so appeals must be heard *de novo* by the county courts or the district court.
  - f. The justice of the peace also serves as a magistrate, issuing warrants for the apprehension and arrest of persons charged with felony or misdemeanor offenses.
  - g. The justice of the peace holds preliminary hearings, and may discharge the accused or remand the accused to jail and set bail.
  - h. The justice of the peace serves as the coroner in counties that do not have a medical examiner and may perform marriage ceremonies.
  - i. Justices of the peace are elected in partisan elections and serve four-year terms. As of September 1, 2005, 826 justice of the peace courts were in operation.

3. The Texas Legislature has used its constitutional powers to create municipal courts in the incorporated cities in the state. **Municipal courts** have original and exclusive jurisdiction over criminal violations of municipal **ordinances**.
  - a. Most of the cases heard by municipal courts involve traffic violations.
  - b. Municipal courts also have concurrent jurisdiction with justice of the peace courts in certain misdemeanor criminal cases.
  - c. Municipal court judges also serve as magistrates of the state of Texas.
  - d. Some municipal courts in the state's largest cities are courts of record, but most are not.
  - e. Most municipal court judges are appointed by the governing body of the municipality; others are elected by the voters in a city.
- E. **County-level courts.**
  1. The **constitutional county courts** hear appeals from the inferior courts, and have jurisdiction over higher-level misdemeanors, probate matters, and civil claims in which the amount in controversy is between \$200.01 and \$5,000. This civil jurisdiction overlaps with the justice of the peace courts.
    - a. The Constitution established a county-level trial court in each of the 254 counties in the state, with judges who are elected to four-year terms.
    - b. The county judge also serves a legislative function as the presiding officer of the county commissioners' court and an executive function exercising power over all county business.
  2. The legislature established county **courts-at-law** in certain counties.
    - a. As of March 1, 2006, 218 county courts-at-law had been established in 84 counties and 17 statutory **probate courts** were operating in 10 counties to relieve the county judge of some judicial functions.
    - b. Statutory county courts have either civil or criminal jurisdiction, as determined by the legislative act that established them.
    - c. Civil jurisdiction is over cases involving less than \$100,000.
    - d. Criminal jurisdiction includes serious misdemeanors with a punishment of a jail sentence or a fine over \$500.
    - e. Qualifications for becoming a statutory county judge depend on the statute that created the court and usually include at least four years experience as a practicing attorney. Statutory county court judges are elected to four-year terms.
  3. The **district courts** are the chief trial courts of the state.
    - a. As of September 1, 2005, there were 432 district courts in Texas.
    - b. Each court has one judge, who must be at least 25 years of age, a resident of the district for at least two years, a citizen of the United States, and a licensed practicing attorney or judge for four years.
    - c. District judges are elected to four-year terms.
    - d. District courts have general jurisdiction over felony criminal cases and misdemeanors involving official misconduct, divorce cases, election contests.
    - e. They also have jurisdiction over civil cases in which the matter of controversy exceeds \$200. Civil cases constitute most of the district courts' workload, with felony cases accounting for only one-third of the workload.

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- f. The geographic area of most district courts is one county. Some of the more populous counties have many district courts.
  - g. District courts in metropolitan areas tend to specialize in criminal, civil, or family law matters.
- F. Appellate Courts
- 1. The appellate-level courts are divided into the courts of appeals, the Texas Court of Criminal Appeals, and the Supreme Court.
  - 2. The **courts of appeals** hear appeals in both civil and criminal cases from the district- and county-level courts in their region, with the exception of death penalty cases.
    - a. The state is divided into 14 districts, each with a court of appeals with a chief justice and at least two other justices.
    - b. Each justice serves a four-year term.
    - c. There are currently 80 justices serving on the 14 intermediate courts of appeals.
    - d. The intermediate courts of appeals are busy workplaces.
    - e. Over half of the appeals come from the state's five largest counties: Harris, Dallas, Tarrant, Bexar and Travis.
  - 3. There are two appellate courts of last resort in Texas: the Court of Criminal Appeals and the Supreme Court.
  - 4. The **Court of Criminal Appeals** hears appeals from death-penalty convictions and denials of bail.
    - a. It has discretion to review decisions in criminal cases appealed from the courts of appeal, but the Court has the right to refuse to hear an appeal without explanation.
    - b. Decisions of the Court of Criminal Appeals may be appealed to the United States Supreme Court.
    - c. The presiding judge and eight associate judges serve staggered six-year terms.
    - d. In 2005, applications for writs of *habeas corpus* accounted for 88 percent of the Court's mandatory caseload. State law requires the Court to review some types of cases if they are appealed.
  - 5. The Texas **Supreme Court** is the court of last resort in civil and juvenile cases.
    - a. A constitutional amendment approved by voters in 1980 also gave the Court the authority to regulate the legal profession in the state.
    - b. Since the 14 courts of appeals handle most of the criminal and civil appeals from the district and county-level courts, and the Court of Criminal Appeals handles all criminal appeals from the Courts of Appeals, the Supreme Court's jurisdiction is limited to civil and juvenile cases.
    - c. The Court's chief justice and eight justices are elected in statewide elections to staggered six-year terms.

## II. JUDICIAL SELECTION AND REMOVAL

- A. There are three primary methods of judicial selection utilized in the states: election, appointment, or merit selection. Except for some municipal court judges, Texas judges are selected in partisan elections.
- B. **Elected Judges**

1. All judges in the state of Texas, with the exception of municipal court judges in a few cities, are selected in partisan elections.
2. Support for the election of judges comes from people who believe that elections keep judges from becoming too independent of the desires or opinions of Texas voters because they have to face the voters on a regular basis.
3. Opponents of judicial elections argue that elections make judges less independent and more willing to rule in favor of whoever provides the largest campaign contribution.
4. Texas sometimes encounters a situation known as "**elective-appointive**," whereby judges will retire or resign their seats before their term expires, allowing for a replacement to be appointed. The replacement has the luxury of running as an incumbent in the next election.
5. With the growing influence of the Texas Republican Party, more judicial elections were contested because the Republican Party was able to run candidates. The increased competition made judicial campaigns more costly.
6. In response to the rising costs of campaigns, the Texas Legislature passed the **Judicial Campaign Fairness Act** in 1995. This act limits individual contributions to candidates in statewide judicial campaigns to \$5,000 from individuals and \$30,000 from law firms.

C. **Appointed Judges**

1. While the majority of judges in the Texas judicial system are selected by partisan elections, some positions and some occasions call for the appointment of judges.
2. Municipal judges are frequently appointed by the local governments that they serve.
3. In addition, the governor can make appointments to fill vacancies in the district and appellate courts.
4. The governor nominates candidates who then must be approved by the consent of the Senate.
5. Supporters of the appointment method of selecting state judges argue that the governor is better positioned to gauge the qualifications of potential judges.
6. Opponents posit that the governor will appoint only his or her friends or wealthy campaign contributors, whether or not the potential judge has the qualifications necessary to serve effectively.

D. **Merit selection**, the third method of selecting state judges, is a hybrid of the other two selection methods, combining gubernatorial appointment with elections. This method is used in a number of states, but not in Texas.

E. **Reforming Judicial Selection**

1. Public opinion indicates the declining support in Texas for an elected judiciary and only slightly stronger support for changing judicial selection.
2. The Justice at Stake Campaign's 2001 survey found that half of the Texas judges reported being dissatisfied with the tone and conduct of judicial campaigns.
3. Public opinion polls regularly find that many people, in and out of the judicial system, believe that the judicial system is corrupted by campaign contributions.
4. In 1986, Chief Justice John Hill formed a Committee of 100 to examine judicial selection and judicial campaign financing in Texas. The committee

developed a proposal called the “Texas Plan.” The proposal called for a merit system of selection to be used for *all* judges in the Texas judiciary that was the same as the Missouri Plan. It failed.

5. Chief Justice Thomas Phillips, Hill’s successor on the Court and a Republican, was an outspoken advocate of reforming the judicial selection process in Texas. Chief Justice Phillips continued the call for changes in the judicial selection process in Texas. He argued that a system including gubernatorial appointment and retention elections would be the best solution.
  6. A number of pieces of legislation were introduced in the Texas legislature during the latter years of the twentieth century. The bills all died in the legislature.
- F. Retirement and Removal of Judges**
1. Automatic retirement for old age and judicial removal provisions were added to the constitution in 1965.
  2. District court judges and judges and justices of the appellate courts must retire when they reach age 75.
  3. Judges may be removed from office, suspended, censured, or disciplined by the State Commission on Judicial Conduct for incompetence, violation of the Code of Judicial Conduct, violation of the rules of the Texas Supreme Court, or actions that discredit the judiciary or the administration of justice.
  4. In May 2006, the State Commission on Judicial Conduct issued a reprimand to Texas Supreme Court Justice Nathan Hecht.

### **III. JUDGES AND JUSTICES IN THE TEXAS JUDICIARY**

**A. Qualifications.**

1. The Texas Constitution establishes most of the formal qualifications to serve on the bench.
2. Additional qualifications are stated in the statutes that created the specific court, and thus there is great variety in the qualifications across the entire judicial system.
3. Justices and judges in the appeals courts of Texas must have been licensed to practice law for at least ten years, be citizens of the United States and of Texas, and be at least 35 years old.
4. District judges must have been licensed to practice law in Texas for at least four years, be residents of the judicial district in which they serve for at least two years, and be citizens of the state.
5. Statutory county court judges and probate judges are governed by the statutes that created the courts, but generally must be licensed to practice law. Most also must be residents of the county they will serve and have some experience as practicing attorneys. They also must be at least 25 years of age. In contrast, most constitutional county court judges are not attorneys.
6. There are *no* constitutional or statutory qualifications to serve as a justice of the peace. All judges of municipal courts of record must be licensed attorneys, but judges in other municipal courts do not need to be licensed to practice law.
7. Informal qualifications to serve as a judge or justice include age and experience. The mean age of judges varies little across courts, ranging from 51 to 64 years of age. The judges also have had long careers in law.

**B. Diversity in the Texas Judiciary**

1. Even though the Texas judiciary is becoming more diversified, it remains largely composed of men (70 percent) and Caucasians (82 percent).
2. Women and members of minority groups are underrepresented in the judicial branch.
3. In 1925, Governor Pat M. Neff appointed three women attorneys to the Texas Supreme Court to hear a single case.
4. Sarah T. Hughes of Dallas was appointed the state's first female judge in 1931.
5. Sharon Keller, the presiding judge of the Court of Criminal Appeals, is the highest ranking Texas state judge.
6. Despite the increase in the number of women judges and judges from minority communities, about 85 percent of all judges in the state of Texas are white. This is the result of the election of judges.
7. Most minority leaders advocate electing judges from small districts that may be represented by a single judge.
8. Finally, the partisan composition of the Texas judiciary reflects the rest of Texas government. The courts have come increasingly Republican, especially at the higher-level courts.

#### **IV. THE LAW AND LEGAL PROCESS**

- A. The law in Texas is a unique combination of Spanish and Mexican legal traditions grafted on to Anglo-American legal principles. Most Spanish law can be found in the area of family property law. In Texas, crimes are defined primarily by the legislature and enforced by local law enforcement.
- B. There are two types of law.
  - a. Criminal law deals with activities that have been prohibited by the government, and can range from a parking violation up to murder. Punishments may include imprisonment, monetary fines, or, in cases of murder, the death penalty.
  - b. Civil law deals with private disputes and is based in large part on English common law. These disputes could be between individuals, corporations, or government agencies. Damages may be awarded, but jail or criminal punishment is not an issue. The family is protected by civil law, along with community property rights, common law marriage and the homestead protection.
- C. **Criminal Justice System**
  1. Crimes are defined by legislatures, including the Congress, the state legislatures, county commissioner court, and the city council.
  2. The Texas criminal justice system can be divided into three components.
    - a. The front line in the criminal justice system is law enforcement and criminal prosecution. Law enforcement consists primarily of municipal police, county sheriffs, and the Texas Department of Public Safety. Criminal prosecution functions are performed by district attorneys offices.
    - b. The second component in the system is the criminal trial and appeals process involving the court system, public defenders, juries, and other court activities.

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- c. Finally, criminal justice involves punishment. In Texas, this is the work of the Texas Department of Criminal Justice and can include incarceration, parole, and capital punishment.
- 3. Crime.
  - a. Most crimes are defined by state or local authorities.
  - b. There are two types of crimes: felonies, which are serious crimes including murder, robbery, burglary, and larceny; and misdemeanors, which are minor crimes.
  - c. The rules of criminal procedure and the penal code in Texas are written by the legislature and are rarely updated. The Texas Code of Criminal Procedure was last substantially revised in 1965
- 4. Trial.
  - a. Before a serious criminal case, a felony, for example, comes to trial, the accused must be indicted for the crime.
  - b. In Texas, indictments are determined by grand juries.
  - c. A prosecuting attorney, usually the district attorney an assistant district attorney, prepares a formal accusation charging a person or persons with a specific crime and presents it to a grand jury.
  - d. The grand jury decides if enough evidence exists to merit a trial.
  - e. If there is enough evidence, the grand jury will issue an indictment. If the grand jury does not believe there is enough evidence, the accused is released.
  - f. If a person is indicted, he or she may request to be released from custody for the duration of the trial.
    - (1) Such a person may be granted release on personal recognizance, a promise to appear as ordered for trial. Personal recognizance usually is only granted when the crime was not violent and if the accused has a good reputation as a responsible citizen and does not pose a flight risk.
    - (2) Other defendants may be released on bail, a monetary guarantee that the accused will appear for trial.
    - (3) When the risk of flight is very great, the defendant is denied bail and must remain in the jail until the disposition of the case.
  - g. Before a case goes to trial, the accused is asked to enter a plea.
    - (1) An accused person may plead guilty, avoid the trial, and go directly to the penalty phase of the case.
    - (2) A defendant may also plead guilty to a lesser charge, in order to avoid the more severe punishment he or she would have received if found guilty of the more severe charge.
    - (3) By pleading *nolo contendere* (no contest), the accused can avoid a trial and assumes no guilt, but still receives some form of punishment.
    - (4) If the defendant pleads not guilty, the case proceeds to a trial.
  - h. Process of a criminal trial.
    - (1) The first step in a trial is the selection of a jury.
    - (2) The jury is then presented with the indictment.
    - (3) Opening statements are made by both sides and then the state (the prosecution) presents its case.

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- (4) The defense makes its case and both sides are allowed to present testimony that challenges the testimony presented by the other side.
  - (5) When both sides finish presenting their cases, the judge instructs the jury and the jury moves to the jury room to deliberate.
  - (6) If the jury finds that the state proved beyond a reasonable doubt that the defendant committed the offense charged, the trial then proceeds to the punishment phase. If the defendant is found not guilty, he or she is free to go.
5. Punishment.
  - a. If the defendant is found guilty or has entered a plea bargain, the convicted person could be assessed a monetary fine, incarceration in a correctional facility, or both.
  - b. Misdemeanors carry a fine only or both a fine and incarceration, depending on the crime. A person convicted of a misdemeanor will serve no more than a year in the county jail.
  - c. Felonies have fines of up to \$10,000 and a range of incarceration from 180 days to two years in state jail facilities, two years to life in state penitentiaries, or the death penalty.
  - d. Under **community supervision**, a convicted person may be allowed to live in his or her home as long as he or she complies with court-ordered terms of probation.
    - (1) The maximum period of community supervision is ten years in a felony case and two years in a misdemeanor case.
    - (2) Conditions of community supervision include prohibiting the defendant from committing additional criminal acts, requiring the defendant to report regularly to a supervision officer, and permitting the supervision officer to visit the defendant's home and other places frequented by the defendant.
    - (3) The convicted person also must agree to remain at a certain place, continue to work at gainful employment, and pay all restitution and fines and court costs.
    - (4) The advantage presented by community supervision is that the convicted person remains a contributing member of society while serving his or her sentence for committing a crime, while the state saves money by not incarcerating the person.
  - e. **Deferred adjudication** occurs when the defendant enters a plea of guilty but there is no finding of guilt by a court.
    - (1) The person must comply with conditions similar to those of a person under community supervision.
    - (2) If the defendant successfully completes the supervision period, the judge dismisses the proceedings and the defendant is released.
    - (3) If the defendant violates the terms of the deferred adjudication, he or she is subject to the adjudication of guilt on the original charge.

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6. Parole.
  - a. **Parole** is early release from prison before a full sentence has been served.
  - b. A prisoner can earn time off his or her sentence through the award of "good conduct time."
  - c. Prisoners released on parole remain under the supervision of the Parole Division of the Texas Department of Criminal Justice and are subject to be sentenced to prison if the terms of the parole are not met.
  - d. The decision whether to grant parole is made by the Texas Board of Pardons and Paroles.
- C. **Civil Law in Texas.**
  1. Even though the outcome of civil cases does not include incarceration, the decisions made in civil cases can deeply affect lives and destroy businesses.
  2. In Texas, criminal cases involving juveniles are treated as civil cases.
  3. A civil lawsuit is brought by a plaintiff, the person allegedly harmed by the actions of the defendant.
    - a. The plaintiff outlines the complaint in the lawsuit and the type of remedy sought.
    - b. The defendant then must respond to the plaintiff's claims in a written pleading.
    - c. The defendant has the opportunity to make counterclaims and even ask for damages.
    - d. In discovery, the plaintiff and defendant ask for and receive information about the incident or incidents at controversy in the suit.
    - e. A civil trial may have a jury or the parties may elect to allow the judge to make the ruling. In either situation, the end result of a civil trial is a finding of whether or not the defendant was negligent in dealing with the plaintiff and how much reimbursement the defendant may owe to the plaintiff for that negligence
- D. **Appeals.**
  1. An appeal generally occurs after a conviction when the defendant asks a higher court to determine whether errors were committed during the trial.
  2. The appellate courts do not decide guilt or innocence, but instead decide, without a jury, questions of procedure about the prior trial.
  3. If the court finds errors were committed during the trial, the original conviction is thrown out and a new trial ordered.
  4. Appeals in criminal cases may end up in the Court of Criminal Appeals, the state's court of last resort for appeals in criminal cases.
  5. Civil appeals are heard by the Texas Supreme Court.
- E. **Jury Duty**
  1. Jury service is an important duty exercised by American citizens, because juries are one of the foundations of American democracy.
  2. Jury service begins with a summons from the county sheriff to report on the specified day to the county courthouse. Failure to answer a jury summons may result in being held in contempt of court, punishable by a fine of not less than \$100 nor more than \$1,000, in addition to any criminal penalty.
  3. To be eligible to serve as a juror, a person must be a citizen of the United States and of the state of Texas, be at least 18 years of age, reside in the county of jury service, be able to read and write, and be of sound mind.

- Persons who have been convicted of a felony or any type of theft cannot serve on a jury.
4. The process of selecting the jurors is called *voir dire*.
    - a. Through a process of questioning, both sides of the case try to eliminate jurors they believe may be prejudiced toward the parties or have some connection with the parties in the case.
    - b. Each side in the case may strike a certain number of jurors, until a proper jury is selected.
    - c. The jurors listen to both sides present their cases.
    - d. In civil cases, jurors usually are asked to answer a series of questions about the degree of negligence permitted by the defendant.
    - e. In criminal cases, jurors are asked to make a general statement of guilt.
    - f. Jurors in capital murder cases also may be asked to determine the punishment of the convicted person.
  5. Jury service can be a burden to some people.
    - a. Employers are not required to pay people while they miss work to serve on a jury, but employers are not allowed to fire a person just for missing work to serve on a jury.
    - b. In 2005, the Texas legislature voted to increase the amount of jury pay from \$6 per day to \$40 after the first day of service, but jurors are still paid \$6 for the first day of service.

## V. UNDERSTANDING THE TEXAS COURT SYSTEM

### A. Democracy and Reforming the Texas Court System

1. While the judges who serve on courts in Texas are democratically elected, they are not representative of the population of the state.
2. Many Texans are concerned that campaign financing, party affiliation, and name recognition are the primary factors in determining whether a person is elected to a judgeship.
3. Judges elected through direct, partisan elections must organize electoral campaigns and run for office just like any other person seeking an elected office.
4. Candidates must follow the Code of Judicial Conduct that specifies that prospective judges may not make pledges or promises regarding specific issues or cases.
5. The funding of judicial campaigns in the state of Texas has received national attention. Despite the fact that judicial candidates are subject to contribution and expenditure limitations, Supreme Court candidates are able to build large war chests.
6. The large amounts of money some individuals and groups contribute to judicial campaigns make judicial elections seem less democratic.
7. There is concern that the at-large system of electing judges also prevents adequate representation by making it difficult for qualified minority candidates to be elected to the bench.
8. There have been numerous attempts to change the method of selecting judges. All of these have failed.

### B. The Texas Judiciary and Policymaking

1. Candidates for Texas judicial positions often campaign on their unwillingness to use their positions to enact policy positions.

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2. The Texas Supreme Court outlined its standards for interpreting the Texas Constitution in a number of decisions starting with the famous 1989 school financing case *Edgewood v. Kirby*.
3. Despite the historic claims that the Court only interprets the Constitution, the Texas Supreme Court has increasingly played an active role in shaping broader public policies and addressing significant constitutional issues.

## **KEY TERMS AND CONCEPTS**

**Jurisdiction:** the types of cases that courts may hear. There are two types of jurisdiction: original and appellate.

**Justice of the peace courts:** local courts that administer criminal or civil justice in minor cases, administer oaths, fix bail, perform marriages, and so on.

**Court of record:** a court that maintains a permanent record of its proceedings.

**De novo:** a new trial. In appeals from courts that are not courts of record, the defendant is allowed a new trial in the county courts.

**Municipal courts:** local courts whose jurisdiction includes adjudicating violations of city ordinances. Municipal courts share some jurisdiction with justice of the peace courts.

**Ordinance:** a statute or regulation enacted by a municipal government.

**Constitutional county court:** county court established by the Texas Constitution and presided over by the county judge. The court has limited criminal and civil jurisdiction.

**County courts-at-law:** county courts created by legislative action and designed to reduce the workload of the constitutional county courts.

**Probate courts:** county courts created by legislative action to determine the disposition of wills.

**District courts:** trial courts of general jurisdiction in the state of Texas. Each county is served by at least one district court, the boundaries of which are determined by the legislature.

**Courts of appeals:** intermediate appellate courts in the state of Texas that hear appeals from the district courts.

**Court of Criminal Appeals:** the court of last resort for appeals resulting from criminal cases.

**Supreme Court:** the court of last resort for appeals in all civil and juvenile cases.

**Elective-appointive:** an informal process in which a judge leaves office before his or her term expires allowing the succeeding judge to run for reelection as an incumbent.

**Judicial Campaign Fairness Act:** 1995 law that establishes limits on contributions to judicial candidates from individuals, law firms, and political action committees, and proposes voluntary expenditure limits.

**Merit selection:** a hybrid system of appointment and election used to select judges in 17 states, but not Texas. This system is sometimes called the “Missouri Plan” because it originated in Missouri.

**Retention election:** an election at which voters are asked if a judge should stay in office. If a majority of voters decide against retention, the judge must step down from the bench.

**Community supervision:** a type of punishment in which the offender remains in the community under certain conditions set by the courts and under court supervision; formerly called “probation.”

**Deferred adjudication:** a plea bargain agreement between a defendant and a Texas criminal court in which formal judgment of guilt is withheld pending the outcome of the probation period.

**Parole:** a system by which a prisoner earns the privilege to be released from prison prior to completing the full sentence.

**Voir dire:** the process of questioning prospective jurors with the intent to determine if they could be fair and impartial.

## **TEACHING IDEAS**

- Bring a local criminal defense attorney into the classroom and have him or her explain the rights of the accused in Texas and the differing levels of crimes.
- Discuss the different crimes that are eligible for the death penalty in Texas. Compare Texas—and what are considered crimes that merit the death penalty—with two other states that have the death penalty. Does Texas have more or less crimes eligible? Are all of the crimes listed worthy of the death penalty? A Texas legislator has recently suggested that child sex offenders who have not committed murder should be put to death; would this be a valid use of the death penalty?
- Have students go to each of the two following sites and read through several of the cases: <http://www.law.northwestern.edu/depts/clinic/wrongful/exonerations/TexasList.htm> and <http://www.law.northwestern.edu/depts/clinic/wrongful/exonerations/Illinois.htm>. Have the students write a brief essay answering the following questions: (1) Which three (or more) cases from Illinois did you read? What aspects do the cases have in common? What do you think led to the errors in convictions in these cases? (2) Concerning the Texas cases, what do the cases have in common? What kinds of things led to problems in these cases? What factors led to these suspects being convicted? (3) Given what you have read about errors in death penalty cases in just Texas and Illinois, do you think that innocent persons might currently be on death row? Do you think any have been executed? If so, how do you feel about that? Before reading these cases, what were your views on the death penalty? Have they changed at all? Do you have concerns?
- Discuss with students the merits of electing judges. Compare Texas with judges in other states.

## **BACKGROUND READING**

Lavergne, Gary M. Worse Than Death: The Dallas Nightclub Murders and the Texas Multiple Murder Law. Denton, TX: University of North Texas Press, 2003.

O'Malley, Suzanne. "Are You There Alone?": The Unspeakable Crime of Andrea Yates. New York: Pocket Star Books, 2005.

Reid, Don. Have a Seat, Please. Huntsville, TX: Texas Review Press, 2001.

Renaud, Jorge Antonio. Behind the Walls: A Guide for Family and Friends of Texas Inmates. Denton, TX: University of North Texas Press, 2002.

Sorensen, Jonathan R. Lethal Injection: Capital Punishment in Texas During the Modern Era. Austin, TX: The University of Texas Press, 2006.

## **ONLINE RESOURCES AND MEDIA**

Thin Blue Line. Adams, Randall., Harris, David, Morris, Errol, Miramax Films, HBO Video (Firm) New York : HBO Video, c.1988. Documentary about the conviction and imprisonment of Randall Adams for the killing of a Dallas policeman; an investigation and reconstruction of the murder and the questions that arise about Adams' guilt.

<http://tlo2.tlc.state.tx.us/statutes/petoc.html>  
Website that contains the entire Texas Penal Code.

<http://www.pbs.org/wgbh/pages/frontline/shows/justice/howshould/>  
Website for PBS program that focused on the court system with emphasis on "How Should Judges be Selected?"

<http://www.cca.courts.state.tx.us/>  
Website for the Texas Court of Criminal Appeals, one of the two highest courts in Texas.

<http://www.supreme.courts.state.tx.us/>  
Website for the Texas Supreme Court.

# **CHAPTER TWENTY-SEVEN: LOCAL GOVERNMENT**

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## **LEARNING OBJECTIVES**

*After studying this chapter, students should be able to:*

- Understand the varying levels of Texas local government.
- Explain the various powers of county government and list the key elected county officials.
- Describe the types of municipal government in Texas, including the difference between general law and home rule cities and the types of home rule city organizations.
- Explain special districts and their powers, including school districts.
- Analyze the level of local government cooperation.
- Detail the means of financing local government at the municipal, county, and special district levels.
- Analyze the effectiveness of local government in Texas.

## **CHAPTER OVERVIEW**

### **THE DIVERSITY OF LOCAL GOVERNMENTS IN TEXAS**

Texas ranks third among the 50 states in number of local government units, with 4,784 as of June 2002. The large number of governments means that the average Texans may be governed by a number of different types of local governments, including city and county governments and numerous special district governments.

## COUNTIES

Counties in the state of Texas serve as local administrative arms of the state government. In fact, the Texas Constitution specifies counties as the convenient place for residents to conduct government business. A county is a political subdivision of state government with a set of government officials who administer state functions while also providing local services. People may register vehicles, obtain marriage licenses, record deeds, and register to vote close to home. Counties are the oldest form of local government in the state of Texas. Texas counties exhibit great variety. The smallest county, Loving County in far west Texas, had only 67 inhabitants in 2000, making it the smallest county in the country as well. Brewster County, in west Texas, is the largest county in area with 6,193 square miles. Rockwell County, located east of Dallas, is the smallest county at 148 square miles.

**County Functions.** Early responsibilities of county governments included road construction and maintenance, law enforcement, and tax collection. As populations increased, county services expanded to include health and social welfare, solid-waste management, and housing and community development. Perhaps the most important function of county governments is the maintenance of records and licenses. The county, in the county clerk's office, keeps records of births, deaths, marriages, and divorces. It also registers deeds, voters, and motor vehicles. The county is responsible for collecting taxes as well. Registering motor vehicles and collecting taxes are two duties of the tax assessor-collector.

**Structure of County Government** The Constitution of 1876 provides specific detail of the organization of counties in Texas. The chief governing body is the **county commissioners court**. The Texas Constitution specifies that each county's commissioners court consists of a **county judge** and four **county commissioners**. The court divides the county into four individual commissioners precincts, which must be roughly equal in size based on population. The county judge is elected to a four-year term in a partisan election. County commissioners are elected to staggered four-year terms in partisan elections with two commissioners being elected every two years. The Texas Local Government Code contains the provisions that direct the commissioners court in carrying out its duties in operating county government. The Code covers the duties and authority of the commissioners court and other officers related to financial management, public officers and employees, regulatory matters, property acquisition, buildings, and many other areas of county affairs.

The chief executive officer of the county is the county judge. This official is both the presiding officer of the commissioners court and the judge of the county court. The duties of the county judge vary depending on the population of the county. In most rural counties, the judge has many judicial responsibilities. In more urban counties, trained attorneys are elected as county court at law judges to handle most of the judicial functions in county court, freeing the county judge to serve as the county's chief executive officer. He or she is responsible for preparing the county's budget. Before the budget may be implemented, it must be approved by the commissioners court. County judges perform a wide range of other administrative duties. These responsibilities include conducting hearings for beer and wine license applications, calling elections, posting election notices, and canvassing the election returns. The county judge also serves as the county's Emergency Management Director and has the authority to designate an Emergency Management Coordinator to serve as an assistant for emergency management issues. County judges may also conduct marriage ceremonies.

Each county's government also has other executive officers, including the county attorney, county sheriff, county clerk, tax assessor-collector, and county treasurer. Most of the executives are elected to four-year terms in partisan elections.

The office of **county attorney** and its relationship to the office of district attorney is complicated. There are three arrangements of responsibilities. First, the Texas Constitution specifies that in counties without a criminal district attorney, a county attorney shall be elected to a four-year term. The county attorney is the chief prosecuting officer for the county courts and also serves as a legal advisor to the county commissioners court. Some counties comprise a criminal district. In these counties, a district attorney is elected and there is no county attorney. Finally, in more rural parts of the state, one judicial district may comprise several counties. In this case, there will be a district attorney and a county attorney. The county attorney prosecutes criminal misdemeanor cases and the district attorney prosecutes felony cases in district court and represents state agencies.

The **sheriff** is the chief law enforcement officer for the county and is responsible for operating county jails, investigating crimes, making judgments, and maintaining communications with other law enforcement organizations. The sheriff has jurisdiction over the entire county, but most sheriffs' departments work in the areas outside of incorporated city limits. The sheriff is elected every four years and is responsible for security in both the county and district courts. The sheriff also sets bail bond policy for the county except when a county has a Bail Bond Board. In counties of less than 10,000 people, the sheriff also is the tax assessor-collector.

The **county clerk** is the clerk for the county courts, including probate courts, and the commissioners court. The clerk is also the recorder for the county. All documents filed for record such as marriage licenses, deeds, and wills are kept in the clerk's office. The clerk also carries out elections for the county and maintains vital statistics. In addition, identification methods for all livestock must be recorded with the clerk of the county in which the animals are located.

The **tax assessor-collector** is a constitutionally required office for counties with over 10,000 people. Until a constitutional amendment became effective on January 1, 1982, the assessor-collector determined the value of property and collected taxes within the county. Since 1982, state law has required that counties participate in a single appraisal district. Many of the duties involved in assessing the value of property are now performed by the chief appraiser of the appraisal district. The assessor-collector still collects taxes for the county and has responsibilities for motor vehicle registration, voter registration, and other financial duties.

The **county treasurer** is elected by the voters in each county for a term of four years in a partisan election held in the same general election as the governor. The treasurer signs county employees' paychecks, receives oil royalties and other deposits to the county, and signs checks paying the county's bills after that payment has been approved by the county commissioners court. The county treasurer supervises the county's bank account. Some counties have abolished the office of treasurer. Because the Texas Constitution requires each county to have a treasurer, abolishing this office requires a constitutional amendment for each county wishing to take the action, which thus allows voters in the other counties to approve the amendment.

## MUNICIPALITIES

The second form of local government in Texas is the municipality, or city. There are 1,196 municipal governments in the state. Cities perform the greatest number of functions of any form of

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local government. Like counties, cities receive their legal status from the state. State law defines and lists certain activities that may be performed by a city government. Municipal governments also are provided proprietary powers to establish and maintain public utilities and manage amusements owned and operated by the city. Charters incorporating cities had to be expressly approved by the Texas Legislature until the adoption of a constitutional amendment establishing the process of home rule in 1912. Under home rule, numerous cities with more than 5,000 in population began writing and adopting charters.

There are two categories of cities in Texas: general law and home rule. **General law cities** are smaller cities, most of which have less than 5,000 inhabitants. All general law cities operate according to specific state statutes granting their powers and duties. General law cities are limited to doing what the state authorizes or permits them to do. Approximately 75 percent of all Texas cities are general law cities. General law cities do not have city charters.

**Home rules cities** are larger municipalities. Any city over 5,000 people in which the citizens have adopted a home rule charter is a home rule city. A city charter is a document that creates the city's governmental structure and provides for the distribution of powers and duties among the various branches of government. Home rule cities are allowed more flexibility in their government structure and activities.

**General Law Cities.** There are three types of general law cities: Type A, Type B, and Type C. The differences between the types of general law cities largely reflect the size of city government.

Most new cities start out as Type B because of the low minimum population size required to become a city. State law allows the incorporation of any area containing 201 to 10,000 inhabitants. As the population grows to 600 or more, the city may become a Type A city with a larger government. Type B general law cities operate under one of two forms of government: aldermanic or commission. If the city uses the aldermanic form of government, the governing body is known as the "Board of Aldermen" and includes six members: the mayor and five aldermen. All officials are elected on an at-large basis. In the commission form of government, the governing body is called the "board of commissioners" and always consists of a mayor and two commissioners. A city may change from a commission form to the aldermanic form as it grows in population.

Type A general law municipalities have populations over 600 inhabitants. Like Type B cities, Type A cities may use either aldermanic or commission forms of government. In either case, the governing body is known as the "City Council" and varies in size depending on whether or not the city has been divided into wards. A ward is a geographic subdivision of a city into districts of equal population. If the city has been divided into wards, the council consists of a mayor and two council members elected from each ward. If the city does not have wards, the council consists of the mayor and five council members. Type A cities have other municipal officers, including a treasurer, tax assessor-collector, city secretary, city attorney, and engineer. The city council decides whether to elect or appoint persons to these positions.

A Type C general law city has between 201 and 4,999 residents, and uses a commission form of government. The governing body is known as the "Board of Commissioners" and consists of the mayor and two commissioners. The board must appoint a city clerk and it may provide for the election or appointment of additional officers as needed. If the municipality has less than 500 people, it follows the general law established for Type B cities. With more than 500 residents, the city follows statutes applicable to Type A cities. However, the commission form of government

described here is different from the commission form of government historically used by home rule cities in Texas, and other states

### **Home Rule Cities**

Home rule became legal through a constitutional amendment passed in Texas in 1912, followed in 1913 by the enabling legislation outlining implementation. The amendment provides that any city with more than 5,000 residents may by vote of the residents adopt a home-rule charter. Under home rule, cities are directed on what they cannot do rather than told what to do by the legislature. A city's **charter** is the basic law of a city government in much the same way that the United States Constitution is the nation's basic law. A city charter describes the city's governmental powers. The charter outlines the organizational structure of the city government and the means for financing its operations.

**Powers and Limits of Home Rule Cities.** Home rule cities have many inherent powers, or powers possessed by a city without these having been specifically granted by the state. The governmental structure of a home rule city is left to the discretion of the city's voters. Citizens are free to choose from one of the three main forms of municipal government: mayor-council, council-manager, or commission.

One of the most significant inherent powers held by home rule cities is the power to annex adjoining areas. Home rule cities have the ability to bring adjacent, unincorporated areas into the city without the permissions of the persons who reside in the area. The Municipal Annexation Act was enacted in 1963. Since then, there was little legislative activity in the area of annexation policy until the 1990s. Senate Bill 89 did not prohibit annexation; rather, it made it more difficult, expensive, and time consuming in certain circumstances. Provisions of Senate Bill 89 included the development of an annexation plan, a process granting residents of areas to be annexed the opportunity to comment on the annexation, the outlining of how the annexed area would receive city services, and other procedures to make the process more fair, equitable, and public.

Voters in home rule cities have the power to change city laws and the city charter through the initiative, referendum, and recall devices. In the initiative process, a petition is circulated by voters seeking to enact an ordinance. If the appropriate number of signatures is obtained, the ordinance is put to a vote of the city residents. A referendum is a similar process through which voters may repeal unpopular, existing ordinances. In a recall election, local voters can oust members of the city council before the expiration of their terms. There are limits on home rule powers, imposed by state and federal laws. Every city must obey the Texas Constitution and statutory requirements.

**Forms of City Government.** Every home rule city in Texas operates under one of two forms of government, either the mayor-council or the council-manager. Even though a third form of city government, the commission government, originated in Texas in the early 1900s, no city in Texas uses it at present. The council-manager form of city government is the newest of the three forms found in cities across the country. In the council-manager form, the residents of the city elect the city council, which then hires a professional city manager to administer the day-to-day activities of city government. The council operates as a legislative body and establishes policy. It also approves the budget and sets the tax rate. A mayor is elected, either separately from the city council in a citywide election, or by the city council from its membership. Some observers criticize this form of government because the manager is not elected and, thus, is not directly accountable to the residents of the city. Most city managers have graduate degrees in public or business administration.

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The second form of municipal government is known as the **mayor-council government**. A mayor-council city government in Texas has a mayor and a number of council members or aldermen. The mayor is elected from the city at large, and the aldermen may be elected at large, but they are usually elected from single-member districts called wards or aldermanic districts. The mayor presides at council meetings and serves as the chief executive officer of the city. The council is the legislative branch of city government.

There are two variations of mayor-council government: the strong mayor and the weak mayor. In both types, the mayor is elected at large and a council is elected by wards, at large, or by a combination. In the weak mayor variation, the mayor is not the chief executive of the city. His or her powers are limited to appointments and removals, as well as veto, and there are a large number of other elected officials or boards.

The **commission form** of city government, also known as the Galveston Plan, was devised in Galveston in 1901. Under the commission plan, voters elect a small governing commission, typically five or seven members, on an at-large basis. As a group, the commissioners are the legislative body of the city responsible for taxation, appropriations, ordinances, and other governmental functions. Individually, each commissioner is in charge of a specific aspect of city affairs, like public works, finance, or public safety. One of the commissioners is designated chair of the commission, or mayor, but this is largely a ceremonial position. The commission plan was a result of the Galveston hurricane of 1900. The commission plan began to be criticized because the specific departmental interests of commissioners often caused internal conflict on the board. The absence of a strong chief executive also resulted in a lack of leadership.

## Municipal Elections

The governing bodies of general law, as well as home rule city governments, in Texas are elected. Generally, municipal elections in Texas are nonpartisan and they are held on election dates separate from state and county elections, usually in May of odd-numbered years. There are three broad classifications of election systems used by cities: at-large, single-member district, or mixed (hybrid). In an at-large election, all council members run citywide and are voted on by all city voters. There are variations of at-large systems. At-large elections have been criticized because, in a city that is racially or ethnically homogenous, the city council will reflect the majority. A minority in a racially mixed city may feel underrepresented by a system that permits all members of the city council to come from one segment of the population. The introduction of single-member districts weakened the monopoly that business interests had over elections in many Texas cities. A single-member district, or "ward," system limits each voter's choice to a single contest. A voter must choose from the list of candidates who have filed to run to represent the district of the city in which the candidates and the voter reside. Some cities use a mixed, or hybrid, election system. A number of members of the city council are elected at-large citywide and some are elected by single-member districts.

## SPECIAL DISTRICTS

The third form of local government in Texas is the special district; you may also see references to special taxing districts. Sometimes referred to as "invisible government" because they do not attract much public attention, special districts are the fastest growing sector of government across the United States. Special districts have certain essential characteristics. They are organized entities, possessing a structural form, an official name, perpetual succession, and the rights to sue and be sued, to make contracts and to obtain and dispose of property. They have officers who are popularly elected or are chosen by other public officials. Special districts are nonpartisan.

Typical examples of special districts are school districts, irrigation districts, hospital districts, fire districts, water conservancy districts, weed control districts, improvement districts, lighting districts, and special authorities for transportation, harbor development, warehousing, etc. The growth in the number of special districts can be attributed to a number of factors: they are easy to establish and operate, they offer greater flexibility to solve specific problems, and they offer a way to get around constitutional and statutory restrictions placed on counties and municipalities. In most cases, the members of the board governing a special district are appointed and not elected. A single metropolitan area may have so many special districts that they tend to be fragmented.

## SCHOOL DISTRICTS

School districts are a type of special district, but some observers consider them a separate category. School districts have a unique history and a common mission to provide public education to all Texans. State law sets general guidelines for school districts. In Texas, the regulations are enforced by the Texas Education Agency. Each school district has a board of trustees, usually elected at-large by numbered place, although a number of districts are adopting the cumulative voting system of election. The board sets the school district property tax rate, determines personnel policies, hires a superintendent to manage the day-to-day operation of the district, and provides for the construction and maintenance of school buildings.

One way local governments cooperate is through **Councils of Government**, or COGs. These organizations, also known as “regional planning commissions,” are defined as political subdivisions of the state in Texas law. COGs are different from cities, counties, and special districts, because they cannot levy taxes nor incur debt. COGs are voluntary, area-wide associations of local governments. Their function is to foster local cooperation among localities by serving as forums for intergovernmental problem-solving and by planning governmental programs and facilities on a regional basis. Each COG operates under the supervision of a governing body composed of elected officials representing participating local governments. Each COG is financed by a combination of dues paid by member governments and federal and state funds.

## LOCAL GOVERNMENT COOPERATION

Another form of local government cooperation is the interlocal cooperation contract. In 1991, the Texas Legislature passed the Interlocal Cooperation Act to “improve the efficiency and effectiveness of local governments by authorizing the fullest possible range of intergovernmental contracting authority at the local level including contracts between all political subdivisions of the state and agencies of the state.”

## FINANCING LOCAL GOVERNMENT

The sources and amounts of revenue received by local governments in Texas depends on their size, the amount and type of taxes they are allowed and willing to levy, and the total assessed value of taxable property within the city limits. The Texas Constitution and numerous statutes allow counties, municipalities, and special districts different methods of financing their operations. Although the property tax is the largest source of revenue for local government, it is by no means the only source. Sales taxes, fees for service, tolls, fines and forfeits, rents, franchise fees, and a variety of special taxes all provide significant revenue for local government.

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County operations are governed by state statute, rather than by a charter adopted by county voters. The primary revenue source for counties is the property tax because counties are prohibited from enacting sales taxes or an income tax. Counties also collect various fees, fines, and rents. Counties also issue bonds to raise funds for capital improvement projects. The revenue to pay the principal and interest on these bonds comes from property taxes. Cities are authorized to levy a property tax, and may be authorized by their voters to levy a sales tax within their boundaries. Cities collect fines and forfeits on citations for violation of city ordinances or traffic laws. They also charge utilities a franchise fee for the use of municipal rights of way for power lines, gas lines or other service lines. These sources of revenue are usually accounted for in a general, or tax-supported, fund.

Cities often have additional funds that are accounted for separately from taxes. These funds are often referred to as enterprise funds, because the revenues are derived from rents or fees for services charged by that operation of the city. Cities can borrow money using one of two forms of municipal bonds. In the covenants of its public improvement bonds, a city may pledge to redeem them from revenues from the property tax. Enterprise fund bonds are called revenue bonds. In order to pledge to levy a property tax to redeem public improvement bonds, a city must receive voter approval for the issuance of those bonds. Revenue bonds do not require voter approval, just a stream of revenue.

The primary local source for school district operations is the property tax. School taxes are typically half or more of the taxes levied on properties in most regions of the state. School districts have historically derived much of their revenue from the state of Texas, but this source has not kept pace with funding requirements, resulting in a significant increase in school district property tax rates. The Texas Lottery has also helped fund public education. The system of funding school districts was revised at the beginning of the 1990s when the old system was ruled unconstitutional because of the wide disparities in education provided by rich and poor school districts.

Special districts are allowed to levy property taxes and some special districts also may collect a sales tax. They are permitted to charge for their services and keep the fees paid for these services. In 2003, Texas voters approved a constitutional amendment allowing the governing bodies of counties, cities, towns, and junior college districts to freeze the amount of property taxes that could be imposed on residential homesteads owned by the elderly or disabled.

## **UNDERSTANDING LOCAL GOVERNMENT IN TEXAS**

**Democracy in Local Governments in Texas.** The presence of the many local governments to handle complex and ordinary services suggests that democracy is strong in the state. Local governments are created by states to assist in addressing citizens' policy demands. Instead of conducting government completely from Austin, the state established counties and other local governments to provide services closer to the people. Local voters choose people to represent them on county commissioners courts, city councils, school boards, and some special district boards. Local politics in Texas is not as democratic as one might believe, however. Typically the media cover the most controversial activities of local government, leaving the mundane events out of the news.

County governments, in particular, appear democratically challenged. A county is an administrative convenience for the state. The county depends on the legislature for power, while the structure of county government is minutely detailed in the Texas Constitution. The voters elect almost all county officials, but these officials then have to rely on the legislature to grant them power. There have been few efforts to increase citizen participation in local government. Some public officials believe

that low voter turnout is a sign of indifference or a lack of knowledge about the importance of local government to citizens' lives.

**The Scope of Local Government in Texas.** One of the challenges of local government is finding ways to deal with change and growth. This is particularly an issue as the state of Texas becomes more urban. The changes in population in the state also cause problems for other local governments like school districts. Since the state's population is becoming more urban, rural school districts are losing population and discovering the need to consolidate to maintain services. Local governments in Texas also have been constrained by the need to react to the unfunded mandates placed upon them by the Texas Legislature. While legislators can claim credit for solving problems without resorting to tax increases, the lowest levels of government are faced with the prospects of increasing tax rates to deal with local challenges as well as these unfunded mandates.

## **CHAPTER OUTLINE**

### **I. THE DIVERSITY OF LOCAL GOVERNMENTS IN TEXAS**

- A. Texas ranks third among the 50 states in number of local government units, with 4,784 as of June 2002.
- B. Texans may be governed by a number of different types of local governments, including city and county governments and numerous special district governments.

### **II. COUNTIES**

- A. Counties in the state of Texas serve as local administrative arms of the state government.
  - 1. A county is a political subdivision of state government with a set of government officials who administer state functions while also providing local services.
  - 2. Counties are the oldest form of local government in the state of Texas.
    - a. The unit of local government under Spanish and Mexican rule was the municipality, a large district of land with one or more settlements and the surrounding rural territory.
    - b. A municipality was governed by an *ayuntamiento* (council), composed of at least one *alcalde* (judge), a number of *regidores* (aldermen), a *sindico procurador* (attorney), an *alguacil* (sheriff), and an *escribano* (secretary).
    - c. At independence, the municipalities became counties patterned after the county governments found in the southern states of the United States.
    - d. During the republic, the chief governing body in the county was the county board that was appointed by Congress. This body was assisted by elected justices of the peace.
    - e. In 1845, the justices of the peace were replaced by four elected commissioners.
  - 3. Texas counties exhibit great variety.
    - a. Harris County (Houston) is the largest county in terms of population with over 3.6 million.
    - b. The smallest county, Loving County in far west Texas, had only 67 inhabitants in 2000.

- c. Brewster County, in west Texas, is the largest county in area with 6,193 square miles. Rockwell County, located east of Dallas, is the smallest county at 148 square miles.

B. **County Functions**

- 1. Early responsibilities of county governments included road construction and maintenance, law enforcement, and tax collection. As populations increased, county services expanded to include health and social welfare, solid-waste management, and housing and community development.
- 2. Perhaps the most important function of county governments is the maintenance of records and licenses. The county, in the county clerk's office, keeps records of births, deaths, marriages, and divorces. It also registers deeds, voters, and motor vehicles.
- 3. Registering motor vehicles and collecting taxes are two duties of the tax assessor-collector.
  - a. If you are registering your car for the first time in Texas, you will need to do two things. First, your car will need to be inspected for safety at an approved inspection station.
  - b. You then take the Vehicle Identification Certificate of Inspection with proof of ownership and insurance to your local county tax assessor-collector and apply for registration stickers, paying the registration fee. You also will receive your license plates.

C. **Structure of County Government.** The Constitution of 1876 provides specific detail of the organization of counties in Texas.

- 1. The chief governing body is the **county commissioners court**.
  - a. The Texas Constitution specifies that each county's commissioners court consists of a **county judge** and four **county commissioners**.
  - b. The court divides the county into four individual commissioners precincts, which must be roughly equal in size based on population.
  - c. The court exercises power over county business as provided by law.
  - d. The county judge is elected to a four-year term in a partisan election. County commissioners are elected to staggered four-year terms in partisan elections with two commissioners being elected every two years.
  - e. The commissioners court has many state administrative responsibilities in addition to permissive functions established by statute.
  - f. The Texas Local Government Code contains the provisions that direct the commissioners court in carrying out its duties in operating county government. The Code covers the duties and authority of the commissioners court and other officers related to financial management, public officers and employees, regulatory matters, property acquisition, buildings, and many other areas of county affairs.
  - g. County government responsibilities include:
    - (1) Establish public ferries where required;
    - (2) Lay out and establish, change, and discontinue public roads;
    - (3) Build bridges and keep them in repair;
    - (4) Appoint road overseers and apportion hands;
    - (5) Exercise general control over all roads, highways, ferries, and bridges;

- (6) Provide for the support of paupers;
  - (7) Provide for the burial of paupers;
  - (8) Acquire property necessary to obtain a surface water supply or to transport and deliver surface water.
- h. The chief executive officer of the county is the county judge.
    - (1) This official is both the presiding officer of the commissioners court and the judge of the county court.
    - (2) The dual executive and judicial functions bring some confusion into the discussion of the county judge.
    - (3) In most rural counties, the judge has many judicial responsibilities.
    - (4) In more urban counties, trained attorneys are elected as county court at law judges to handle most of the judicial functions in county court, freeing the county judge to serve as the county's chief executive officer.
    - (5) The county judge prepares the budget.
    - (6) County judges perform a wide range of other administrative duties. These responsibilities include conducting hearings for beer and wine license applications, calling elections, posting election notices, and canvassing the election returns. The county judge also serves as the county's emergency management director.
- 2. **County attorney.**
    - a. Strange relationship with district attorney. There are three arrangements of responsibilities.
      - (1) First, the Texas Constitution specifies that in counties without a criminal district attorney, a county attorney shall be elected to a four-year term. The county attorney is the chief prosecuting officer for the county courts and also serves as a legal advisor to the county commissioners court.
      - (2) Some counties comprise a criminal district. In these counties, a district attorney is elected and there is no county attorney.
      - (3) Finally, in more rural parts of the state, one judicial district may comprise several counties. In this case, there will be a district attorney and a county attorney.
  - 3. The Texas Constitution creates the office of **county sheriff**.
    - a. The sheriff is the chief law enforcement officer for the county.
    - b. The sheriff is responsible for operating county jails, investigating crimes, making judgments, and maintaining communications with other law enforcement organizations.
    - c. The sheriff has jurisdiction over the entire county.
    - d. The sheriff is elected every four years and is responsible for security in both the county and district courts.
    - e. The sheriff also sets bail bond policy for the county except when a county has a Bail Bond Board
    - f. In counties of less than 10,000 people, the sheriff also is the tax assessor-collector.
  - 4. The **county clerk** is the clerk for the county courts, including probate courts, and the commissioners court.

- a. The clerk is also the recorder for the county. All documents filed for record such as marriage licenses, deeds, and wills are kept in the clerk's office.
- b. The clerk also carries out elections for the county and maintains vital statistics.
- c. Identification methods for all livestock must be recorded with the clerk of the county in which the animals are located.
5. The **tax assessor-collector** is a constitutionally required office for counties with over 10,000 people.
  - a. The tax assessor-collector's duties have changed since the ratification of the Constitution of 1876. Until a constitutional amendment became effective on January 1, 1982, the assessor-collector determined the value of property and collected taxes within the county.
  - b. Since 1982, state law has required that counties participate in a single appraisal district.
  - c. The assessor-collector still collects taxes for the county and has responsibilities for motor vehicle registration, voter registration, and other financial duties.
6. The **county treasurer** is elected by the voters in each county for a term of four years in a partisan election held in the same general election as the governor.
  - a. The treasurer signs county employees' paychecks, receives oil royalties and other deposits to the county, and signs checks paying the county's bills after that payment has been approved by the county commissioners court.
  - b. The county treasurer supervises the county's bank account.
  - c. Some counties have abolished the office of treasurer. When the county's voters approve this change, the duties of the treasurer's office must be transferred to another county official.

### III. MUNICIPALITIES

- A. The second form of local government in Texas is the municipality, or city. There are 1,196 municipal governments in the state.
  1. State law defines and lists certain activities that may be performed by a city government. These include 36 governmental functions like police and fire protection, health and sanitation services, street construction and design, transportation systems, establishment and maintenance of jails, and enforcement of land use restrictions.
  2. Municipal governments also are provided proprietary powers to establish and maintain public utilities and manage amusements owned and operated by the city.
- B. Before independence in 1836, there were no incorporated cities in Texas.
  1. After independence, the Texas Congress began incorporating cities in the state.
  2. Texas adopted a constitutional amendment establishing the process of home rule in 1912. Under home rule, numerous cities with more than 5,000 in population began writing and adopting charters.
  3. **General law cities** are smaller cities, most of which have less than 5,000 inhabitants.

- a. All general law cities operate according to specific state statutes granting their powers and duties.
  - b. Approximately 75 percent of all Texas cities are general law cities.
  - c. The only documentation of the incorporation of a general law city are the incorporation papers filed at the county courthouse that describe when the city was established and the city's original boundaries.
4. **Home rules cities** are larger municipalities.
- a. Any city over 5,000 people in which the citizens have adopted a home rule charter is a home rule city.
  - b. A city charter is a document that creates the city's governmental structure and provides for the distribution of powers and duties among the various branches of government.
  - c. In home rule cities, if a proposed city action has not been prohibited or preempted by the state, the city generally may take the action

### C. General Law Cities

1. There are three types of general law cities: Type A, Type B, and Type C. The differences between the types of general law cities largely reflect the size of city government. Type A cities are larger than Type B cities.
2. Most new cities start out as Type B because of the low minimum population size required to become a city. State law allows the incorporation of any area containing 201 to 10,000 inhabitants.
  - a. Type B general law cities operate under one of two forms of government: aldermanic or commission.
  - b. If the city uses the aldermanic form of government, the governing body is known as the "Board of Aldermen" and includes six members: the mayor and five aldermen. All officials are elected on an at-large basis. The board may pass an ordinance providing for the appointment or election of additional city officers needed to take care of city business.
  - c. In the commission form of government, the governing body is called the "board of commissioners" and always consists of a mayor and two commissioners. A city may change from a commission form to the aldermanic form as it grows in population.
3. Type A general law municipalities have populations over 600 inhabitants.
  - a. Like Type B cities, Type A cities may use either aldermanic or commission forms of government. In either case, the governing body is known as the "City Council" and varies in size depending on whether or not the city has been divided into wards.
  - b. A ward is a geographic subdivision of a city into districts of equal population. If the city has been divided into wards, the council consists of a mayor and two council members elected from each ward.
  - c. If the city does not have wards, the council consists of the mayor and five council members.
  - d. Type A cities have other municipal officers, including a treasurer, tax assessor-collector, city secretary, city attorney, and engineer. The city council decides whether to elect or appoint persons to these positions.
4. A Type C general law city has between 201 and 4,999 residents, and uses a commission form of government.

- a. The governing body is known as the “Board of Commissioners” and consists of the mayor and two commissioners.
- b. The board must appoint a city clerk and it may provide for the election or appointment of additional officers as needed.
- c. If the municipality has less than 500 people, it follows the general law established for Type B cities. With more than 500 residents, the city follows statutes applicable to Type A cities.

D. **Home Rule Cities**

1. Home rule became legal through a constitutional amendment passed in Texas in 1912, followed in 1913 by the enabling legislation outlining implementation.
2. The amendment provides that any city with more than 5,000 residents may by vote of the residents adopt a home-rule charter. Under home rule, cities are directed on what they cannot do rather than told what to do by the legislature.
  - a. A city’s **charter** is the basic law of a city government in much the same way that the United States Constitution is the nation’s basic law.
  - b. A city charter describes the city’s governmental powers. It also establishes the form of government as well as legislative and judicial processes.
  - c. The charter outlines the organizational structure of the city government and the means for financing its operations.
3. Home rule cities have many inherent powers, or powers possessed by a city without these having been specifically granted by the state.
  - a. The governmental structure of a home rule city is left to the discretion of the city’s voters.
  - b. Citizens are free to choose from one of the three main forms of municipal government: mayor-council, council-manager, or commission.
  - c. One of the most significant inherent powers held by home rule cities is the power to annex adjoining areas.
    - (1) There is little statutory activity dealing with the power of home rule cities to annex territory.
    - (2) The Municipal Annexation Act was enacted in 1963.
    - (3) Issues between Houston and smaller Kingwood led to a new round of legislation.
    - (4) Senate Bill 89 did not prohibit annexation; rather, it made it more difficult, expensive, and time consuming in certain circumstances.
4. Voters in home rule cities have the power to change city laws and the city charter through the initiative, referendum, and recall devices.
  - a. In the initiative process, a petition is circulated by voters seeking to enact an ordinance. If the appropriate number of signatures is obtained, the ordinance is put to a vote of the city residents.
  - b. A referendum is a similar process through which voters may repeal unpopular, existing ordinances.
  - c. In a recall election, local voters can oust members of the city council before the expiration of their terms.
5. There are limits on home rule powers, imposed by state and federal laws.

- a. Every city must obey the Texas Constitution and statutory requirements.
  - b. Cities are prohibited from holding elections on days different from those prescribed and published by the Secretary of State's office.
- E. **Forms of City Government.**
- 1. The **council-manager form of city government** is the newest of the three forms found in cities across the country.
    - a. The residents of the city elect the city council, which then hires a professional city manager to administer the day-to-day activities of city government.
    - b. The council operates as a legislative body and establishes policy. It also approves the budget and sets the tax rate.
    - c. A mayor is elected, either separately from the city council in a citywide election, or by the city council from its membership.
    - d. Administration, or executive functions, is carried out by the city manager.
    - e. Some observers criticize this form of government because the manager is not elected and, thus, is not directly accountable to the residents of the city.
  - 2. A mayor-council city government in Texas has a mayor and a number of council members or aldermen.
    - a. The mayor is elected from the city at large, and the aldermen may be elected at large, but they are usually elected from single-member districts called wards or aldermanic districts.
    - b. The council is the legislative branch of city government.
    - c. Two forms of mayor-council.
      - (1) In the weak mayor variation, the mayor is not the chief executive of the city. His or her powers are limited to appointments and removals, as well as veto, and there are a large number of other elected officials or boards. No major city in Texas uses this form.
      - (2) In a strong mayor-council form of government, the mayor has the power to appoint and remove most department heads, and only a few officials are elected (see Figure 27.3). The mayor prepares the budget for the council to consider and he or she has substantial veto power over the actions of the council. Houston is the only major city to use this form.
    - d. The **commission form** of city government, also known as the Galveston Plan, was devised in Galveston in 1901.
      - (1) Voters elect a small governing commission, typically five or seven members, on an at-large basis.
      - (2) As a group, the commissioners are the legislative body of the city responsible for taxation, appropriations, ordinances, and other governmental functions.
      - (3) The commission plan was a result of the Galveston hurricane of 1900. The city of Galveston was rebuilt quickly and efficiently and the commission plan of city government soon became popular across the country.

- (4) The commission plan began to be criticized because the specific departmental interests of commissioners often caused internal conflict on the board.

F. Municipal Elections

1. Generally, municipal elections in Texas are nonpartisan and they are held on election dates separate from state and county elections, usually in May of odd-numbered years.
2. In an at-large election, all council members run citywide and are voted on by all city voters.
  - a. The at-large by place system requires candidates to declare which numbered or lettered place on the council they are seeking. The candidates are voted on by voters citywide. The place or seat has no geographical basis.
  - b. Very few cities use the at-large from residency district system. In this system, the city is divided into equally populated, geographical districts. A candidate files to run for the seat representing the district he or she lives in. All voters citywide have the opportunity to select who will represent each district.
3. The introduction of single-member districts weakened the monopoly that business interests had over elections in many Texas cities. A single-member district, or "ward," system limits each voter's choice to a single contest.
  - a. A voter must choose from the list of candidates who have filed to run to represent the district of the city in which the candidates and the voter reside.
  - b. This method of electing city council members seems to favor neighborhood groups, ethnic and racial groups, and other community groups.
4. Some cities use a mixed, or hybrid, election system. A number of members of the city council are elected at-large citywide and some are elected by single-member districts.

**IV. SPECIAL DISTRICTS**

- A. Special districts are the fastest growing sector of government across the United States.
1. Special districts have certain essential characteristics. They are organized entities, possessing a structural form, an official name, perpetual succession, and the rights to sue and be sued, to make contracts and to obtain and dispose of property.
  2. They have officers who are popularly elected or are chosen by other public officials. Special districts are nonpartisan.
  3. Typical examples of special districts are school districts, irrigation districts, hospital districts, fire districts, water conservancy districts, weed control districts, improvement districts, lighting districts, and special authorities for transportation, harbor development, warehousing, etc.
  4. The growth in the number of special districts can be attributed to a number of factors: they are easy to establish and operate, they offer greater flexibility to solve specific problems, and they offer a way to get around constitutional and statutory restrictions placed on counties and municipalities.

5. While the boards governing special districts meet in public venues, their highly technical nature makes it hard for the average Texan to keep track of them.
  6. One of the most significant criticisms is that many special districts are created to benefit land developers.
- B. School Districts
1. School districts are a type of special district, but some observers consider them a separate category. School districts have a unique history and a common mission to provide public education to all Texans.
  2. State law sets general guidelines for school districts. In Texas, the regulations are enforced by the Texas Education Agency.
  3. Each school district has a board of trustees, usually elected at-large by numbered place, although a number of districts are adopting the cumulative voting system of election.
  4. The board sets the school district property tax rate, determines personnel policies, hires a superintendent to manage the day-to-day operation of the district, and provides for the construction and maintenance of school buildings.

## V. LOCAL GOVERNMENT COOPERATION

- A. Because of the number and types of local governments in the state, the governing bodies of each government often find it helpful and efficient to work together to solve problems and address issues.
- B. One way local governments cooperate is through **councils of government**, or COGs. These organizations, also known as “regional planning commissions,” are defined as political subdivisions of the state in Texas law.
1. COGs are different from cities, counties, and special districts, because they cannot levy taxes nor incur debt.
  2. COGs are voluntary, area-wide associations of local governments.
  3. Their function is to foster local cooperation among localities by serving as forums for intergovernmental problem-solving and by planning governmental programs and facilities on a regional basis.
  4. Each COG operates under the supervision of a governing body composed of elected officials representing participating local governments.
  5. Each COG is financed by a combination of dues paid by member governments and federal and state funds.
  6. Councils of government work on problems that involve numerous local governments or cross jurisdictional lines.
- C. Another form of local government cooperation is the interlocal cooperation contract. In 1991, the Texas Legislature passed the Interlocal Cooperation Act to “improve the efficiency and effectiveness of local governments by authorizing the fullest possible range of intergovernmental contracting authority at the local level including contracts between all political subdivisions of the state and agencies of the state.”

## VI. FINANCING LOCAL GOVERNMENT IN TEXAS

- A. The sources and amounts of revenue received by local governments in Texas depends on their size, the amount and type of taxes they are allowed and willing to levy, and the total assessed value of taxable property within the city limits.

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1. The Texas Constitution and numerous statutes allow counties, municipalities, and special districts different methods of financing their operations.
  2. Although the property tax is the largest source of revenue for local government, it is by no means the only source. Sales taxes, fees for service, tolls, fines and forfeits, rents, franchise fees and a variety of special taxes all provide significant revenue for local government.
  3. Many special projects are financed through public-private partnerships, especially in real estate development and housing.
- B. Counties have several mechanisms to finance county government.
1. The primary revenue source for counties is the property tax because counties are prohibited from enacting sales taxes or an income tax.
  2. Counties also collect various fees, fines, and rents.
  3. Counties also issue bonds to raise funds for capital improvement projects.
- C. Cities are authorized to levy a property tax, and may be authorized by their voters to levy a sales tax within their boundaries.
1. Cities collect fines and forfeits on citations for violation of city ordinances or traffic laws.
  2. They also charge utilities a franchise fee for the use of municipal rights of way for power lines, gas lines or other service lines.
  3. Cities also have income outside of taxes such as enterprise funds in which the revenues are derived from rents or fees for services charged by that operation of the city.
  4. Cities can borrow money using one of two forms of municipal bonds.
- D. The primary local source for school district operations is the property tax.
1. School taxes are typically half or more of the taxes levied on properties in most regions of the state.
  2. School districts have historically derived much of their revenue from the state of Texas, but this source has not kept pace with funding requirements.
  3. The Texas Lottery has also helped fund public education.
  4. School districts also receive federal aid.
  5. The system of funding school districts was revised at the beginning of the 1990s when the old system was ruled unconstitutional because of the wide disparities in education provided by rich and poor school districts.
- E. Special districts are allowed to levy property taxes and some special districts also may collect a sales tax. They are permitted to charge for their services and keep the fees paid.
- F. In 2003, Texas voters approved a constitutional amendment allowing the governing bodies of counties, cities, towns, and junior college districts to freeze the amount of property taxes that could be imposed on residential homesteads owned by the elderly or disabled. Property taxes cannot be increased as long as the residences were maintained as homesteads by owners or their spouses who were disabled or at least 65 years old.

## VII. UNDERSTANDING LOCAL GOVERNMENTS IN TEXAS

### A. Democracy in Local Governments in Texas.

1. The presence of the many local governments to handle complex and ordinary services suggests that democracy is strong in the state.

2. The state established counties and other local governments to provide services closer to the people, since these governments would be more likely to know how to serve the people.
  3. Local politics in Texas is not as democratic as one might believe, however.
  4. Media coverage of local politics is rife with holes caused in part by the large number of local governments to cover.
  5. Some local governments operate virtually invisible to citizens.
  6. County governments, in particular, appear democratically challenged. A county is an administrative convenience for the state.
  7. This situation encourages county officials to look toward the legislature for their guidance instead of paying attention to their constituents.
  8. Some public officials believe that low voter turnout is a sign of indifference or a lack of knowledge about the importance of local government to citizens' lives
- B. **The Scope of Local Government in Texas.**
1. One of the challenges of local government is finding ways to deal with change and growth. This is particularly an issue as the state of Texas becomes more urban.
  2. The changes in population in the state also cause problems for other local governments like school districts. Since the state's population is becoming more urban, rural school districts are losing population and discovering the need to consolidate to maintain services.
  3. Local governments in Texas also have been constrained by the need to react to the unfunded mandates placed upon them by the Texas Legislature.

## **KEY TERMS AND CONCEPTS**

**County commissioners court:** comprise four commissioners and the county judge elected to manage county government.

**County judge:** presides over the five-member county commissioners court; may have judicial functions in some counties.

**County commissioners:** four members, elected from precincts of equal population in the county; they serve with the county judge to set and implement the budget of the county.

**County attorney:** elected official who represents the state in criminal cases in the county and may also be asked to provide legal counsel to other county officers.

**County sheriff:** the chief law enforcement officer in a county with responsibilities for enforcing traffic laws, conducting criminal investigations in the county, and operating the county jail.

**County clerk:** elected public official who maintains county records, administers elections, issues marriage licenses, and serves as the clerk of the county court and the county commissioners court.

**Tax assessor-collector:** elected public official responsible for collecting property taxes, assessing property values, and registering and licensing motor vehicles owned by county residents.

**County treasurer:** the custodian of the county's finances.

**General law cities:** municipalities that are limited to doing what the state authorizes or permits them to do.

**Home rules cities:** municipalities that are permitted by state law to write their own city charters and change them without receiving specific permission from the state legislature.

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**Charter:** organizational statement and grant of authority from the state to a local government, much like a state or federal constitution.

**Council-manager government:** common form of municipal government in which voters elect a city council (and possibly an independent mayor) to make public policy for the city. The city council then appoints a professional manager to serve as chief executive of the city.

**Mayor-council government:** form of municipal government in which voters elect a mayor and a city council. In the weak mayor form, the city council is the more powerful branch; in the strong mayor form, the mayor is the chief executive of city government.

**Commission government:** form of municipal government in which voters elect individuals to serve as city commissioners who have legislative responsibilities to approve city policies and executive responsibilities to direct a functional area of city government, such as public safety or public works.

**Councils of government:** voluntary, area-wide associations of local governments that work to foster local cooperation among localities through intergovernmental problem solving and planning on a regional basis.

## TEACHING IDEAS

- Require students to attend a local government meeting of a city council, planning and zoning commission or county commissioners court. Students should write up a one page review of what occurred at the meeting and their views on the issues discussed.
- Ask a local government official to talk to the class about his/her job responsibilities and how local government works on a daily basis.
- Discuss with students what they believe to be the most pressing problem facing the local community, such as traffic, street repairs, etc.
- Assign students to learn who are all of their local government officials.
- Go to <http://deleon.tea.state.tx.us/SDL/Forms/>. Focus on the area near your school or wherever students choose. Compare several school districts. Check to see if they have websites. How many students are in the district? How many schools are in the districts?
- Go to <http://www.txregionalcouncil.org/> and show the various Councils of Government in the state. Examine what councils exist in your area. Discuss the services that these councils supply. Why does the state need these councils? Could they be implemented with a different form of local government?
- Visit the Texas Historical Commission site on the restoration of Texas courthouses: <http://www.thc.state.tx.us/courthouses/chdefault.html> Assign students to research one of the historic courthouses.
- Have students attend a board of trustees meeting for your college. Students should write a summary of what is discussed.
- Visit the following site to learn about updates to the annexation laws in Texas [http://www.ci.austin.tx.us/annexation/legis\\_overview.htm](http://www.ci.austin.tx.us/annexation/legis_overview.htm). Have students learn what areas their city has annexed in the last 10 years. Why do cities annex territory? What requirements are there for annexation?

## **BACKGROUND READING**

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Texas Education Agency. Texas Public Schools 1854-2004 Sesquicentennial Handbook. Austin, TX: Texas Education Agency, 2004.

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## **ONLINE RESOURCES AND MEDIA**

<http://www.statelocalgov.net/state-tx.cfm>

Website for state and local government in Texas with links to county and city governments and personnel.

<http://www.thc.state.tx.us/courthouses/chdefault.html>

Website for Texas Historical Commission with history of Texas counties and courthouses.

<http://www.geocities.com/CapitolHill/1389/>

National City Government Resource Center provides links for city governments.

<http://deleon.tea.state.tx.us/SDL/Forms/>

Texas Education Agency site with a map and links for all the school districts in Texas.

[www.fortworthgov.org](http://www.fortworthgov.org)

Website for the city of Fort Worth, Texas, with links to city offices and agencies.

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<http://www.state.tx.us/category.jsp?language=eng&categoryId=3.3>

Link for community colleges in Texas, which are special districts.

<http://window.state.tx.us/taxinfo/proptax/adalindex.html>

Website for Texas Appraisal Districts with links to all the districts and most contain means to search property appraisals.

# NOTES

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