**Lecture notes for exam 1**

America in the 21st Century

Opening Question:

* Is the country headed in the right direction? Or are we on the wrong track?
* Last company to ask this was NBC News/Wall street journal: 28% say right direction, 65% say wrong track

What’s happening now?

* Is pessimism explained by recent bad news? If so, what news?
  + King vs Burwell which debated health care stuff
  + Police brutality in recent areas between police and different races
  + Spontaneous violent events like shootings
  + Political polls
  + Foreign policy debates (Iran deal)
  + Dormancy of foreign policies (Russian and North Korea)

Recent past?

* Does it seem like the past year was just a depressing/ unnerving time?
  + Last year was even more pessimistic than this year.
* What good news might be balancing this bad news out?
* Last break-even point: April 2009 (Obamas inauguration)
* Last time people were optimistic was January of 2004
* Most positive in the last 20 years was two weeks after 9/11

Is it Structural?

* GOVT lays out several alternative forms of government
* No call to make extreme changes though
* Political science research: two different types of support for government
  + Diffuse support: How we feel about the system we’ve chosen
    - Usually high
  + Specific support: how we feel about those running this system, what they’re doing.
    - Usually mixed to negative

Is it services?

* Harold Lasswell: politics is “who gets what, when and how”
* GOVT discusses services for all, services for some
* Maybe we’re sensing all isn’t all
* Maybe we’re frustrated with who’s in the some (some people get something while others don’t)
* GOVT also discusses the importance of managing the economy
* What if we took this concern off the table?

Is it conflict resolution?

* GOVT: “governments decide how conflicts will be resolved so that public order can be maintained”
* Resolutions: not quick enough
* Example: most pressing problems list
* Federal government: setting a bad example as to how?
* Thomas Patterson: “governing” vs. “game”
* We love governing: issue talk, processes followed
  + People want this
* We hate game: chasing power over helping people
  + Media loves this

Failure across Morone and Kersh’s “4-I’s” Depiction?

* Ideas
* Institutions
* Interests
* Individuals

Amending the Constitution

The Ratification Battle

* Known conflict: Federalists vs. Antifederalists
* Lesser known: does the document need a Bill of Rights?
  + Many framers were afraid to open this debate. They knew it would be a big debate.
* Bill of Rights: traditional to many
  + Many states and colonies already had bills of rights, which is why it was an expectation that the constitution would contain one

The Failure of Federalist 84

* Hamilton argues a Bill of Rights is unnecessary
* Why?
  + The government is small and the constitution is narrow
  + Many rights were already included in the constitution
  + Hamilton thought it would be redundant with what states were already doing
  + If you care about federal power, making a list is dangerous
* Most federalist papers were successes. This is a rare case of failure

Price of Ratification

* Bill of Rights: promised under the new government
  + So the promise is that if you ratify this, the question of the bill of rights will be looked at again

Building the Bill of Rights

* James Madison: “father of the Constitution” and “father of Bill of Rights”
* He reminded that the promise of the Bill of Rights must be fulfilled
* The concept: still divisive
* The congressional process: whittles down the list of proposed amendments (20 to 17 to 11 to 12)
* 10 eventually ratified
* Gregory Watson: “stepfather of the 27th Amendment” salvages 1 from the scrap heap
  + <https://www.google.com/search?site=&source=hp&q=27th+amendment&oq=27th+&gs_l=hp.3.0.0l5j0i3j0l2j5.471.1519.0.3169.5.5.0.0.0.0.197.657.0j4.4.0....0...1c.1.64.hp..1.4.653.vgQnLG7m5aQ>

The 17 Amendments that Followed

* Placed into 4 groups
  + Extending rights (e.g. prohibiting slavery, extending voting, eliminating pole taxes)
  + Adjusting election rules (e.g. direct election of senators, presidential term limits)
  + Modify government operations (e.g. presidential succession, inauguration)
  + Expand or adjust government power (e.g. income tax, prohibition)

4 Ways Constitutions can Change

* Revolution
* Amendments
* Interpretation
* Construction

Amendability

* Too rigid? Legitimacy might drop
* Times change, people change, but imagine if Constitution couldn’t
* Too easily revised? Constitution becomes a weapon
* Strong run roughshod over weak

Amendments are Longshots

* 10,000 amendments introduced
* 27 success stories (10 of those at once)
* What’s been proposed recently?
  + New rights: to housing, to quality education, to a “clean, safe, sustainable environment”
  + New electoral rules: eliminating Electoral College, limit campaign contributions, establish term limits
  + New values: define marriage, prohibit flag desecration, make English the official language, permit prayer in school

Rising to the Constitutional Level

* Consider the 18th Amendment: prohibition
* Important enough for an amendment? Or could it have been handled by Congress or the States?
* Also a good example of times changing, changing again
* Why go constitutional? Frustration with government decision-making as is

How we amend: Proposing an Amendment

* First path: 2/3 vote in both houses of Congress
* Second path (unused so far): national convention called by Congress at request of 2/3 of state legislatures
* Too dangerous or unpredictable to call a convention?
* First path satisfied (used 26 times): ¾ of state legislatures approve
* Second path (used once for the 18th amend): ratifying conventions in ¾ of states
* Time limits on ratification in modern times

How some states do it differently?

* Make it harder: amendment must pass in consecutive sessions
* Make it easy: simple majorities of legislators rather than 2/3 to propose
* Open up the process: let citizens vote on amendments through initiatives
* Examples: California’s constitution has 500+ amendments

Stealth Amending

* Supreme Court interpretation of what amendments mean is key
* Example: 14th amendment’s citizenship rights and equal protection
* Proposed to deal with issues regarding former slaves
* Interpretation over time: far reaching

Amendments Cont.

**Stealth Amending**

* Supreme Court interpretation of what amendments mean is key
* Example: 14th amendment’s citizenship rights and equal protection
  + Proposed to deal with issues regarding former slaves
  + Interpretation over time is far reaching and varying

**Famous cases related to 14th amendment interpretation**

* Arguments regarding substantive due process: Lochner, Griswold, Roe, Obergfell
  + Ideas like birth control, gay marriage, abortion
* Arguments regarding equal protection: Plessy, Korematsu, Brown, Loving, Bakke
  + Japanese internment camps, public schooling for genders, race issues
* Arguments regarding incorporation: Gitlow, Mapp, Gideon

**Judicial interpretation**

* Article 3 is silent, allowing courts to evolve
  + Courts feel that they can be the final arbiter of what the constitution does and doesn’t say
* How they evolve depends on how judges approach their job
  + Each judge has their own ideas on being a judge
* Do they defer to legislators and executives? Do they have ideologies?

Common Approaches

* Strict construction
  + Idea that constitution says “here is what congress can do” and if congress tries to do something that the constitution doesn’t say, the courts say no
* Textualism
  + Try to interpret the plain meaning of what the constitution says or what a law says. They look at the words, not the philosophies
* Original intent
  + Going back to read the words of the founding fathers, and interpreting what they actually meant by putting those things into the constitution
* Modernism
  + Realize that the constitution was written so long ago that we must look at it through a modern lens

The Pros and Cons of Federalism

**Federalism**

* According to GOVT: “Government powers are shared by the national government and the states”
* Reality: power shared by many, many entities (thousands)
* The 89,000 or so government
  + 1 federal
  + 50 states and DC
  + 3000+ counties
  + 19500+ municipalities
  + 16000+ townships
  + 37000+ special districts
    - Airports, water and sewage, schools, resource boards
  + About 1900 of these are in Oklahoma
    - 77 counties
    - 594 municipalities
    - 567 school districts
    - 642 special districts

**Advantages and Disadvantages of Federalism**

* Pros:
  + deals with size of the nation (population and geographic size)
  + Experimentation with different policies
  + Respects subcultures and diversity
  + Opportunities for citizens to get involved
* Cons:
  + Small units potentially dominated by factions
  + Laws not uniform from one place to the next
  + Legal red tape
  + Confusion for citizens over where to turn to solve problems

Todays Lecture

* Federalism creates an incredibly broad answer to the question “Who represents me?”

Federalism

Today’s Lecture

* Federalism creates an incredibly broad answer to the question “who represents me?”
* Is that answer strictly electoral in nature? Geographic in nature?
* How should I want these individuals to view their jobs?

Questions

* How should Tom Cole go about deciding what to do and how to vote as the Representative of this district?
* Who should Tom Cole listen to? Who shouldn’t he listen to?

How does representation work?

* Representation: the relationship between an elected official and the area they were elected to represent
* Classic model: Warren Miller and Donald Stokes
* Representation is congruence (how well what an elected official does matches the district opinion)
* Public seeks to control members through elections
* Problems:
  + Do citizens have opinions?
  + Do they express them?
  + Do they use elections?

Heinz Eulau and Paul Karps: Other forms

* Service: respond to specific needs, wants, problems in your area
* Allocation: bring home the cash
* Symbolic: getting things on the agenda, listening to all voices, building relationships

Representational Woes

* What if you’re a Democrat living in a part of Oklahoma in which every elected official is a Republican?
* What if you care about an issue and your elected officials feel the opposite? Or don’t care?
* What if my elected officials are completely different people than I am demographically?
* In essence: is representation solely about geography?

Alternate Conceptions of Representation: Collective

* Your location may differ from state dynamics or national dynamics
* Some elected officials look outward as well
* Result: collective representation
* Collective Representation: some elected officials stand for groups broader, more dispersed than a geographical location

Alternative Conceptions of Representation: Descriptive

* Women: 51 percent of population, about 20 percent of congress
* Latinos: 17 percent of population, about 7 percent of congress
* African American: 13 percent of population, about 9 percent congress
* Scholars call this underrepresentation
* Descriptive Representation: linkages between underrepresented groups and elected officials who share demographics

In Closing

* Federalism creates countless possibilities when it comes to representation
* If I don’t like my elected officials and what they’re doing, I can look elsewhere

Civil Liberties

Question

* Let’s say the Oklahoma Nazi Party (if there was such a thing) wanted to hold a demonstration in Norman? What arguments could be made for or against such a request?
  + For:
    - Freedom of speech (first amendment)
  + Against:
    - Negative effects of what they have to say on community

The Skokie Case

* 1977: National Socialist Party of America (Nazis) wants to hole a demonstration (carry signs, wear uniforms)
* Rejected by Chicago (who required insurance), settle on suburban Skokie (home of thousands of Jewish residents)
* City passes new requirements (insurance required, no demonstrations by hostile groups)
* Freedom of expression lawsuits lead courts to side with Nazis

Liberties and Rights

**Interpreting the First Amendment**

* Seems straightforward, but isn’t always
* Might think of a pendulum swinging between freedom and protection
* Pendulum: shifts based on state of affairs
  + War has a big effect on this pendulum
* Today: focus on historical and modern challenges to some of these liberties

**Original Philosophies**

* Founders didn’t always live up to these ideals (ex. Alien and Sedition Acts)
* Earliest major speech case: 1919’s Schenck case (“clear and present danger”) as test of 1917 Espionage Act
* Near v. Minnesota (1931): key case in favor of free expression by newspapers
* Over time: shift from “balancing doctrine” to what some call “fundamental freedoms” doctrine (where government has to meet heavy burden)
* New York Times v U.S. (1971): leaked classified documents on state of Vietnam War. This is an example of government failing to meet this burden

**Who’s swinging the Pendulum?**

* Three cases above: government versus individuals/media
  + Individual usually wins
* At times: government action built on foundation of public opinion
* Key to moving the pendulum: perception of threat (ex. 9/11)

**Testing Tolerance**

* Vague questions like “do you believe in freedom of speech?” lead to strong support
* Start naming groups: support drops
  + Do you believe in freedoms for Nazis, KKK, etc.
* Sullivan, Piereson, Marcus: the “least liked group” changes over time (very different in 1950’s, 1970’s, 2000’s)
  + 50’s: Athiests/communists
  + 70’s: Nazis/KKK
  + 00’s: radical islam
* Why? Threats change, new issues pop onto agenda

**Norms and Power Conditioning**

* Marcus, Sullivan, Theiss-Morse, and Wood: tolerance is shaped by multiple assessments of the situation
* Do we think demonstrators will follow norms (cooperate with police, follow routes, or be violent and cause trouble)?
* Do we think demonstrators have any chance of gaining power?
* The Skokie example: no to the first, a mixed history on the second

**Electoral Prejudice?**

* Three examples just given: the “Bradley Effect”
* Possibly a result of “social desirability bias” amongst white surveyed
* 2008 Presidential Election: a true sign we’ve advanced?