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Constitutional
Underpinnings

Democracy in the United States

- I. Democracy
 - A. Rule by the people
 - B. 2 types:
 - 1) **Direct Democracy**: rule by the people themselves
 - a. The Framers distrusted it because of impracticalities, ignorance of the masses, fleeting passions of the people, and the fear the masses could be swayed by demagogues.
 - 2) **Indirect/Representative Democracy**: rule by elected representatives
 - a. *A.k.a. Republic*
 - b. Framers believed it solved the problems of direct democracy.
 - c. “Secures the advantages of direct democracy while curing its weaknesses.”
- II. Distribution of power in our system
 - A. *Majoritarian politics view*: government is heavily influenced by the will of the people
 - B. *Elite politics view*: government is heavily influenced by small powerful groups
 - 1. Marxist – influence of economic elites
 - 2. C. Wright Mills – influence of power elite (ex. Corporate, political, military) – Eisenhower’s “military industrial complex”
 - 3. Max Weber – influence of bureaucracy
 - C. *Pluralist view*:
 - 1. Political resources are so scattered that no single elite has a monopoly
 - 2. There are so many institutions with power that no elite could control them
 - 3. Therefore: many groups compete with each other for control over policy. So, policy is the outcome of political haggling, innumerable compromises, and ever-shifting alliances among groups.
 - D. *Hyperpluralist view*:
 - 1. Pluralism gone sour: there are so many strong groups that the government has become gridlocked and unable to act.
- III. Fundamental Democratic Values:
 - A. Popular sovereignty
 - B. Respect for the individual (state serves individual),
 - C. Liberty
 - D. Equality (of opportunity more than result/outcome)

- IV. Fundamental Democratic processes:
 - A. Free/fair elections (w/competing political parties)
 - B. Majority rule w/ minority rights (fear of “tyranny of the majority”)
 - C. Freedom of expression
 - D. Right to assemble and protest
- V. Democratic structures:
 - A. Federalism
 - B. Separation of powers
 - C. Checks and balances
 - D. Constitutionalism

- I. Sources of the Constitution:
 - A. British customs and traditions (Magna Carta and English Bill of Rights)
 - B. Colonial experiences (power of elected representatives)
 - C. State constitutions (preamble resembles Mass. constitution)
 - D. Experiences under Articles of Confederation (lack of power to tax and regulate currency and interstate commerce)
- II. Constitutional Convention in 1787
 - A. Background leading up to the Convention:
 - 1. Declaration of Independence > Revolutionary war > Articles of Confederation (This was the Constitution of the United States from essentially independence to the new Constitution).
 - 2. Weaknesses in Articles of Confederation:
 - a. NO: power to tax
 - b. NO chief executive
 - c. NO national judiciary
 - d. NO power to regulate commerce [interstate or foreign]
 - e. NO national currency
 - 3. Annapolis Convention, 1786: called to improve Articles (no one shows)
 - 4. Shay's Rebellion, 1786 : Was the final event that proved necessity of a stronger national government
 - B. Delegates:
 - 1. Characteristics (Demographics): well-read, well-bred, well-fed, and well-wed"
 - 2. Participants:
 - a. Madison: "Father of Constitution" because of leadership and notes of proceedings
 - b. Washington: presiding officer
 - c. Franklin: "elder statesman"
 - d. Morris: largely responsible for final wording of Constitution
 - e. Hamilton: most forceful advocate for strong central government
 - 3. Charles Beard's Economic Interpretation of the United States (1913)
 - a. Constitution written by propertied class = reflected those interests
 - b. Rebuttals:
 - 1. Most people owned property
 - 2. The poor, hoping to own someday, wanted to protect property

3. Making a democratic government has risks and dangers-safeguards and protections needed

C. Areas of agreement:

1. Scrap Articles of Confederation
2. Suffrage for property owners only
3. Establish a republican govt.
4. Create a stronger central govt. than w/Articles.
5. Establish a constitutional govt.
6. Protection of property rights: main purpose
7. Make balanced govt. w/no one interest dominated
8. Keep the proceedings secret until the document was complete

D. Areas of disagreement:

1. Representation among states
 - a. Large states liked Virginia Plan [based on population of the states.]
 - b. Small states liked New Jersey Plan [equal representation for all states]
 - c. Connecticut (Great) Compromise: House based on population and directly elected by the people. Senate with equal representation elected by members of the state legislatures.
2. Representation and taxation of slaves
 - a. North wanted slaves to count in taxation but not representation
 - b. South wanted the opposite
 - c. 3/5 Compromise = 3/5 of slaves would count for both purposes. 3/5 was the ration that would yield equal representation among northern and southern states.
3. Election of the President
 - a. Life term vs. annual election: compromise = 4-year term
 - b. Proposed methods of election by delegates at the Convention
 1. Election by Congress
 2. Election by state legislatures
 3. Direct election by the masses
 4. Compromise: Electoral College. This acted as a filter.

E. Ratification Politics

1. Federalists:
 - a. Supporters: Wealthy property owners, creditors, merchants)
 - b. Views:
 1. Elites were the most fit to govern
 2. Feared “excesses” of democracy
 3. Wanted stronger central government than under the Articles of Confederation.
 - c. Leaders: Hamilton, Madison, Washington, Jay.
2. Antifederalists
 - a. Supporters: Average citizens small farmers, frontiersmen, debtors, shopkeepers)
 - b. Views:
 1. Feared concentration of power into the hands of the elites
 2. Felt government should be close to the people
 3. Feared a strong central government and favored strong state government
 4. Feared the lack of a Bill of Rights in the new Constitution.
 - c. Leaders: Henry, Mason, Gerry, Jefferson
3. Federalist advantages:
 - a. Better represented in state legislatures
 - b. Controlled the press(Media)
 - c. Began ratification procedures before Anti-Federalists could organize
 - d. Agreed to a Bill of Rights to be added after ratification of the Constitution
4. Federalist Papers: Persuasive essays written by Madison, Hamilton, and Jay to rally support for ratification (approval) of the Constitution.
5. Ratification, 1788: by state ratifying conventions of popularly-elected delegates.

I. Separation of powers

- A. To Madison, tyranny was govt. that controlled all 3 branches. Therefore he wanted the division between legislative, executive, and judicial power
- B. Influence of Montesquieu
- C. Colonial experiences, ex. powerful state legislature-> need strong executive
- D. Threat of 2 branches combining powers-> checks and balances

II. Checks and balances

A. Background

- 1. 18th century view of government: as something to be restrained, and modern view that government should use for common good.
- 2. Fear of tyranny among founders -> distrust of govt. -> checks and balances to purposefully make inefficiency to prevent government abuse of power

B. Definition: system of restraints in which each branch can check the other. Each branch has some degree of control and oversight over the actions of the others.

C. Examples: veto, veto override, appointment and confirmation, treaty making and ratification, Congressional defense funding and Commander-in-Chief

D. Political independence within each branch: no branch dependent on other two for election (except federal judges which are appointed by president and confirmed by the Senate) and continuance in office [life terms for judges ameliorate presidential influence]

E. Staggering of terms within each branch

F. Modifications of checks and balances: **examine if the following strengthen or weaken them**

1. Political Parties:

- a. In theory, should weaken because parties are a way of bringing branches of government together. The Constitution divides govt. but parties bring people in govt. together.
- b. In reality, however, parties are weak:
 - a. Dominance of only 2 parties, each party with a wide range of interests and leads to disagreement within party itself and hard to assert such strong control.
- c. Prevalence of a **divided government**.

2. Changes in voting methods:

- a. Senators and congressmen chosen by people
- b. Presidents chosen by electors influenced by people.
- c. Two branches are chosen by the same electorate. Therefore, these changes should weaken, but split ticket voting changed this.

3. Growth of federal bureaucracy:
 - a. Creation of many agencies w/legislative, executive, and judicial functions
 - b. Congress often gives broad authority to agencies and lets them carry out the laws written by Congress.
4. Changes in technology (nukes, computers, internet, satellite communications)
 - a. President, congress, interest groups, media can take advantage of them-> strengthens
 - b. President has taken extreme advantage of these (“electronic throne”)-> weakens
5. Emergence of US as a world power after WWII [WEAKEN]
 - a. Areas of “national interest” grow around the world
 - b. US is leader of free world
 - c. These responsibilities seem to entangle the US in any crisis; puts power in executive branch
 - d. These responsibilities need to be dealt with in a strong and efficient manner. Therefore, power has concentrated in the executive branch and weakened checks and balances.

III. **Limited government:** dilemma of wanting a more effective government but also a limited government that did not become tyrannical.

- A. Constitutional government: gives government has only the powers listed in the Constitution.
- B. Bill of Rights: safeguard against possible tyranny from a new, strong, distant govt. Little fear of state government but a large fear of national govt. **Amendment 10** reflects view that states would have substantial powers.
- C. Free elections, but potential of majority faction-> Madison's "auxiliary precautions" in the Federalist 51.

IV. **Judicial Review**

- A. Definition: power of courts to strike down laws or governmental actions
- B. Not clearly stated in Constitution but written in broad terms, in Article III, that need to be interpreted, this most logically falls to the courts. *"The judicial power shall be vested in one Supreme Court..."*
- C. Established by Marbury v. Madison, 1803:
 - 1. Facts of case: at the end of the Federalist control of the govt. and appointment of the "midnight judges" [including Marbury]-> Marbury's request for a **writ of mandamus** (under Sect. 13 of Jud. Act of 1789) from the Supreme Court to order the delivery of his commission
 - 2. Decision of Marshall and the Court: the Act enabling the court to issue this through original jurisdiction in this type of case was unconstitutional
 - 3. Analysis
 - a. Marshall ruled that the Court did not have the authority to issue the writ, but he paradoxically increased its power by establishing judicial review when the Court struck down section 13 of the Judiciary Act of 1789.
 - b. Jefferson couldn't complain because the midnight judges didn't receive their appointments but he fumed because his enemy, Federalist John Marshall, increased the power of the Supreme Court
 - 4. Effects of judicial review: citizens can challenge constitutionality of laws by initiating lawsuits-> therefore; **litigation** has become an important way of making public policy.

V. **Changing the Constitution informally** (without adding Amendments. In essence, changing/reinterpreting) the meaning of the existing words in the document)

- A. The Constitution is a framework, allowing details to be filled in later.
- B. Because changing it formally is difficult and rare, informal ways developed.
 - 1. Legislation written by Congress.
 - 2. Judicial rulings [Plessey v. Ferguson, Brown v. Board, Texas v. Johnson]
 - 3. Presidential actions [police actions since WWII, executive privilege, impoundment, recent activities under the Obama administration regarding listening to phone call and reading emails]

4. Customs and traditions [Cabinet, parties, committee system in Cong., senatorial courtesy, legislative veto, presidential nominating conventions]

C. *“Constitution belongs to the living, not the dead”* (Jefferson)

1. Jefferson believed that each generation might need a new Constitution but this hasn't happened because of the informal changes that allow it to adapt to changing times.

VI. **Formally Changing the Constitution** [adding Amendments]

A. Legacy and experience of Articles of Confederation which needed a unanimous vote to amend and was impractical and hard. Therefore, framers desired an easier process but not too easy.

B. Reasons for recent popularity of proposing amendments [balanced budget, D.C. statehood, ERA]

1. Dissatisfaction of interest groups with court decisions

2. Gridlock in Congress

C. The process of amending reflects the federal system (FEDERALISM)

1. Proposal: TWO METHODS

a. 2/3 vote from both houses of Congress [all have been done this way] w/no presidential veto allowed

b. Constitutional Convention called by Congress at request of 2/3 of states. Serious implications and fears of such a gathering:

1. Never used before

2. Fear of a “runaway” convention that could get out of hand and make wholesale changes in Constitution

3. Disturbing questions: Will it stick to only the matter at hand? Will it take on other issues? Get gets to be delegates? How are they selected? How is representation among the states decided?

2. Ratification [TWO METHODS: Congress decides which one will be used]

a. ¾ of state legislatures vote on the proposed amendment

1. All but one done this way [21st]

2. Most state legislatures ratify with a simple majority, but some require a supermajority.

b. Ratifying conventions in ¾ of states

1. Amendment 21 was done this way.

2. More democratic way: people elect delegates who state their positions on the proposed amendment. Citizens are in essence casting their votes for the amendment by voting for the appropriate delegates.

D. Time limits for ratification: generally 7 years [exception of ERA]

Origins of American Federalism

I. Federalism: constitutional division of power between the national and state governments Both get powers from a Constitution not each other.

II. Reasons for federal system in the US

A. Unitary system [where a *central govt.* not *constitution* delegates power] was not wanted-too reminiscent of British rule. Fear of strong, distant government.

B. Confederate system undesirable-too reminiscent of Articles.

C. Allows unity along with differences among states

D. More suitable for geographically large nations **and** a heterogeneous people

E. More likely to check tyranny because the national govt. only has powers granted to it, all others belong to the states [10th Amendment]

1. Cost of checking tyranny is at times an inefficient government, **but the Founders cared more about stopping tyranny than having a strong and efficient govt. that is able to destroy the people's liberties**

F. Allows national govt. to concentrate on truly national matters

G. Frees states from excessive intrusion on strictly state/local matters [but discuss problem of growth of federal mandates, and esp. unfunded ones]

H. Encourages experimentation-states as "laboratories" [Wisconsin's welfare reform plan]

I. Keeps govt. closer to people. Multiple points of access for citizens.

III. Historical developments (in other words, what federalism has looked like in American history).

A. Dual (layer cake) federalism: State and national govts each remained supreme in their own spheres.

1. Prevalent from 1789 to roughly 1937

2. Powers and policy assignments of the layers of government were distinct like a layer cake.

3. Suggested that the powers of the national govt. should be interpreted narrowly

B. Marble cake (cooperative) federalism: Mingling responsibilities and powers between state and national governments.

1. Prevalent from 1937 to mid-1970s: New Deal, Civil Rights, New Frontier, Great Society

2. Suggests that powers of the national govt. should be interpreted broadly

C. New federalism: Belief in the need to shift some authority and decision making powers from national government back to the states.

1. Associated with Nixon(70s), Reagan(80s), and esp. with 104th and 105th Republican Congress'(1990s): "Devolution Revolution"

2. Example: use of block grants in welfare reform bill of 1996

Structure of American Federalism

I. National Powers

- A. **Delegated** [synonyms: expressed, enumerated]: These are Congress' powers that are clearly stated in Constitution. Article 1 Section 8 Clauses 1-17 are examples: Commerce, Declare War, and Taxing.
- B. **Implied**: Congressional powers not stated explicitly, but suggested implicitly.
 - 1. *Importance of Necessary and Proper Clause (Elastic Clause)*
 - 2. *Article I Section 8 Clause 18: "The Congress shall have Power - To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."*
- C. **Inherent**: Executive branch powers not stated explicitly but derived from the Article II in the Constitution.
 - 1. The President derives these powers from the loosely-worded statements in the Constitution that "the executive Power shall be vested in a President" and the president should "take care that the laws be faithfully executed"

II. State Powers: **Reserved/Police**

- A. Amendment 10: *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."*
- B. Source of power for the states. Reflects the fears of the Anti-Federalists.
- C. Examples: *establishing voting requirements*, running elections, licensing professionals, protecting community health, establishing a vehicle codes.

III. Concurrent Powers

- A. Held by both national and state governments
- B. Examples: taxing, borrowing, establishing court systems, establishing law enforcement agencies
- C. Questions of fed./state authority conflicts are decided by courts

IV. National Supremacy (Article VI's Supremacy clause): The national govt. is generally supreme in case of conflict between the states and national government.

- A. *"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."*

V. Obligations of national govt.

- A. Guarantee that each state has a republican form of govt.
- B. Protect each state against invasion or domestic violence
- C. Grant new states the same rights as other states

VI. Obligations of state governments

- A. Full faith and credit clause (Article IV): *"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."*
 - 1. Each state has to honor the laws/legal proceedings of other states [marriages, debts]
- B. Privileges and immunities clause (Article IV): *"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."*
 - 1. each states has to grant citizens of other states the same rights/privileges that they grant their citizens [cannot discriminate]
- C. Extradition: governors must return suspects to the states in which they allegedly committed their crimes
- D. Interstate economic compacts require consent of Congress

American Federalism: Decentralism (States' Rights) v. Centralism (Nationalists)

I. Decentralist (States' Rights) Views:

- A. Constitution is a compact created by states -> implications?
- B. Constitution carefully limits national authority to delegated powers
- C. 10th Amendment gives broad power to states
- D. When in doubt as to which holds a power, matter resolved in favor of states
- E. Implies **strict constructionist** interpretation of the Constitution
- F. National government has gotten too big and impersonal
- G. State governments are closer to the people
- H. Followers: Anti Federalists, Goldwater, Reagan, southern conservatives, western conservatives

II. Centralist (Nationalist) Views:

- A. Constitution created by people ["We the people..."]
- B. Elastic, commerce, and taxing/spending clauses give great power to national government.
- C. Powers go to states only if they have been surrendered by national govt.
- D. When in doubt, matter resolved in favor of national govt.
- E. Implies **loose constructionist** interpretation of the Constitution
- F. Size of federal bureaucracy has remained relatively constant for last 40 years
- G. While state governments may be closer to people, some of those state governments have violated people's basic rights [South during first 70 years of this century]. Therefore, the national government has been key protector of rights.
- H. Followers: Federalists, John Marshall, TR, FDR, JFK, LBJ

III. Triumph of Nationalist approach: **McCulloch v. Maryland, 1819**

- A. Maryland attempted to tax a branch of the Bank of the US.
 - 1. Maryland argued that taxing was one of its reserved powers.
 - 2. Additionally, Maryland argued that a national bank was unconstitutional and Congress did not have the power to create one.
- B. The Supreme Court's decision [under the Federalist John Marshall]:
 - 1. Need for a more flexible interpretation of the Constitution so that it would endure->bank was "necessary and proper"->establishment of implied powers and said creating a national bank was one of Congress' implied powers based in the elastic clause (Article 1 Section Clause 18)
 - 2. In his opinion, Marshall stated, "the power to tax involves power to destroy"->states clearly not free to destroy the national govt. ->establishment of national supremacy (Article VI's Supremacy Clause).

IV. Constitutional Sources of National Strength

- A. Elastic/Necessary and Proper Clause: Article 1 Section 8 Clause 18.
- B. War power: Congress has the power to declare war and the President is Commander in Chief.
- C. Commerce clause: Congress can regulate interstate and foreign commerce. Since almost anything can be defined as commerce this gives tremendous powers.
- D. **Preemption** of state laws by federal courts if laws in conflict w/Constitution or federal laws. (recent Arizona voter ID law)
- E. Imposition of federal mandates [some unfunded] on states.
- F. Power to tax and spend: Congress can't legislate on everything, but they can spend funds on almost everything. Therefore, if states want federal money, they must obey the "strings"/guidelines that the federal government attaches to the money. This leads to tremendous power for the federal government. (Common Core standards and Race to the Top Money)

V. Recent Developments

A. Generally an **evolution** towards greater federal power throughout 20th century.

B. Nixon's "New Federalism:" returning some of the power back to states. Also favored Reagan, both Bushes, and Republican Party in general.

C. Republican victory in congressional elections of 1994 -> Contract with America and **devolution** of power back to states. The following are examples of devolution:

1. Unfunded Mandates Reform Act of 1995 = no more unfunded mandates
2. Block grants replace categorical
3. 1996 Welfare Reform Bill
 - a. Ended welfare as federal entitlement
 - b. Instead states receive block grants to administer welfare
 - c. With "strings" attached of course:
 1. Recipients must work within 2 years
 2. Recipients can't get benefits for more than 5 years
4. Repeal of 55 M.P.H. speed limit

D. Supreme Court actions consistent with **devolution**

1. Struck down Gun Free School Zones Act in 1995 (*US v Lopez*): Congress overextended itself when it linked gun control laws to the interstate commerce clause of the Constitution.
2. Struck down Religious Freedom Restoration Act in 1993 that interfered w/state regulation of religion for public welfare. (*City of Boerne v Flores*)
3. Struck down Brady Act in 1997 that required local law enforcement agencies to do background checks on gun buyers. (*Printz v US*)

Federalism and Federal Grants (Grants in Aid)

I. As the national govt. has grown more powerful, it has used state and local governments to administer programs that are federally funded [development of federal grants]

II. Purposes of Federal Grants:

- A. Reduces growth of federal govt. [simply provides money w/guidelines to states and has them run the programs]
- B. Supplies state and local governments w/needed revenue
- C. Establishes minimum federal standards in important areas [air and water quality]
- D. Equalizes resources among rich and poor states

III. Types of Federal Grants (Grants-in Aid)

A. Categorical Grants

- 1. Money must be spent for specific programs [roads, airports, housing, bilingual education] and must be spent following the guidelines (strings) set by Congress.
- 2. National government pays a portion and the state picks up the balance. Sometimes called “formula grants” because they are offered under a payment formula [80%-20%]
- 3. States don’t have to take these grants but if they do they must comply w/federal standard (strings)

B. Project Grants

- 1. States apply for grants for specific projects. States create a project and ask the federal government for the funding.

C. Block Grants

- 1. Granted to support a collection of general programs [urban development, transportation, law enforcement, etc...]
- 2. State has more leeway in spending of the money. State gets to determine how to spend the money. For example, if the federal government sends block grants to the state to be spent on law enforcement, the states must spend on that area but Nevada can hire more officers while California can buy radio equipment. Another example is the Welfare Reform Act. It came as a block grant. States had to spend the money on welfare but got to determine how to spend it.
- 3. Associate with 104th and 105th Republican Congress and the **devolution** of power back to states

D. Revenue Sharing Grants

- 1. General grant of money back to the states to spend as they please [most discretion]
- 2. Associate with Nixon and Reagan [more New Federalism]
- 3. When budget deficits skyrocketed in late 80’s these ended, “no more revenue to share”

E. Analyze these types of grants from centralist and decentralist positions. When do states have more power? When does federal government have more power?

IV. Politics of Federal Grants

A. Democrats generally favor greater funding, but with more “strings” as with categorical grants

B. Republicans generally favor less funding, but with fewer “strings” as with block grants. Welfare reform is an example of this:

- 1. End to entitlement of AFDC and federal guarantee of welfare checks with passage in 1996 of Personal Responsibility and Work Opportunity Reconciliation Act
- 2. Welfare block grants therefore replaced the welfare categorical grants.
 - a. This gave states more power through the decision of how best to spend this money on welfare programs.
- 3. Federal “strings”
 - a. No federal funds go to recipients who have not worked w/in 2 years
 - b. No federal funds go to recipients who have received federal money > 5 years
 - c. States must spend at least 75% of what they had previously spent on welfare-to avoid “race to the bottom”

Federal Mandates

- I. **Mandate:** a federal order imposed upon states. This is usually done through legislation. However, they can be done through executive orders, court decisions, and bureaucratic rules and regulations. *Examples:*
 - A. Americans with Disabilities Act
 - B. Various environmental acts [Clean Air Act, Clean Water Act]
 - C. Individuals with Disabilities Education Acts.
 - D. *Brown v Board*
- II. Purpose: to meet a goal of the federal government
- III. Impact upon the states:
 - A. Financial burdens esp. w/unfunded mandates
 - B. States feel intruded upon and feel that they are closer to the people and know what is best for them.
 - C. States complain about federal heavy-handedness. [if doesn't create a plan to pay for the requirements of the mandate, the federal government imposes its own plan upon the state]
 - D. States complain about federal blackmail [if doesn't comply with mandate standards, federal funds can be withheld in other programs]
 - E. States believe that federal govt. is altering the nature of federalism w/its excessive power
- IV. Republican Response to mandates:
 - A. Unfunded Mandates Reform Act of 1995 [part of contract w/America] restricted future unfunded mandates
 - 1. Required Congressional Budget Office (CBO) to analyze impact of unfunded mandates on states
 - 2. Requires separate congressional vote on bills that impose unfunded mandates.
 - B. This is another example of the **Devolution Revolution** associated with the 104th and 105th Congress'.

Politics of American Federalism

I. Nonconstitutional Reasons for Triumph of Nationalist Approach

- A. Growth of U.S. size and population leads to problems only the national govt. could handle
- B. Problems tend to be more national/international in scope [pollution, crime, global economy]
- C. Improved communication and technology [Washington D.C. not so far away]
- D. Historical developments [New Deal, WWII, Great Society] made huge bureaucracies and constituencies to support a strong fed. government. Once these programs have started and gained political support, they are hard to end.

II. Reaction against Big Government

- A. General consensus in late 70s that power of govt. had gone too far
- B. 4 “outsiders” elected as president [Carter, Reagan, Clinton, Bush]
- C. Questionable effectiveness of some fed. programs
- D. Tax revolt [Prop 13, Mondale’s “pledge” to raise taxes, Bush’s “read my lips,” Bush 43 tax cuts]
- E. Reduction of Great Society-style fed. aid to cities, and restoration of principle that states should have more responsibilities
 - 1. Elimination of revenue sharing
 - 2. Reduction of categorical grants
 - 3. Increased use of block grants
 - 4. Reduction of federal regulations [granting of waivers to states wanting to experiment with welfare reform]
 - 5. 1996 welfare reform bill that ended welfare as federal entitlement
 - 6. Restrictions on future unfunded mandates as part of Contract with America

III. Effects of New Federalism and Devolution Revolution

- A. Bill Clinton declared [1996] that “the era of big government is over.” Evidence of this:
 - 1. Welfare reform bill
 - 2. Repeal of 55 mph limit
 - 3. Restrictions on future unfunded mandates
 - 4. More block grants/less categorical grants
- B. However, even Republican Congresses increased national power:
 - 1. National criteria for state-issued drivers’ licenses
 - 2. National registration for mutual funds
 - 3. More national food safety standards
 - 4. More national crimes [carjacking and stalking]
 - 5. Recent NSA activities regarding collecting phone and internet data on Americans
 - 6. Affordable Care Act (Obamacare)

C. Clinton tried to increase national power by calling for more national gun control laws and for national education standards.

D. **“Anti-Washington sentiment is 3000 miles wide, but only a few miles deep.”-> Americans are pragmatists who want whatever level of govt. gets the job done.**

Review Sheet Unit I Exam

1. Direct democracy
2. Republic
3. Natural Rights Theory
4. John Locke
5. Thomas Hobbes
6. State of Nature
7. Social Contract
8. Law of Nature
9. Pluralism
10. Hyperpluralism
11. Elite Theory (Mills, Marx etc...)
12. Declaration of Independence
13. Articles of Confederation
14. Shays' Rebellion
15. Popular sovereignty
16. Bill of Rights
17. Federalists
18. Anti-Federalists
19. Virginia Plan
20. New Jersey Plan
21. Connecticut/Great Compromise
22. Separation of Powers
23. Checks and Balances
24. Auxiliary Precautions
25. Judicial Review
26. Limited Government
27. Constitutionalism
28. Charles Beard
29. Annapolis Convention
30. 3/5 Compromise
31. Electoral College
32. Federalist Papers
33. Federalists 10 and 51
34. Marbury v Madison
35. McCulloch v Maryland
36. Gibbons v Ogden
37. US v Lopez
38. Boerne v Flores
39. Confederate System
40. Unitary System
41. Federalism
42. Dual Federalism
43. Cooperative Federalism
44. New Federalism
45. Devolution Revolution
46. Contract with America
47. 104th and 105th Congress
48. Unfunded Mandates Reform Act
49. 1996 Welfare Reform Act
50. Delegated (expressed or enumerated)
Powers
51. Implied Powers
52. Inherent Powers
53. Reserved/Police Powers
54. Concurrent Powers
55. Commerce Clause
56. Supremacy Clause
57. Elastic or Necessary and Proper
Clause
58. Centralists and Decentralists
59. Grant-in-Aid
60. Formula grants
61. Categorical grants
62. Block grants
63. Revenue sharing grants
64. Project grants preemption

65. Nullification

66. mandates and Unfunded mandates

67. 10th Amendment

68. Full faith and credit clause

69. Preemption

70. Privileges and immunities clause

71. Be able to identify LEJFASR

72. Tyranny

1. Why did the Framers desire a republic rather than a direct democracy?
2. Compare and contrast the theories of power in the American Republic. (i.e. elite vs. majoritarian and pluralism).
3. How do we see the Framers' views of human nature being reflected in the Constitution?
4. Identify and discuss the influences upon the Constitution.
5. What were the weaknesses of the Articles of Confederation and how did the Constitution address these weaknesses?
6. Explain the formal and informal process of ratification.
7. What was the purpose of the Federalist Papers? Compare and contrast the Federalists and Anti-Federalists.
8. Give 3 examples of checks and balances.
9. Discuss the reasons for a federal system in the United States.
10. Discuss the evolution of federal power from the Articles of Confederation to the Devolution Revolution.
11. Discuss the following quote: "[A republic] secures the advantages of direct democracy while curing its weaknesses."
12. How does the Federalist 10 justify a republic.
13. In the 51st Federalist Paper, Madison outlines the reasons for checks and balances. Why does he say they are necessary?

Place Tab Here

Civil Rights and
Civil Liberties

PRINCIPLES OF CIVIL LIBERTIES AND CIVIL RIGHTS, 438-43

- I. Distinction: Civil liberties involve basic freedoms (e.g., speech and religion), civil rights involve protections against discriminatory treatment. Civil liberties are protected by Amendment 1. Civil rights are protected by Amendment 5 (against the national govt.), Amendment 14 (against the state governments), and by congressional legislation.
- II. Sources of protection of these:
 - A. The Constitution, e.g., no ex post facto laws or bills of attainder, habeas corpus.
 - B. Bill of Rights (and subsequent Amendments)
 - C. Legislation, e.g., Civil Rights Acts of 1964 and 1968, **Voting Rights Act of 1965**.
 - D. Court decisions, e.g., **Brown v. Board** and **Roe v. Wade**.
 - E. State constitutions.
- III. Relative nature of these.
 - A. These not absolute: they may be exercised only as long as they do not infringe upon the rights of others.
 - B. Balancing test: courts balance individual rights and liberties with society's need for order and stability.
- IV. People to whom these are guaranteed:
 - A. Most rights and liberties are granted to all in the U.S., regardless of citizenship.
 - B. Exceptions: non-citizens may not vote, serve on juries, stay in the U.S. unconditionally, or hold public office or certain jobs.
- V. Impact of federalism.
 - A. Bill of Rights was originally a protection against the national government, and did not include protections against state governments (Barron v. Baltimore, 1833). The feeling was that people could protect themselves against the state governments that were in their own back yards, but that they needed additional protection against a new, powerful, and distant national government.
 - B. **Modifying effect of the 14th Amendment.**
 1. **The due process clause has been used to apply most of the provisions of the Bill of Rights to the states. This clause bans states from denying life, liberty, or property without due process of law. Freedom of speech, for example, is a "liberty," therefore states cannot deny freedom of speech without due process of law.**
 2. The "total **incorporation**" view would apply all of the provisions of the Bill of Rights to the states. It argues for nationalization of the Bill of Rights.
 3. The "selective **incorporation**" view would apply only some of these provisions, and would do so on a gradual, case-by-case basis over time
 4. The important case here: Gitlow v. New York, 1925.
 - a. Benjamin Gitlow, a communist, was convicted of criminal anarchy in a state court.
 - b. The Supreme Court upheld the conviction, BUT also added that states may not deny freedom of speech and press. These were to be protected by the "liberty" part of the 14th Amendment's due process clause.
 5. Subsequent cases nationalized parts of the Bill of Rights on a selective **incorporation** basis:
 - a. Assembly
 - b. Petition
 - c. Religion.
 - d. Search and seizure protections.
 - e. Self-incrimination.
 - f. Double jeopardy.

- g. Right to counsel.
 - h. Right to bring witnesses.
 - i. Right to confront witnesses.
 - j. Protection against cruel and unusual punishment.
6. Which rights must states uphold? The Palko test (from Palko v. Connecticut) tells us that any right that is so important that liberty would not exist without it must be upheld by states.
 7. All provisions of the Bill of Rights except Amendment 2, Amendment 3, Amendment 7, **Amendment 10**, and the grand jury requirement of the 5th Amendment have been nationalized.

VI. 9th Amendment.

- A. No complete listing of rights is possible ---> inclusion of the 9th Amendment.
- B. Examples of "other" rights protected by Amendment 9:
 1. **Privacy (Griswold v. Connecticut, 1965).**
 2. Travel.
 3. Freedom of association (Boy Scouts of America v. Dale 2000: Boy Scouts can ban homosexuals from being scout leaders via Amendment 1 and 9)
 4. Homosexual conduct (Lawrence v. Texas, 2003: Using the right of privacy, this decision struck down a Texas law that banned sodomy. It reversed the decision of Bowers v. Hardwick [1986], which upheld a Georgia law banning sodomy.

FREEDOM OF RELIGION, 443-47

I. Establishment clause.

A. Examine the text.

B. Nationalizing influence of Amendment 14 (Gitlow v. New York).

C. **Basic meaning of establishment clause: government may not establish an official religion.**

1. "Accommodationist view": Government should bend a bit and allow a certain degree of church/state blending, e.g., allowing nativity scenes on city property, allowing a non-denominational prayer in public schools. Stresses freedom OF religion.
2. "Separationist view:" Government should allow virtually no blending of church and state. There should be a "**wall of separation**" (Jefferson) between the two. Stresses freedom FROM religion.
3. Endorsement view: forbids governmental practices that endorse religion, e.g., nativity scene at City Hall or 10 Commandments being posted in a court house
4. Non-preferentialist view: Const. prohibits favoritism towards a particular religion, but allows governmental support for religion in general.

E. Key rulings.

1. Everson v. Board, 1947:
 - a. Upheld a NJ law allowing tax money to pay transportation costs for students attending private (incl. Religious) schools. Bus transportation is not a religious activity.
 - b. However, the Court stated that a "wall of separation" exists between church and state, and that the **establishment clause** of Amendment One applied to the states via the due process clause of Amendment Fourteen
2. Zorach v. Clauson, 1952: released time for students is constitutional
3. Engle v. Vitale, 1962: no state-sponsored, recited prayer in public school.
4. Abington v. Schempp, 1963: no devotional Bible-reading in public school.
5. Epperson v. Arkansas, 1968: state laws may not prohibit the teaching of evolution in public school.
6. Lemon v. Kurtzman (1971): In this case, the Supreme Court struck down a Penn. law in which the state reimbursed nonpublic schools (most of which were Catholic) for teachers' salaries, textbooks and instructional materials. The case established "permissible" and "Impermissible" aid. It established a 3-part test (the Lemon test) to determine if a statute or practice violates the **establishment clause**:
 - a. Nonsecular (religious) purpose.
 - b. Advances or inhibits religion.
 - c. Excessive entanglement with government.

(If any of these is present, the statute or practice is unconstitutional)

7. Zelman v. Simmons-Harris 2002: Public money can be used to send disadvantaged students to religious schools in school voucher programs

II. Free exercise clause.

A. Provides freedom of worship.

B. Nationalizing influence of Amendment 14.

C. Problem of contradiction between **establishment clause** and free exercise clause, e.g., a law requiring students to salute the flag might violate freedom of worship for a Jehovah's Witness, but exempting that student from doing so might be construed as favoring religion and therefore might violate the **establishment clause**.

D. Distinction between belief and practice: the former is always allowed, but the latter is not always allowed. Freedom of worship is a relative, not absolute, right. Balancing test once again applies.

E. Standard used for judging whether or not religious expression is constitutional:

1. Old standard: govt. could not deny religious expression unless there was a compelling purpose for it to do so. Burden of proof was on states. This made it difficult for states to restrain religion.
 2. That standard was reversed by Employment Division of Oregon v. Smith, 1990: state denied unemployment benefits to a man who was fired from his job because he used peyote, even though he used peyote as part of a Native American religious ceremony. Supreme Court upheld the state's ruling: govt. no longer needed a compelling purpose to deny religious expression. Burden of proof was on religion. The only laws that would be struck down would be those that were intended to stifle a particular religion. This made it easier for states to restrain religion.
 3. A strange congressional coalition led by Orrin Hatch and Ted Kennedy sponsored the Religious Freedom Restoration Act, 1993: restored the old compelling purpose standard, and burden of proof was once again on states. This made it difficult for states to restrain religion.
 4. In City of Boerne v. Flores, 1997, the Supreme Court struck down the Religious Freedom Restoration Act and restored the standard used in Oregon v. Smith. Burden of proof was once again on the religion. This made it easier for states to restrain religion.
- F. Religious practices that have been restricted:
1. Reynolds v. US, 1879: Morrill Bigamy Act (1862) criminalized polygamy. George Reynolds was prosecuted under the act. Supreme Court ruled that free exercise clause protected religious beliefs, but not necessarily religious actions. Polygamy therefore not protected by Amendment One, and Reynolds was convicted.
 2. US v. Lee, 1982: Amish cannot refuse to pay Social Security taxes for religious reasons.
 3. Employment Division of Oregon v. Smith, 1990 (noted above)
- G. Religious practices that have been permitted:
1. West Virginia v. Barnette, 1943: one of the Jehovah's Witnesses cases. Students may not be compelled to salute the flag in school.
 2. Wisconsin v. Yoder, 1972: Amish do not have to send children to school past the 8th grade.
 3. Church of Lukumi Babalu Aye v. Hialeah, 1993: City of Hialeah banned the religious ritual of animal sacrifice, which was practiced by the Santerians. Supreme Court struck down that city ordinance, allowing the practice of animal sacrifice.

III. Article 6 bans religious tests and oaths as a qualification to hold public office.

FREEDOM OF SPEECH, 447-53

- I. Nationalizing influence of Amendment 14.
- II. Involves both the freedom to give and hear speech -- see Mill's quotation.
- III. Belief is most protected, action can be most restricted, but speech falls somewhere in between.
- IV. Historic tests used by courts to determine if speech is protected.
 - A. Bad tendency doctrine.
 - 1. State legislatures, and not the courts, should generally determine when speech should be limited.
 - 2. Speech can be limited when it might lead to harm/illegal action
 - 3. Example: university speech code banning "racially abusive" speech would be constitutional.
 - 4. A restrictive test.
 - B. **Clear and present danger doctrine.**
 - 1. Schenck v. U.S., 1919. Case involved a man who was urging others to avoid the draft during WWI. The conviction was upheld, however: **Speech can be suppressed only if there is an imminent threat to society**, e.g., falsely shouting "Fire!" in a crowded theater.
 - 2. The university speech code would be unconstitutional because there is no imminent threat to society.
 - C. Preferred position doctrine.
 - 1. Free speech is of utmost importance and should therefore occupy a "preferred position" above other values ---> government should virtually never restrict it.
 - 2. The university speech code would be clearly unconstitutional.
- V Non-protected speech
 - A. Libel and slander.
 - B. Obscenity
 - C. "Fighting words." Speech that leads to violence can be restricted.
 - D. Commercial speech is subject to far greater regulation than political speech
 - E. Sedition
 - 1. In the past, could be mere criticism of the government (e.g., Alien and Sedition Acts)
 - 2. Smith Act, 1940: banned advocacy of overthrowing the government.
 - 3. Supreme Court narrowed the definition even further when it stated that sedition was prohibited only when:
 - a. there is imminent danger of an overthrow, and
 - b. people are actually urged to do something rather than merely believe something.
- VI Protected speech
 - A. Prior restraint.
 - 1. Blocking speech before it is given.
 - 2. Such action is presumed by courts to be unconstitutional.
 - 3. In the Pentagon Papers case, the court refused to impose prior restraint: the revelations may have embarrassed the government, but they did not endanger national security.
 - B. Vagueness
 - 1. Speech restrictions cannot be written in too vague a manner. They must be clear to the average person.
 - 2. The university speech code would be unconstitutional.
 - C. Least drastic means test.
 - 1. Laws cannot restrict speech if there are other means to handle the problem.
 - 2. The university speech code would be unconstitutional.
 - D. Centrality of political speech: political speech is given special protection because of

its importance in a democracy. Political speech is less likely to be restricted than other types of speech, e.g. commercial speech

E. Symbolic speech.

- 1. Somewhere between speech and action. Generally protected.**
2. U.S. v. O'Brien, 1968: draft card burning was not a protected form of speech.
3. Tinker v. Des Moines, 1969: wearing black armbands in school as a form of protest (against the Vietnam War) is constitutionally protected.
4. Texas v. Johnson, 1989: flag burning was a protected form of speech.

FREEDOM OF THE PRESS, 454-58

- I. Nationalizing effect of Amendment 14.
- II. Balancing test once again applies.
- III. Controversial areas.
 - A. Right of access.
 - 1. Generally granted to the press, but not always.
 - 2. "Sunshine laws" require agencies to open their meetings to the public and press.
 - 3. **Freedom of Information Act (1966) allows public access to government files.**
 - 4. Electronic Freedom of Information Act of 1996 requires agencies to put files online.
 - B. Executive privilege.
 - 1. The right of presidents to withhold information from Congress or the courts.
 - 2. U.S. v. Nixon, 1974: A President generally does have executive privilege, but not in criminal cases. Even the President is not above the law.
 - C. Gag orders may be issued by courts to ensure fair trials.
 - D. Shield laws.
 - 1. Protect reporters from having to reveal their sources.
 - 2. The press claims that without them, their sources would "dry up," and they would be unable to provide information to the public.
 - 3. While Congress has not passed a shield law, many states have done so.
 - E. Defamation.
 - 1. Distinction between libel (written word) and slander (spoken word).
 - 2. Not protected by Amendment 1.
 - 3. To win a libel or slander case, one must generally prove that the allegations were false and that they damaged his/her reputation.
 - 4. In New York Times v. Sullivan (1968), however, the Court ruled that public figures must also prove malice. This makes it difficult for public figures to win libel suits, so the case was seen as a major victory for freedom of press.
 - F. Obscenity.
 - 1. Not protected by Amendment 1.
 - 2. Old standard for proving obscenity: material appealing to prurient interests and utterly without redeeming value.
 - 3. New standards in Miller v. California, 1973:
 - a. Community standards must be violated.
 - b. State obscenity laws must be violated.
 - c. Material must lack serious literary/artistic/political value.
 - G. Student press. Hazelwood v. Kuhlmeier, 1988: high school newspaper was not a public forum and could therefore be restricted just as other high school activities could be restricted by school authorities.
 - H. Regulation of the electronic media.
 - 1. Radio and t.v. stations need license from FCC, and must comply with FCC regulations, e.g., devoting a certain amount of time to public service, news, and children's programming.
 - 2. Fairness Doctrine required that stations allow a broad spectrum of viewpoints, but that was repealed by the FCC in 1987.
 - 3. FCC restricts the use of obscene words. Fine imposed upon Howard Stern. FCC also fined CBS \$500,000 for the Janet Jackson incident at the Super Bowl halftime show.
 - 4. The Court struck down the Communications Decency Act (CDA) in 1997, which had prohibited the circulation of "indecent" material on the Internet to minors.
 - 5. "Virtual" child pornography is protected by Amend. 1 (Ashcroft v. ACLU, 2002): this case struck down the Child Online Protection Act using the least drastic means test: the goal of protecting children could be accomplished in a less restrictive manner.

FREEDOM OF ASSEMBLY AND PETITION, 458-61

- I. Nationalizing effect of Amendment 14.
- II. **Freedom of petition.**
 - A. **Right to petition the govt. for redress of grievances**, i.e., right to ask for government action.
 - B. Serves as constitutional justification for lobbying.
 - C. Since people "petition" the govt. in groups, this has also provided the constitutional basis for freedom of association. Two types:
 - 1. Political association (e.g., belonging to parties, interest groups, PACs).
 - 2. Personal association (e.g., belonging to private clubs). *Boy Scouts of America v. Dale* (2000) is a relevant case here: Boy Scouts can ban homosexuals from being scout leaders.
 - D. Freedom of association has been limited by the Hatch Act for federal employees (restricts their political activities).
 - E. Freedom of association has been limited by restrictions on campaign contributions, but these restrictions have generally been upheld. However, the Court struck down in *Buckley v. Valeo* limits on the amount that a congressional candidate can spend on his campaign. Such campaign spending is a form of expression protected by Amendment One.
- III. Freedom of assembly.
 - A. Government may regulate the time, place, and manner.
 - B. Government may require police permits for assemblies.
 - C. Problem of "heckler's veto:" if govt. restricted assembly every time an opposing group claimed that there might be "violence or disorder," there would be very few assemblies. Courts are therefore reluctant to impose prior restraint. (*Skokie case*)
 - D. Applies to public places, not private places.

THE STRUGGLE FOR EQUAL RIGHTS, 486-97

- I. For women.
 - A. First feminist wave.
 - 1. Seneca Falls Convention, 1848.
 - 2. Struggle for suffrage --> 19th Amendment, 1920.
 - B. The second feminist wave: 1960-present.
 - 1. Rise of feminists such as Betty Friedan.
 - 2. Rise of NOW and other women's groups (e.g., EMILY'S LIST).
 - 3. Legislation.
 - a. **Equal Pay Act of 1963**
 - b. Title VII of the **Civil Rights Act of 1964** prohibited employment discrimination on the basis of sex.
 - c. Proposal, ratification struggle, and defeat of ERA.
 - d. **Title IX of Education Act of 1972** prohibited gender discrimination in federally subsidized education programs, including athletics.
 - 4. Litigation:
 - a. Reed v. Reed, 1971: Court ruled against arbitrary gender-based discrimination as a violation of the 14th Amendment's equal protection clause.
 - b. **Roe v. Wade**, 1973.
 - 5. Success in electoral politics.
 - a. **1992: Year of the Woman: many women elected to Congress.**
 - b. In 111th Congress, 74 women hold House seats, 17 women hold Senate seats
 - c. Gender gap
 - d. "Soccer Moms," Million Mom March (gun control), "Security Moms"
 - e. 3 female Justices on Supreme Court.
 - f. "Sex sensitive" issues: war/peace, education, pornography, abortion
 - g. Active interest groups: NOW, Feminist Majority, EMILY'S LIST.
- II. For blacks.
 - A. 12.6% of the population. (2010 census)
 - B. **Dred Scott decision, 1857, denied the right to Scott to sue: slaves were not citizens.**
 - C. **Civil War Amendments: 13, 14, 15: to protect blacks against state govts.**
 - D. Rise of Jim Crow laws -> Plessy v. Ferguson, 1896 ("separate but equal").
 - E. Resistance against de jure segregation -> **Use of courts ---> Brown v. Board, 1954.**
 - F. Nonviolent civil disobedience of 50s and 60s, violence of late 60s.
 - G. Success in electoral politics:
 - 1. Esp. at the local and state level.
 - 3. Increasingly at federal level.
 - 4. With more blacks voting, white politicians have to take into account black needs
 - H. Backlash against affirmative action (e.g., Prop. 209 in CA).
 - I. "Achievement gap" issue
- III. For Hispanics.
 - A. 16.3% of the population. (2010 census)
 - B. Main groups: Mexican-Americans, Puerto Ricans, Cubans, Central Americans.
 - C. Key issues:
 - 1. Bilingualism (Lau v. Nichols, 1974: schools must take active steps to help non-English speaking students). **States must now provide bilingual ballots for areas with high concentration of non-English speakers.**
 - 2. Immigration. In an era of such close elections, neither party wants to offend Hispanics by taking a restrictive position on immigration.

3. Massive demonstrations throughout the country in 2006 over immigration bills in Congress
5. "Day Without Immigrants" boycott on May 1, 2006, to show the importance of immigrants in American society
6. Electoral politics: Bush 43 and Jeb Bush tapped into the Hispanic vote. However, Hispanics strongly supported Obama in election of 2008
7. "Achievement gap" issue

IV. Asians.

- A. 4.8% of the population. (2010 census)
- B. Main groups: Chinese, Korean, Japanese, Filipinos, Southeast Asians, South Asians
- C. Key issues:
 1. Immigration restriction in the past.
 2. Internment of Japanese-Americans during WWII ---> reparations.
 3. "Reverse discrimination" in college admissions.
 4. "Model minority"

EQUAL PROTECTION UNDER THE LAW, 498-501, 508-11

I. Discrimination.

- A. General meaning of the term: classification/treating groups differently.
- B. Some is inevitable, e.g., age requirements for driver's licensing and drinking.
- C. 14th Amendment's equal protection clause bans the state governments from practicing unreasonable discrimination.

II. Court tests used to determine if state government discrimination is constitutional.

A. Rational basis test.

- 1. Discrimination is constitutional if it has a reasonable relationship to a proper purpose of govt.
- 2. Burden of proof is on the plaintiff.
- 3. Examples of acceptable discrimination: polygamy, marriage age, prohibiting felons from obtaining a teaching credential.
- 4. Rational basis test cannot be used if a case involves a suspect class, an almost-suspect class, or a fundamental right.

B. Suspect classifications test (strict scrutiny).

- 1. Suspect class: a class that has historically suffered unequal treatment on the basis of race or national origin.
- 2. When govt. discriminates on this basis, burden of proof shifts to the defendant, i.e., the government.
- 3. Courts subject such discrimination to strict scrutiny -- there must be a compelling purpose for the discrimination to be constitutional.
- 4. Affirmative action:
 - a. U.C. Regents v. Bakke, 1978: race can be taken into account as a factor in admission decisions.
 - b. Richmond v. Croson, 1989: banned city set-aside programs.
 - c. Gratz v. Bollinger, 2003: struck down use of "bonus points" for race in undergraduate admissions at Univ. of Michigan
 - d. Grutter v. Bollinger, 2003: allowed use of race as a general factor in law school admissions at University of Michigan
 - e. CA Proposition 209 banned state affirmative action programs
- 5. Racial gerrymandering banned (Shaw v. Reno). Race cannot be "overriding, predominant force" in redistricting (Miller v. Johnson)

C. Quasi-suspect classifications test (heightened scrutiny).

- 1. Quasi-suspect class: sex.
- 2. Scrutiny for sex discrimination is not quite as high as for race, in recognition of some biological differences between the sexes (e.g., state law allowing pregnancy leave for women, but not men, is probably acceptable).
- 3. To justify such discrimination, states must show that the law bears some relation to important governmental objectives. Law cannot be based upon archaic or old notions about women being of the fairer sex.
- 4. Male-only draft registration has been allowed.

in

D. Fundamental rights test.

1. Court subjects laws which deny fundamental rights to strict scrutiny.
2. Fundamental rights are those which are explicitly in the Constitution, e.g., 1st Amendment liberties, voting.
3. Such rights also include those which are implicitly in the Constitution, e.g., travel, political association, **privacy (go over Griswold v. Conn., 1965).**
4. Abortion court cases:
 - a. Prior to 1973: states set own abortion policies.
 - b. **Roe v. Wade, 1973:** one federal policy, w/trimester guidelines. **Based upon right of privacy implied in Bill of Rights (via Griswold v. Conn.).**
 - c. Webster v. Reproductive Health Services, 1987: did not overturn Roe, gave states more leeway in restricting abortion.
 - d. Planned Parenthood v. Casey, 1992: somewhat defined that leeway: states cannot impose an "undue burden" on a woman's right to an
 - e. Gonzales v. Carhart, 2007: Upheld Partial Birth Abortion Act of 2003
5. Voting: Bush v. Gore, 2000: use of 14th Amendment's equal protection clause.
6. Same-sex marriage:
 - a. Four states allow same-sex marriage (MA, CT, VT, IA)
 - b. Defense of Marriage Act (1996):
 - 1) Defined marriage as union of a man and a woman
 - 2) Allowed states to not recognize same sex marriages contracted in other states. Based this upon last part of Full Faith and Credit clause that allows Congress to "prescribe the effect thereof."
7. Gay rights. Lawrence v. Texas (2003): Court struck down Texas sodomy law through use of "liberty" part of 14th Amendment's due process clause. This reversed the Court's decision in Bauer v. Hartwick (1986)

but

abortion.

BARRIERS TO VOTING, 498-501, 508-11

- I. 15th Amendment banned voting discrimination on the basis of race ---> southern states devised other ways of discriminating ---> federal government stepped in with remedies.
 - A. White primary ---> declared unconstitutional in 1944.
 - B. Poll tax: banned by 24th Amendment.
 - C. **Literacy test: banned by Voting Rights Act of 1965.**
 - D. Grandfather clause: declared unconstitutional.
- II. **Voting Rights Act of 1965.**
 - A. Provisions.
 - 1. Suspended literacy tests.
 - 2. Empowered federal officials to register voters.
 - 3. Empowered federal officials to ensure that citizens could vote, e.g., w/marshals.
 - 4. Empowered federal officials to count ballots.
 - 5. Subsequent amendments require states to include ballots in languages other than English if a significant number of non-English speakers reside in an area.
 - 6. Most controversial: States that have history of voting discrimination must clear w/Justice Dept. any changes in voting practices (e.g., polling places, candidacy requirements, filing deadlines, changes from district to at-large elections, etc.) in order to prevent states from "diluting" minority voting strength. This clearance requirement was challenged in the Supreme Court in 2009.
 - B. Effects.
 - 1. Huge increase in black turnout.
 - 2. Large increase in number of black elected officials.
 - 3. Forced white elected officials to take into account the needs of blacks.
- II. Additional developments
 - A. Creation of majority-minority districts in 1990s to increase representation for racial minorities
 - B. Shaw v. Reno (1993): no racial gerrymandering.
 - C. Miller v. Johnson (1995): Race cannot be predominant factor in drawing district lines → many court challenges to state redistricting plans

PRIVATE DISCRIMINATION AND THE FEDERAL RESPONSE, 501-08, 511-12

- I. 5th and 14th Amendments prohibit government from discriminating ---> what sources protect against discrimination by private individuals or businesses?
 - A. 13th Amendment has been broadly interpreted to prohibit the relics of slavery.
 - B. Commerce clauses.
 - C. Power to tax and spend (attaching "strings" to federal grants and contracts).
- II. Federal legislation.
 - A. Civil Rights Act of 1866 prohibits racial discrimination in making of private contracts.
 - B. Civil Rights Act of 1964.**
 - 1. Title II **bans discrimination in places of public accommodation** on basis of race, color, national origin, or religion (upheld by Heart of Atlanta Motel v. U.S, 1965). **Based upon Congress' power to regulate interstate commerce.**
 - 2. Title VII.
 - a. Prohibits employment discrimination on same bases + sex.
 - b. Employers cannot be required to give racial preferences to remedy past discrimination, but they may voluntarily do so
 - c. Executive Order #11246 required federal contractors to adopt affirmative action programs.
 - d. Allowed class action suits.
 - e. Enforced by EEOC.
 - C. Civil Rights Act of 1968 (Fair Housing Act of 1968)
 - 1. Restrictive covenants had previously been declared unconst. in 1948.
 - 2. This act banned housing discrimination on same bases as above.
 - D. Age Discrimination in Employment Act of 1967: bans age discrimination for jobs unless age is related to job performance.
 - E. Americans with Disabilities Act of 1990: bans job and access to facilities discrimination if "reasonable accommodation" can be made.

CITIZENSHIP

I. Methods of acquisition.

A. Birth.

1. Jus soli

- a. Latin for "right of soil".
- b. All born in U.S., regardless of parentage, are citizens by virtue of Amend. 14.

2. Jus sanguinis.

- a. Latin for "right of blood."
- b. Anyone born to U.S. citizens living overseas is a citizen.
- c. Possibility of dual citizenship.

B. Naturalization.

1. Legal process in which an alien acquires citizenship.

2. Two forms:

- a. Individual: done through INS when an individual has met various requirements.
- b. Collective: done by Congress when it makes a group of people citizens, e.g., Congress granted collective naturalization to Hawaiians and Puerto Ricans.

II. Methods of losing citizenship.

A. Expatriation: voluntarily renouncing citizenship, e.g., becoming a citizen of another nation.

B. Denaturalization: stripping of cit. from a naturalized citizen who gained cit. through fraud or deception.

III. Aliens.

A. Definition: citizens of other nations who are living in U.S.

B. Types:

- 1. Resident: permanent residents.
- 2. Nonresident: here for temporary purpose.
- 3. Illegal: entered without permission.
- 4. Enemy: citizens of a nation at war w/U.S.
- 5. Refugee: fled political persecution.

C. Rights: basically, the same as those of citizens. Some exceptions:

- 1. Suffrage.
- 2. Serving on juries.
- 3. Holding certain jobs within the public or private sector.
- 4. Unconditionally staying in U.S.

D. Entry into U.S.

1. Current law allows ~675,000 to be legally admitted each year.
2. Admission based upon a complex preference system that takes into account:
 - a. Relatives in U.S.
 - b. Needed job skills.
 - c. "Diversity exceptions" for Europeans since the above two qualifications make it difficult for Europeans to enter.
3. Political refugees (~100,000 yr.) also allowed above and beyond the 675,000

E. To deal w/problem of illegal aliens: Simpson-Mazzoli Bill of 1986:

1. Provisions.
 - a. Amnesty for illegals here before 1982, as long as they applied for it.
 - b. Fines for employers who knowingly hire illegals.
 - c. A certain number of aliens are allowed to enter each year as temporary farm workers.
2. Analysis:
 - a. First portion gives legal sanction to those who broke the law.
 - b. Second has raised concerns that employers will refuse to hire any Hispanics for fear of being fined.
 - c. Third portion has raised concern that temporary workers will be

exploited.

F. Bush 43 met with Mexican President to discuss immigration

- 1) Concern over terrorism has again raised issue of immigration to prominence.
- 2) Both parties are reluctant to deal with immigration for fear of alienating Hispanic vote.

IV. Sources of immigration.

- A. Pre-1880: primarily from Northern and Western Europe.
- B. 1880-1920: primarily from Southern and Eastern Europe ---> nativist fears.
- C. 1924: National Origins Act: set a nation-by-nation quota system that gave large quotas to N. and W. European nations, but smaller ones to S. and E. Europe and Asia.
- D. 1965: National Origins Act repealed ---> replaced with a preference system (see above).

1. Most immigrants now from Latin America and Asia.
2. 1980s saw the second largest number of immigrants of any decade in U.S.

history.

LIFE, LIBERTY, PROPERTY AND DUE PROCESS OF LAW, 464-73

- I. Property rights v. public welfare.
 - A. Property rights closely connected with liberty and freedom.
 - B. Contract clause (Article 1, Section 10) in Const. forbids states from passing any law "impairing the obligation of contracts." Fear that states would cave in to pressure from debtors and declare debts to be null and void.
 - C. However, states MAY impose limits on property rights:
 - 1. States may exercise police powers to protect public welfare (e.g., meat inspection, worker safety laws, child labor laws).
 - 2. States may exercise right of eminent domain.
 - a. Kelo v. New London, 2005: The case arose from a city's use of [eminent domain](#) to condemn privately owned real property so that it could be used as part of a [private](#) redevelopment plan. The Court held that "the city's proposed disposition of this property qualifies as a 'public use' within the meaning of the Takings Clause of the [Fifth Amendment](#)." The private use of the property would lead to overall economic growth in the city, and thus constituted a "public use."
 - 3. Controversy over regulatory "takings:" when states restrict property rights to the point of making that property less valuable.
 - D. Prior to 1937, Supreme Court more protective of property rights; since then, it has been more likely to uphold legislation that protects the public welfare.
- II. Due process of law: 5th (fed.) and 14th (st.) Amendments prohibit govt. from denying life, liberty, or property without due process of law. Two types of due process:
 - A. **Procedural: the "how" a law is applied**
 - 1. **When govt. denies life, liberty or property, it must use fair procedures:**
 - a. **Observe Bill of Rights.**
 - b. Provide reasonable notice.
 - c. Provide chance to be heard.
 - 2. Examples of violations of procedural due process:
 - a. Illegal searches.
 - b. Unfair court procedures.
 - B. **Substantive: the "what" a government may/may not do**
 - 1. It's not enough that govt. use fair procedures in denying life, liberty and property; the laws themselves that enable govt. to do so must be fair.
 - 2. Examples of violations of substantive due process:
 - a. Ban on all abortions within a state.
 - b. County ordinance banning all firearms.
 - C. Example of distinction between procedural and substantive: a law prohibits possession of narcotics (substantive) and police must generally obtain a warrant before conducting a search for narcotics in one's home (procedural).

- D. Classify the following as procedural or substantive:
1. Police strip searches (P)
 2. Compulsory vaccination laws (S).
 3. Minimum wage law (S).
 4. Firing a city employee without giving a hearing (P).

ARRESTS, QUESTIONING, AND IMPRISONMENT, 474-78

- I. Arrests ("seizures"). May be conducted:
 - A. With a warrant issued upon "probable cause." (Amendment 4)
 - B. Without a warrant in emergencies, in cases of "hot pursuit," or when probable cause exists.
- II. Searches. May be conducted:
 - A. With a warrant issued upon "probable cause." (Amendment 4).
 - 1. Warrant must be specific: must state place to be searched and objects to be searched for.
 - 2. These restrictions resulted from the English abuses of authority during colonial times when writs of assistance -- general search warrants -- were often issued.
 - B. Without a warrant under these exceptions:
 - 1. If probable cause exists w/automobile ("automobile exception")
 - 2. Terry exception: if police have reason to believe suspect is armed and dangerous
 - 3. When police make lawful arrest.
 - 4. If suspect gives consent.
 - 5. At border crossings.
 - 6. If evidence is in plain view.
 - 7. Exigent circumstances, e.g., to protect lives and property
 - 8. Schools can impose random drug tests on students in extracurricular activities (Board of Pottawatomie v. Earls, 2002)
 - C. Wiretapping legal only if a warrant has been issued.
 - D. Foreign Intelligence Surveillance Act (1978): established a FISA court to secretly authorize electronic surveillance of telephones, etc. for foreign intelligence purposes. Requires fed. govt. to go through this court if it wants to conduct such secret surveillance.
 - E. **Exclusionary rule.**
 - 1. **Illegally-obtained evidence may not be used in court.**
 - 2. Established in case of Mapp v. Ohio, 1961 (for state cases), Weeks v. U.S. (fed. cases)
 - 3. Supporters claim that it discourages police misconduct.
 - 4. **Critics claim that it lets crooks "off the hook" on technicalities. They ask**

society should pay for the misconduct of a few police officers.
 - 5. Not used if:
 - a. There would be "inevitable discovery" of the evidence.
 - b. Police operate on a "good faith" assumption that a warrant was valid.
 - F. Effects of Patriot Act of 2002: designed to combat terrorism by:
 - 1. Giving FBI and CIA greater powers to:
 - a. Wiretap phones
 - b. Monitor email
 - c. Survey financial and student records
 - d. Conduct searches without prior notification

why

- 2. Giving fed. Govt. power to deport/detain noncitizens without judicial appeal
 - 3. In essence, the act has strengthened the powers of the federal govt. and weakened the protections of Amendment 4
 - G. In 2006, NSA leaks revealed that it was engaged in the analysis of telephone records and e-mails where one party was outside US and where one party was linked to terrorism
- III Protection against self-incrimination.
- A. Provided by Amendment 5.
 - B. Associated with concept that people are innocent until proven guilty.
 - C. Protects suspects against testifying against themselves in court proceedings or agency hearings.
 - D. Can be invoked only if crime involved -- can't be used to protect against embarrassment.
 - E. Cannot be invoked when prosecutors grant immunity.
- IV. **Police questioning.**
- A. **Forced questioning prohibited.**
 - B. **Miranda warnings to silence and counsel (Miranda v. Arizona, 1966)**
- V. **Habeas corpus.**
- A. Latin for "present the body."
 - B. A court order that requires the authorities to bring an accused person to court to determine if he is being held legally. It therefore prevents unfair and arbitrary imprisonment.
 - C. Can be suspended by Congress only in case of rebellion or invasion.
 - D. Extensive use by death row inmates.
 - E. Habeas corpus petitions were used by detainees at Guantanamo in an attempt to receive court hearings.
- VI. Two other constitutional guarantees.
- A. Ex post facto law.
 - 1. Latin for "after the fact."
 - 2. Punishes a person for something that was not a crime when he did it, i.e., retroactive punishment.
 - 3. May not be passed by Congress or states
 - B. Bill of attainder.
 - 1. An act that punishes a person without benefit of trial.
 - 2. Possible example: seizure of Nixon's White House papers by act of Congress.
 - 3. May not be passed by Congress or states.

RIGHTS OF AN ACCUSED PERSON, 478-85

I. Counsel.

- it. A. Gideon v. Wainright, 1963: states must provide legal help for suspects who cannot afford it.
- B. Johnson v. Zerbst: the fed. govt. must also do so.

II. Excessive bail and fines

- A. Amendment 8 states that excessive bail and fines cannot be imposed.
- B. Generally, this means that the amount of bail set must bear some relationship to:
 - 1. The gravity of the offense.
 - 2. The likelihood that the suspect will "jump bail."
- C. Denial of bail does not constitute excessive bail.
- D. The amount of a fine must be proportionate to the offense.

III Speedy and public trial.

- A. The first provision protects against unreasonable delays. It generally means "as speedy as possible," given the backlog of cases in our courts.
- B. The second provision bans the government from conducting trials in secret. By having trials out in the open, judicial abuse of power is less likely.

IV. Grand jury indictment.

- take A. Grand jury simply charges a person with a crime by issuing an indictment. This does not mean that the person is guilty, but simply means that there is enough evidence to take the accused to trial.
- B. By requiring this first step, frivolous govt. cases against an individual are therefore less likely.
- C. Required in federal cases, but not state cases. 5th Amendment has not been nationalized in this area.
- D. Some charge that the grand jury has merely become a tool of prosecutors.

VI. Trial by jury.

- A. Guaranteed in criminal cases **(though most cases are disposed of by plea bargaining)**.
- B. Guaranteed in federal civil cases worth more than \$20 (Amendment 7).

VII Witnesses.

- A. A suspect has the right to bring witnesses on his behalf.
- B. A suspect also has the right to confront (cross-examine) witnesses.

VIII Cruel and unusual punishment.

- A. Banned by Amendment 8.
- B. Punishment must be proportionate to the crime.
- C. Death penalty is not cruel and unusual.
- D. Supreme Court struck down death penalty for mentally retarded in Atkins v. Virg., 2002
- E. Ewing v. California, 2003: "Three strikes and you're out" law was upheld in the case of a man who received his "third strike" (and 25 yrs. to life in prison) as his punishment for stealing golf clubs.

- IX. Double jeopardy.
 - A. A person may not be tried twice for the same criminal act.
 - B. Exceptions:
 - 1. When the crime violates both state and federal law.
 - 2. When there is a mistrial, e.g., where the jury could not come to a unanimous verdict.

Unit VI-Civil Rights and Civil Liberties

1. What is the Bill of Rights?
2. What is the balancing test?
3. What is the difference b/w civil liberties and civil rights?
4. What was the initial intention of the Bill of Rights?
5. Where is the due process clause found in the Bill of Rights?
6. What are the 9th and 10th Amendments?
7. *Barron v Baltimore*? When was this case and what precedent did this case set?
8. When was the 14th Amendment added to the Constitution and how did it change the interpretation of the Constitution set in *Barron v Baltimore*?
9. *Gitlow v New York*? How did this case interpret the 14th Amendment and what precedent did it overrule? What civil liberty did it incorporate?
10. Selective incorporation?
11. Total incorporation?
12. *Palko v Connecticut*?
13. *Griswold v Connecticut*
14. *Skokie Case*?
15. Where are the freedom of speech, press, and assembly located in the Constitution?
16. Generally, what has the Court decided regarding thoughts, actions, and words?
17. Bad Tendency doctrine
18. *Schenck v U.S* and the clear and present danger test
19. *Brandenburg v Ohio*? Direct incitement test?
20. What types of speech are not protected by the First Amendment?
21. Libel and slander? *Defamation*?
22. Sedition?
23. Obscenity
24. Fighting Words
25. Political Speech?
26. Symbolic Speech? *Texas v Johnson* and *Tinker v Des Moines*?
27. Prior restraint
28. *New York Times v Sullivan*(1964)
29. How did the Court define obscenity in *Miller v California*

Please prepare the following questions

30. What in Article VI relates to religion?
31. What are the establishment and free-exercise clauses?
32. Accommodationist View? Separationist View? Endorsement View? Nonpreferentialist View?
33. *Everson v Board*?
34. What is the main question for the Court as they interpret the establishment clause?
35. *Engel v Vitale*?
36. *Lemon v Kurtzman* Lemon Test?
37. *Reynolds v US*?
38. What is the overall trend in establishment clause cases since the 1980s? Examples?
39. How do you apply the balancing test to the free exercise clause?
40. *Oregon v Smith*? Religious Freedom Restoration Act?
41. *City of Boerne v Flores*

Please prepare the following questions

42. Eminent Domain?
43. Procedural Due Process?
44. Substantive Due Process?
45. The key Constitutional components in this section are the fourth, fifth, sixth, and eighth amendments. You should know the general liberties and rights of each of these amendments. Due process rights? How is the balancing test applied here? What unstated right can be inferred from the 4th amendment? (Hint: it was used in *Griswold* and *Roe*).
46. Writs of assistance?
47. 4th Amendment?
48. What are the general rules for search warrants? When can a warrantless search happen? What do police need to obtain a warrant?
49. *Miranda v Arizona*? What part of the Constitution was used to justify Miranda rights?
50. What court case established the exclusionary rule?
51. *Mapp v Ohio*?
52. Good faith exceptions?
53. Inevitable discovery?
54. Habeas Corpus?
55. Ex Post Facto? Bill of Attainder?
56. *Gideon v Wainwright*?
57. 8th amendment?
58. Double Jeopardy?

Please prepare the following

59. Discrimination?
60. Rational Basis Test?
61. Suspect Class?
62. Strict Scrutiny?
63. UC Regents v Bakke?
64. Gratz v Bollinger? Grutter v Bollinger?
65. Shaw v Reno?
66. Miller v Johnson?
67. Affirmative Action?
68. Quasi-Suspect Class?
69. Heightened Scrutiny?
70. Fundamental Rights Test?
71. What parts of the Constitution did the Court use in *Griswold v Connecticut* to establish the right to privacy?
72. How was the right to privacy established in *Griswold* used in *Roe v Wade*?
73. *Webster v Reproductive Health services* (how did this affect the precedent in *Roe*?).
74. *Planned Parenthood of Southeastern Pennsylvania v Casey*?
75. Seneca Falls Convention?
76. Title IX?
77. *Dred Scott v Sanford*?
78. 13th, 14th and 15th Amendments?
79. Jim Crow Laws?
80. Grandfather Clause?
81. What precedent was set in *Plessy v Ferguson*?

82. Brown v Board?

Please prepare the following questions

83. How were white primaries, poll taxes, literacy tests, and grandfather clauses used to keep African-Americans from voting?
84. What are the main provisions of the Voting Rights Act of 1965? How did this piece of legislation affect black voter turnout?
85. What were the main provisions of the Civil Rights Act of 1964?
86. How did Congress use the Constitution to justify the legislation?
87. Heart of Atlanta v US?
88. Civil Rights Act of 1968?
89. Age Discrimination in Employment Act of 1967?
90. Americans with Disabilities Act of 1990?

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Political Beliefs
and Behaviors

POLITICAL CULTURE

I. The widely-shared beliefs, values, and norms that citizens share about their govt.

II. Characteristics.

- A. Liberty.
- B. Individualism/rugged individualism, as opposed to collectivism/statism
- C. Equality.
 - 1. **Equality of opportunity more than equality of result.**
 - 2. **Political equality more than economic equality.**
 - 3. American Dream. Reverence for property/capitalism/chance to acquire wealth.
 - 4. FDR's "second Bill of Rights" (1944) ensuring economic security.
 - 5. False consciousness (as opposed to class consciousness historically associated with Europe).

-- Conflict between liberty associated with capitalism and equality associated with democracy -> federal action:

- 1. In Progressive Era to bring corporations under control
- 2. In 1930s to smooth out ill effects of capitalism
- 3. In 1960s w/Great Society programs

D. Democracy

E. Civic duty.

- 1. This is strongest society when has developed "social capital:" the social networks that bind people together.
- 2. Political scientist Robert Putnam uses, as an example of the decline in social capital, the decline in the number of people who participate in bowling leagues. The number of people who bowl has increased, but the number of people who bowl in leagues has declined. With a decline in such social networks, there is less likelihood of people coming together, listening to each other, exchanging ideas -> consequently a smaller degree of civic duty.

F. Distrust of government, esp. since the 1960's. Impact of Vietnam War & Watergate.

G. Political efficacy: the sense that one can both understand and influence public policy.

H. Political tolerance -- more in the abstract than in the concrete.

I. Pragmatism -- Americans tend to be less ideological.

J. Justice. Belief in the rule of law. A "government of laws, not men."

IDEOLOGY AND PUBLIC POLICY

I. Background.

- A. Ideology: integrated set of beliefs and values that shape a person's views.
- B. Smaller percentage of ideologues in our two-party system than in the multi-party systems used in Europe. Stronger parties in Europe ---> easier for ideologues to find a place to fit.
- C. Most Americans tend to be non-ideological – they tend to be moderate in their beliefs.

II. Liberalism.

- A. Classical liberalism of 18th century.
 - 1. Limited role of government.
 - 2. Govt. seen as chief threat to liberty.
 - 3. "That govt. is best which governs least."
 - 4. **Role of government to protect property rights.**
- B. Modern liberalism of 20th century. (New Deal liberalism)
 - 1. Expanded role of government.
 - 2. Corporations seen as chief threat to liberty.
 - 3. Need for a strong central govt. to "smooth out the rough edges of capitalism."
 - 4. Role of government is to protect people's well-being. Freedom from govt. control rings hollow when one is poor, unemployed, or discriminated against.
- C. Strong influence of liberalism, 1930's - 1970's.
- D. Backlash against liberalism in 1980's and 1990's: a feeling that liberalism had "gone too far." Need to get back to more individualism and less reliance on big govt.
- E. "Neoliberals."
 - 1. Less likely to rely upon gov't as solution to problems.
 - 2. Govt. certainly has some role to play, but not as big a role as desired by New Deal liberals.
 - 3. Rise of Democratic Leadership Council, w/members like Bill Clinton and John Edwards.
- F. Return of modern liberalism/New Deal liberalism w/election of Obama: more of a willingness to use the federal government as a tool to protect the well-being of the people

III. Conservatism.

- A. Essentially classical liberalism.
- B. Resurgence since late 70's:
 - 1. Reagan/Bush 41/Bush 43
 - 2. 104th - 109th Republican Congresses.
 - 3. Strength in the formerly "solid South," Rocky Mtns., Great Plains
 - 4. Strength among evangelical Christians
 - 5. Reversal of the trend since the 1930's to automatically look to govt. as the solution to our problems.
 - 6. Emphasis today on the private sector to solve problems.
 - 7. Strong support for large tax cuts, which occurred under both Clinton and Bush 43
- C. "Neoconservatives" and the New Right:
 - 1. Some (Helms, Buchanan, Robertson, Bennett) emphasize social issues like prayer in school, anti-abortion, anti-homosexuality. Support from evangelical Christians. Sometimes known as the "Religious Right." Use of faith-based initiatives by Bush Admin.
 - 2. Some, like Donald Rumsfeld and Paul Wolfowitz, are more aggressive in dealing with foreign threats such as terrorism, and are more supportive of intervention, as in Iraq.
 - 3. Some, like Pat Buchanan, are neoisolationists who shy away from intervention, are wary of any "new world order," are wary of international organizations like the UN, WTO, IMF, World Bank, are wary of NAFTA.
- D. "Compassionate conservatism" of Bush 43. A more moderate brand of conservatism.

IV. Socialism.

- A. System in which means of production, distribution, and exchange are controlled by govt.
- B. Strong impact upon Western Europe.
- C. Reasons for weakness in U.S.: association with radicalism, belief in individualism, belief in American Dream, suspicion of big govt.

V. Libertarianism.

- A. Extreme emphasis on individual liberty.
- B. Extreme cutback on role of govt: essentially, govt. should only defend the nation.

PUBLIC OPINION

I. Types of publics.

- A. Elites.
 - 1. Those w/disproportionate amount of political resources.
 - 2. Raise issues and help set national agenda.
 - 3. Influence the resolution of issues.
- B. Attentive: those with an active interest in govt. and politics.
- C. Mass: those with little interest in govt. and politics.

II. Types of opinions.

- A. Stable: change very little (e.g., death penalty).
- B. Fluid: change frequently (e.g., presidential popularity).
- C. Latent: dormant, but may be aroused (e.g., military draft).
- D. Salient: have some personal importance to individuals (e.g., Brady and gun control).
- E. Consensus: shared by 75% of the people or more. (e.g., having a balanced budget).
- F. Polarized: shared by less than 75% (e.g., gun control, ERA).

III. Measurement of public opinion.

- A. By elections: deceiving -- does not tell us WHY people voted as they did.
- B. By straw (informal) polls -- inaccuracies.
- C. By scientific polls.
 - 1. Construction.
 - a. Definition of universe: population to be measured.
 - b. Selection of sampling.
 - 1) Through random means: where each person in the universe has an equal chance of being selected (typically through "shuffling" of census tracts).
 - 2) National polls typically require ~1500-2000 respondents.
 - 3) Sampling error: expressed in +/- terms.
 - 4) Can reduce sampling error by adding more respondents, but at some point diminishing returns set in.
 - c. Writing the question -- avoiding bias.
 - d. Selection of means of polling.
 - 2. Uses of polls.
 - a. Informing the public.
 - b. Informing candidates.
 - c. Informing office-holders.
 - d. Making election night projections through use of exit polls.
 - 3. Abuses of polls.
 - a. "**Horse race**" mentality emphasized during campaigns at expense of issues.
 - b. Pandering to whims of public by candidates and office-holders.
 - c. Early projections from exit polls may discourage voter turnout, especially in the western states
 - 1) Election of 2000 demonstrated problems of exit polls
 - A) Early projection in Florida may have discouraged turnout in the panhandle part of that state
 - B) Flawed data from the company with which all the major networks had contracted led to flawed projections – "Garbage in, garbage out."

- I. Public awareness and interest in politics.
 - A. Secondary in importance to most, esp. mass public.
 - B. Surveys show substantial lack of political knowledge on part of public:
 - 1. Identifying political figures (e.g., congressman, senator, chief justice)
 - 2. Identifying key issues, e.g., in 1982, after years of debate, 1/3 of adults indicated that they had never heard of ERA. In 1993, after extensive debate, 60% of Americans indicated that they were not following the NAFTA story.

POLITICAL SOCIALIZATION

I. Definition: process in which people acquire their political beliefs.

II. Agents.

A. Family.

1. Strongest.

2. Correlation between parent's party affiliation and child's party affiliation.
3. Less of a correlation on specific policy issues.
4. Fairly equal influence of mother and father.
5. Father's party ID has greater impact on sons, mother's party ID has greater impact on daughters.

B. Schools.

1. Impart basic values, e.g., civic duty, patriotism.
2. High school government classes apparently do not change political orientation of students.

C. Religion.

1. Protestant.

- a. Generally more conservative.
- b. Evangelicals, esp., are most conservative on social issues.

2. Catholic.

- a. Traditionally more liberal.
- b. Greater acceptance of Catholics, greater inclusion into mainstream of society, and increasing importance of various social issues (e.g., abortion, gay rights) - --> greater degree of conservatism. A majority of Catholics voted for Clinton, but Bush 43 won Catholic vote in 2004. A majority of Catholics voted for Obama in 2008.

3 Jewish: liberal influence, strong support for the Democratic Party.

D. Race.

1. Whites: more conservative, greater support for Republicans.
2. Blacks: more liberal, **strongest supporters of Democratic Party** (>90% Democratic in recent presidential elections).
3. Hispanics: Mexican-Americans and Puerto Ricans more liberal and supportive of Democrats, Cubans more conservative and supportive of Republicans. Bush 43 made gains in Hispanic vote in 2004 (won 44%). Obama won Hispanic vote in 2008.
4. Asians: won by Democrats in 2000, 2004, and 2008 presidential elections

E. Income: those with higher incomes ---> more conservative and supportive of Republicans, those with lower incomes ---> more liberal and supportive of Democrats.

F. Opinion leaders.

G. Mass media.

H. Gender.

1. "Year of the Woman" in 1992: many more women elected to Congress.

2. Clinton's appeal to "soccer moms."
3. Million Mom March of 2000 to demonstrate for stricter gun control laws.
4. Sex-sensitive issues (e.g., abortion, pornography, gun control, war) provoke different views among the sexes)
5. Gender gap of recent years, but narrowed in 2004 pres. election (Bush won 48% of female vote to Kerry's 51%). Bush's stronger showing may be due to "security moms" who were concerned about terrorism and national security. Obama won 56% of women's vote in 2008. Obama also narrowly won men's vote: 49%-48%.

1. "NASCAR Dads:" conservative, blue collar men.

III. Cross pressure: conflicting elements within one's own political socialization.

VOTER TURNOUT

I. Historical qualifications for suffrage.

- A. Religion (eliminated by state legislatures).
- B. Property (eliminated by state legislatures).
- C. Race (eliminated by 15th Amendment).
- D. Sex (eliminated by 19th Amendment)
- E. Income (eliminated by 24th Amendment banning the poll tax).**
- F. Literacy (eliminated by **Voting Rights Act of 1965**).
- G. Minimum age of 21 (eliminated by 26th Amendment).

II. Current qualifications (set by states):

- A. Citizenship.
- B. Residency.
- C. Age.
- D. Registration (in all states except ND).

III. Voter turnout in U.S. as compared to foreign nations.

- A. Voter turnout = number of those who voted/number of those age-eligible to vote
- B. U.S.: ~50% in presidential elections, 30%-40% in midterm congressional elections. Even lower in state/local elections. A decline in voter turnout since 1960. Turnout rose slightly in 2008: 56%**
- C. Comparable industrialized nations in the West have much higher turnout: as high as ~90%. A deceiving picture, however, because:**
 - 1. The U.S. does not impose compulsion penalties (e.g., fines, govt. papers stamped "DID NOT VOTE") for not voting, as other countries do.
 - 2. Other nations have multi-party systems that allow for more choice, and perhaps a more meaningful vote.
 - 3. Other nations have automatic/same day registration.

IV. Reasons for low voter turnout.

- A. Institutional barriers.
 - 1. Registration. National Voter Registration Act of 1993 ("Motor Voter Bill") was designed to increase voter turnout:
 - a. Allows people to register when renewing license or car.
 - b. Various public offices also offer registration forms.
 - c. Requires states to allow registration by mail.

-- Has not really increased turnout significantly
 - 2. "Ballot fatigue:" excessive number of offices/measures on the ballot, so that voters are "fatigued" in getting through entire ballot.
 - 3. Excessive number of elections
 - 4. Type of election:
 - a. General election turnout > primary election turnout.
 - b. Chief executive election turnout > legislative election turnout. Presidential elections have the highest turnout.**
 - c. National election turnout > state election turnout.
 - 5. Difficulties in obtaining absentee ballots
 - 6. Young people tend to have the lowest turnout ---> when the 26th Amendment was ratified, turnout "naturally" declined.**

B. Political reasons.

1. Lack of political efficacy.
2. Dissatisfaction with candidates, parties, and politics in general.
3. Lack of strong 2-party competition.
4. Weakness of parties in mobilizing voters.

V. Who votes? Who doesn't? Who cares?

A. Characteristics of those likely to vote:

1. **Level of educational achievement: the greatest predictor of voting** that cuts across other factors. Those with high levels of educational achievement, regardless of race, sex, or income status) are more likely to vote than those with low levels.
2. Income: those with higher levels are more likely to vote.
3. Age: older voters (except for the very old or infirm) are more likely to vote.
4. Race: whites are more likely to vote than blacks, who are more likely to vote than Hispanics. However, when differences in socioeconomic status are factored out, blacks vote at levels comparable to whites, and some studies show that they vote in higher percentages.
5. Sex: in the past, women voted at lower rates than men, but that is no longer the case.

B. Does low turnout matter?

1. If voters accurately represented a cross-section of the U.S., then low turnout would be relatively unimportant.
2. The problem, however, is that older whites with higher levels of income and educational achievement are over-represented ---> problem of class bias.
3. Rebuttal: some studies show that although nonvoters are demographically different, they are not that politically different from voters, and would not vote in a significantly different way than those who do vote.

II. Other forms of political participation.

- A. Petitions
- B. Demonstrations/marches/rallies
- C. Local party meetings
- D. Making campaign contributions
- E. Writing letters to the editor, or the Internet equivalent thereof
- F. Trying to persuade others

FACTORS AFFECTING VOTER BEHAVIOR

- I. Geography.
 - A. **Solid South: traditionally Democratic, but increasingly now Republican**
 - B. Great Plains: Republican trend.
 - C. Rocky Mountain region: Republican trend.
 - D. Republicans have built on the "L:" Rocky Mtns.-South.
 - E. New England: traditionally Republican, but increasingly Dem. in recent years
 - F. Great Lakes region: Democratic trend, but several swing states, e.g., Ohio
 - G. Far West: Democratic trend
- II. Presence of an especially strong presidential candidate: coattail effect.
- III. Time.
 - A. Maintaining elections: political alignment remains same, e.g., 1960, 1964.
 - B. Deviating elections: temporary change in political alignment, e.g., 1952, 1956.
 - C. **Critical ("realigning") elections: long-term change in political alignment, e.g., 1860, 1896, 1932.**
 - D. Midterm elections: party in power has lost seats in Congress every midterm election since 1938 (except for 1998 and 2002)
- IV. Political party identification: psychological sense of attachment to a political party. Show 7 point scale of party identification: Strong Dem./Weak Dem./Ind. Leaning Dem./ Pure Ind./Ind. Leaning Rep./Weak Repub./Strong Repub.
 - A. **Probably the strongest predictor of voting behavior.**
 - B. However, more people probably "vote the man, not the party" than in the past.
 - C. Straight ticket voting: decline in recent years. Facilitated by party-column ballot.
 - D. **Split ticket voting: increase in recent years.** Facilitated by office-column ballot.
 - E. Independents.
 - 1. **Rising number (~ 1/3) -> decline in Dem. & Rep. Members.**
 - 2. Some are "leaners:" Independent Republicans or Independent Democrats.
 - 3. Others are pure independents, with no pattern of voting behavior. (~12%)
 - 4. **Many tend to be young, college educated, with above average incomes.**
- V. Demographic factors.
 - A. Gender
 - 1. Males: more likely than females to vote Republican.
 - 2. **Females: more likely than males to vote Democratic.** "Gender gap."
 - B. Race.
 - 1. White: more likely than nonwhites to vote Republican.
 - 2. Nonwhite: more likely than whites to vote Democratic. **Blacks are the most loyal Democratic voters.**
 - C. Social class
 - 1. Lower: more likely than upper to vote Democratic.
 - d. **Upper: more likely than lower to vote Republican.**
 - D. Religion.
 - 1. Protestant: more likely to vote Republican.
 - 2. Catholic: traditionally more likely to vote Democratic, but Bush 43 won Catholic vote in 2004. Obama won the Catholic vote in 2008.
 - e. Jewish: more likely to vote Democratic.
 - E. Issues (esp. state of the economy -- "It's the economy, stupid!" from '92 election, and Bush 43 tax cuts to pull nation out of recession).
 - 1. Retrospective voting: looking back on whether or not things have gotten better or worse since the last election.
 - 2. Prospective voting: looking at the candidates' views on the issues, and how they will accordingly handle the office if elected.
 - F. Candidate appeal, e.g., character, leadership, charisma

CONGRESSIONAL ELECTIONS

I. Intro.

- A. US cong. elections are regularly scheduled, as compared to Br. where elections are called by govt at time of its choosing
- B. Members of Cong. have fixed terms.
- C. Term limits imposed by states have been overturned by Sup. Ct. (US Term Limits v. Thornton) on grounds that they would, in effect, be adding another qualification for members of Congress → this would require a const. amendment.
- D. US uses winner take all/**single member district system** ("1st past the post"): most votes wins the seat. Contrast with proportional representation/multi-member district system used in Europe

I. Primary elections.

- A. A Progressive reform from the early 20th century designed to weaken parties.
- B. Types:
 - 1. **Closed.**
 - a. **Used in most states.**
 - b. **Only registered party members can vote for partisan offices, no crossing of party lines.**
 - 2. Open: Independents may vote, voters get ballot of any one party they wish ---> crossing of party lines allowed ---> danger of "raiding" and damage to pol. parties.
 - 3. Blanket ("free love"): Independents may vote, voters can "mix and match" their votes, i.e., vote for candidates of different parties for different offices. Damage to political parties. Used in CA 1998-2000, but overturned by Supreme Court. Used in WA and Alaska, also.

II. Factors affecting outcomes of congressional elections.

- A. **Incumbency: the greatest influence.**
 - 1. **Scope of incumbency advantage:**
 - a. **~ 90% of congressmen who run are reelected, ~ 80% of senators.**
 - b. **Lack of competitiveness ---> charges of "permanent Congress" and the call for congressional term limits (ruled unconst. by Supreme Court).**
 - 2. Advantages of incumbents.
 - a. **Franking privilege.**
 - b. **Campaign staff already in place.**
 - c. Gerrymandered districts. "Safe seats."
 - d. **Committee service to district.**
 - e. **Name recognition.**
 - f. **Casework done for constituents.**
 - g. **Pork barrel projects for district.** Explosion of "earmarks" in recent years: pet projects that members designate for their states/districts. Example: Congressman McKeon earmarked \$49,000 for a National Mule and Packers Museum in Bishop, CA.
 - h. **Money**, e.g., in recent House elections, incumbents outspent challengers by 3:1 ratio. Incumbents build a "war chest" to discourage challengers from running.

- B. Type of election.
 - 1. Incumbent campaigns: least competitive. Often in districts w/safe seats.
 - 2. Weak challenger campaigns: uncompetitive, but more competitive than inc. camp.
 - 3. Strong challenger campaigns: more competitive than above two.
 - 4. Open seat campaigns (the most competitive).
 - 5. **House or Senate (latter more competitive).**
 - 6. Midterm elections ---> loss of congressional seats for party of President
 - a. This occurred in House every year from 1938-1994.
 - b. Exceptions in congressional elections of 1998 and 2002.
 - c. Once again, in 2006, President's party lost seats, and even control, of both houses of Congress.
- C. Coattail effect.
- D. Media, esp. in Senate elections.
- E. Party affiliation -- still a strong predictor of voting behavior.
- F. Issues.
- G. Campaign consultants: increasing importance of these, and decreasing importance of political parties.
- H. Technology.

PATH TO THE PRESIDENCY

- I. "Invisible primary:" unofficial campaigning done by unofficial candidates.
- II. Nomination phase.
 - A. Some states use conventions method of sending delegates to national convention.
 1. Local caucuses ---> district convention ---> state convention ---> national convention.
Each level selects delegates to attend higher level.
 2. Importance of Iowa: 1st state to hold caucuses each pres. election yr. -> chance for candidate to build momentum for succeeding caucuses and primaries.
 - C. Other states use presidential primaries as method of sending delegates to national convention. **Increased use of primaries in the last 30 years.**
 1. "Beauty contest primary:" voters vote for candidates and state parties select delegates to attend the convention either on a proportional basis (Democratic Party) or a winner-take-all basis (Republican Party).
 2. Delegate selection primary: voters vote for delegates to attend convention.
 3. Combination of above.
 4. Importance of New Hampshire: the 1st state to hold primary each election yr. -> chance for candidate to build momentum for succeeding caucuses and primaries.
 5. "Front-loading" trend: primaries are held earlier and earlier. The idea of "Super Tuesday," where many southern states held their primaries early in the election season, has morphed into a situation where more and more non-southern states are moving up the dates of their primaries, as well.
 - C. Democratic Party has used "superdelegates" since 1982: automatically selected to attend national convention on basis of being party leaders and/or office holders. Purpose was to restore a prominent role for those party leaders and elected officials at the convention
 - D. National convention.
 1. Selection of presidential nominee: a mere formality since the winner is known well ahead of time ---> emphasis on "image" instead of "scrimmage," "ratification rather than nomination."
 2. Selection of V.P. nominee.
 - a. Chosen by pres. nominee and rubber stamped by convention.
 - b. **"Balancing the ticket"**
 3. Development of party platform.
 4. Reconciliation and unification of party by end of convention.
 - E. Analysis of presidential nominating system.
 1. Pro:
 - a. **Highly participatory: caucuses, primaries, conventions.**
 - b. Highly representative.
 - c. A testing ground for candidates. Weeds out weaker candidates.
 2. Con:
 - a. Low rates of turnout.
 - b. Too lengthy.
 - c. Does not test candidates for qualities they need as President. Too much emphasis on media game.
 - d. Front-loading has adversely affected states with later primaries. In essence, these states have no say in who is nominated.
 - e. **Voters in primaries tend to be better educated and more affluent than those in general elections.**
 - f. **Delegates at caucuses and conventions tend to be unrepresentative: more ideological, more activist, more educated, less moderate, much more wealthy.** "Selectorate" replaces the "electorate."
- III. Fall campaign.
- IV. Election day.
- V. Meeting of electors.
- VI. Formal election.
- VII. Inauguration day.

THE ELECTORAL COLLEGE

- I. Rationale for such a system at the Constitutional Convention:
 - A. Poor communication ---> common people would lack essential information.
 - B. Desire to have the "best" people select the President. Fear that the common people might be swayed by demagogues.
 - C. A compromise by those who wanted direct election and those who wanted the Congress to elect the President.
- II. Allotment of electoral votes to states.
 - A. Each state has as many electoral votes as it has members in Congress.
 - B. Minimum #: 3.
 - C. Washington D.C. has 3 votes by virtue of Amendment 23.
 - D. Total of 538 votes.
 - E. California has highest number (55).
 - F. Implications of movement of people from "Rust Belt" to "Sun Belt:" increasing representation in latter, decreasing in the former.
- III. Selection of electors: each party develops a "slate" of electors prior to the election (typically loyal party members).
- IV. Winning of electoral votes.
 - A. **Candidate with most popular votes (only a plurality is needed) wins all of that state's electoral votes (winner-take-all) ---> concentration of campaigning in large, competitive states.** Emphasis on "swing" states, e.g., FL, OH, PA, MI.
 - B. Electors meet in respective state capitals in December to cast ballots.
- V. Winning the election.
 - A. **Majority of electoral votes (270) needed to win.**
 - B. If no candidate has majority (this is what the Founders thought would happen most of the time. They did not anticipate the development of the two-party system):
 1. House selects President from among top 3 candidates.
 2. Each state has 1 vote.
 3. Done in 1800 and 1824.
 4. Senate selects V.P. from among top two candidates.
- VI. Criticisms.
 - A. **President can be elected w/only a plurality, rather than a majority, of popular votes, esp. w/presence of strong 3rd party candidates.**
 - B. Possibility of a minority President (1824, 1876, 1888, 2000). This is due to the winner take all feature that distorts margins of victory within states.
 - C. "Faithless electors:" no fed. law requires electors to vote the way they are "supposed" to vote
 - D. **Small states proportionately overrepresented**, e.g., Wyoming, with about 500,000 people, has 3 electoral votes, or about 1 vote per 166,666 people. California, with about 33 million people, has 55 electoral votes, or about 1 vote per 600,000 people. This is why it is unlikely that a const. amend. abolishing the Electoral College will be passed: small states like their overrepresentation.
 - E. Small states ridiculously overrepresented if election goes to House, e.g., Wyoming would have same voting power as California.
 - F. **Inhibits development of third parties**, e.g., Perot won 19% of the vote in 1992, but won zero electoral votes since he did not win any states.

VII. Alternatives.

- A. **Direct election: each person's vote would count as much as every other person's vote**
- B. District system (candidate who wins a congressional district wins that district's electoral vote). Overall winner in a state would get the two "bonus" electoral votes by virtue of its senate seats.
- C. Proportional system (candidate gets same % of electoral votes as popular votes).
- D. Keep electoral votes but abolish the electors themselves.

VIII. Why has the electoral college system not been abolished?

- A. Tradition/reluctance to tamper with the Const.
- B. Difficulties in amending the Constitution
- C. Opposition from the overrepresented small states
- D. Opposition from urban racial minorities: concentration of racial minorities in swing states give them the clout to "tip the scales" towards their favored candidates under the present system.

Study Guide Unit II Exam

Terms:

1. Political culture(know all the characteristics of American Political Culture).
2. Internal and External Efficacy.
3. Ideology.
4. Classical Liberalism,
5. Modern Liberalism,
6. Neo-liberal,
7. Conservatism,
8. Socialism,
9. Libertarianism.
10. Straw polls
11. universe, sampling, and sampling error(margin of error).
12. Explain all the elements of a scientific poll.
13. Exit polls.
14. What are the uses of polls?
15. Identify the abuses of polls.
16. Why was the 2000 election a good example of the problems with exit polls?
17. Horse race mentality.
18. Cross Pressure.
19. Political socialization.
20. Discuss all the agents of political socialization(family, schools, religion, race, income, opinion leaders, mass media, and gender.
21. Identify all the institutional barriers to voting.
22. What are the political reasons for lower voter turnout?
23. How does voter turnout in the US compare to other industrialized democracies.
24. What do we know about voter turnout since the 1960s?
25. What is the turnout in presidential and midterm congressional elections?
26. What were the historical qualifications for suffrage?
27. What are the current qualifications for suffrage?
28. **Regarding voter turnout** (not choice) what are the characteristics of people that turnout?
29. What is the single greatest predictor of turnout?
30. Discuss turnout in relation to education level, income, age, and race.
31. In regards to voter choice identify regions in this country and their voting patterns.
32. Maintaining elections, deviating elections and realigning (critical elections).
33. Split-ticket and straight ticket voting.
34. Identify gender, race, social class, religion, issues(retrospective and prospective voting) and candidate appeal to **voter choice**.
35. Look at the ideology quiz and study the statements and why certain ones are considered conservative or liberal.
36. Explain the voting trends for all the different demographics.

37. What is the difference between US **Congressional elections** and systems in Europe?

38. Who invented the primary system? Why?

39. Closed and open primaries.

40. All the factors that affect the outcome of congressional elections: incumbency (know all the advantages if this), types of elections (for example: incumbent, weak challenger etc...), coattail effect, media, party affiliation, issues (like war or economy), campaign consultants, and technology.

41. Explain the path to the Presidency.

42. Invisible primary, declaration of candidacy,

43. Caucuses vs primaries(what is the trend regarding which one is used more today?),

44. Iowa Caucus, and New Hampshire Primary,

45. Frontloading(be able to analyze this), regional/bloc primaries,

46. Super Tuesday and Junior Tuesday.

47. What happens at the national convention?

48. Also what is the time frame from Iowa to the National Convention?

49. Analyze the pros and cons of the nominating system.

50. Explain the Electoral College as the framers created it and how the system works today.

51. How did the Electoral College reflect the framers' fear of the masses (remember this is essentially the same argument as a republic vs. a democracy.

52. Discuss criticisms of the EC and alternatives to it.

53. Total number of electoral votes, number needed to win, minority president.

53. Who chooses the slate of electors?

Good luck!

Take Care-Mr. B

Place Tab Here

InterestGroups,
Parties, Media

Interest Groups, Political Parties & Elections, Media

- I. Interest group: group w/common interest that seeks to influence government.
- II. Madison's dilemma: wanting both liberty and order: allowing people the liberty to form groups and express their views could destroy the hope for an orderly society. **Political factions were inevitable - --> need to control their effects. A geographically large republic is more likely to be able to cure the "mischief of factions."**
- III. Pluralism: growth of interest groups prevents the concentration of excessive power in the hands of few, and thus enhances democracy ---> rebuttal that groups do not have equal resources and equal access.
- IV. Reasons for growth of interest groups:
 - A. Tocqueville's description of Americans as having a propensity for joining groups.
 - B. Economic developments, e.g., farm problems ---> Grange.
 - C. Government policies. Whenever govt. creates an agency, it creates an entry point for interest groups, e.g., New Deal and Great Society programs created agencies ---> more groups needed to form in order to protect their stakes in these agency activities.
 - D. Diversity of population -- countless social, racial, economic and geographic cleavages.
 - E. Diffusion of power in government. Political power shared by many ---> plenty of places in which a group can argue its case. The more places there are to influence policy, the more organizations there will be to exercise that influence.
 - F. Weakness of political parties: when parties are unable to get things done, interest groups have filled the power vacuum.**
 - G. Reforms of the 1970s that opened up and brought out into the open the lobbying process, e.g., FECA and the explosion of PACs.
 - H. Interest groups tend to beget interest groups, i.e., when one group is formed, another may be formed to counter it.
 - I. Technology, e.g., computerized mailing lists to solicit funds, use of communications media.

TYPES OF INTEREST GROUPS

- I. Traditional.
 - A. Goal: to promote economic interests of its members.
 - B. Types:
 - 1. Agricultural, e.g., Grange, American Farm Bureau Federation (nation's largest).
 - 2. Labor, e.g., AFL-CIO, UAW, Teamsters. Note decline of union membership in recent years.
 - 3. Business, e.g., Chamber of Commerce, National Assn. of Manufacturers
 - 4. Professional, e.g., AMA, ABA.
- II. Nontraditional protest.
 - A. Goal: to protest the status of its members & to convince government to take remedial action.
 - B. Examples: NAACP, MALDEF, NOW, ACT UP. Does OCCUPY movement fit here?
- III. Single issue.
 - A. Goal: to get government action on one overriding issue.
 - B. Examples: Right to Life League, National Abortion Rights Action League, NRA, MADD, NORML, PETA
 - C. Polarizing effect of these.
- IV. Public interest.
 - A. Goal: to bring about good policy for society as a whole.
 - B. Examples:
 - 1. Common Cause: campaign finance reform
 - 2. Public Citizen (a Nader group): consumer advocacy
 - 3. League of Women's Voters: encourages people to become informed, to register to vote, and to vote.
 - 4. Various environmental groups (e.g., Sierra Club, Wilderness Society).
 - C. 501(c)(3) groups: tax exempt and cannot be involved in election campaigns. Examples : American Cancer Society, Girl Scouts of America, FBLA
- V. Ideological.
 - A. Goal: to convince government to implement policies that are consistent with their philosophies.
 - B. Examples: Christian Coalition, People for the American Way, Free Congress Foundation, ACLU, American Conservative Union, "think tanks" (Brookings Institute, Heritage Foundation, Cato Institute).
- VI. Governmental, e.g., National League of Cities, National Association of Governors.
- VII. PACs (covered later).

TACTICS OF INTEREST GROUPS

- I. Use of mass media.
- II. Boycotting, e.g., NOW's boycott of states that didn't ratify ERA, civil rights groups boycotting S. Carolina because of that state flying the Confederate flag at the state capital.
- III. **Litigation.**
- IV. Use of **amicus curiae** briefs, e.g., disabled groups filing these on behalf of disabled PGA golfer Casey Martin, NAACP filing these on behalf of minorities in civil rights cases, NRA filing these in gun control cases
- V. **Campaign contributions.**
- VI. Endorsement of candidates.
- VII. "Targeting" of unfriendly candidates, e.g., NCPAC in 1980, moveon.org in 2004.
- VIII. Issuing "report cards" to rate candidates.
- IX. Initiative, referendum and recall at state and local levels.
- X. **Lobbying** (more on this later).
- XI. Mass mailings. New techniques of targeting specific segments of population w/database software

REASONS FOR JOINING INTEREST GROUPS

- I. Irrationality of joining a group:
 - A. Single person will probably not make much of a difference.
 - B. Person will probably receive benefits from the group anyway, e.g., an elderly person joining AARP will benefit from the group's lobbying efforts whether or not he joins AARP ---> "free rider" problem ---> need for groups to offer incentives for people to join.
- II. Types of incentives:
 - A. Material benefits, e.g., newsletters, t-shirts, mugs, magazine subscription.
 - B. Purposive benefits, i.e., satisfaction that a person has done a good thing in joining.
 - C. Solidary benefits, i.e., social benefits of joining.

FACTORS INFLUENCING INTEREST GROUP STRENGTH

- I. Nature of membership.
 - A. Size.
 - 1. More members = more money, more votes. AARP as an example.
 - 2. More members also means greater cross-pressure among members and possibly less focus.
 - B. Spread, i.e., the degree to which a group's membership is either concentrated or dispersed.
 - C. Cohesiveness: degree to which members are committed to "the cause," e.g., members who joined solely for getting a good deal on life insurance would be less committed than members who joined because they deeply believed in "the cause."
 - D. Leadership.
 - E. Resources, e.g., money, expertise, reputation, connections.

LOBBYING

- I. Attempting to influence government. **Interest group lobbying is generally most effective on narrow, technical issues that are not well-publicized.**
 - A. Iron triangle: informal coalition of interest groups/congressional committee/federal agency that seeks to influence public policy
 - B. These are sometimes known as issue networks, policy networks, sub-governments
- II. Cooperative lobbying: groups with a similar purpose combining their efforts, e.g., liberal interest groups joined forces to put pressure on the Senate to reject the nomination of Robert Bork to the Supreme Court.
- III. Grassroots lobbying: organizing lobbying efforts at the local level.
- IV. "Netroots" lobbying: political activism organized through blogs and other online media
- V. **Functions of lobbyists:**
 - A. Influence govt.
 - B. Provide information to govt.**
 - C. Testify at hearings.
 - D. Help write legislation.

-- a "third house of Congress."
- VI. Regulation of Lobbying.
 - A. 1946 Federal Regulation of Lobbying Act: Required registration and disclosure, but was full of loopholes.
 - B. Lobbying Disclosure Act of 1995: tightened up registration and disclosure requirements.
 - C. Restrictions on gifts, meals, and expense paid travel that members of Congress may receive from lobbyists.
 - D. Former agency employee must wait 1 year before lobbying that agency.
- VI. The case for lobbyists.
 - A. **They provide useful information to govt.**
 - B. They provide a means of participation for people.
 - C. They provide a means of representation on the basis of interest rather than geography. "linking mechanism" between people and government. A "third house of Congress."**
 - D. 1st Amendment protection.
 - E. As Madison points out in Federalist #10, the "remedy" of curing the evils of faction by eliminating their causes is worse than the disease. Potential loss of liberty is worse than the abuses of lobbyists.
- VII. The case against lobbyists.
 - A. Rich and powerful interests are over-represented.
 - B. Average and poor people are under-represented.
 - C. By safeguarding liberty, equality is sacrificed.
 - D. Single issue lobbies, especially, contribute to political polarization.
 - E. Lobbies contribute even further to diffusion of power, making it even more difficult for govt. to get things done.
 - F. National interest is sacrificed for narrow interests.

POLITICAL ACTION COMMITTEES

- I. Explosive growth of **PACs: group that raises funds for favored candidates.**
 - A. In 1974, only 600 PACs existed. Now: more than 4100.
 - B. Reason: cong. legislation that had the intent of preventing a few wealthy campaign contributors from helping candidates "buy" elections. Instead, Cong. wanted to "open up" campaign contributions to the masses, as represented by PACs.
 - C. FECA of 1974 did just that:
 1. Individuals could contribute no more than \$1000 (now \$2400 for 2009-10 cycle).
 2. Individuals could also, however, contribute to a PAC, with no limit on the number of PACs they could contribute to.
 3. Furthermore, **PACs could contribute 5x** (now ~ 2x) what an individual could contribute, and there is no limit on the total amount that a PAC can contribute in any one year.
 4. In addition, there is no limit on the amount of independent expenditures that a PAC could make.
- II. Explosive growth of PAC contributions.
 - A. In 1972, PAC contributions to congressional races totaled only \$8.5 million. By 2004, that figure was \$384 million.
 - B. 50 House candidates raised > \$500,000 each from PACs in 1998 (only 4 lost).
 - C. 38 Senate candidates raised > \$500,000 each from PACs in 1998 (7 lost).
 - D. PACs even donate to candidates facing no opposition at all! Why?
 - E. Important to keep things in perspective: most congressional campaign money comes from individual contributions.
- III. PAC strategies.
 - A. Campaign contributions ---> Factors influencing who gets PAC money:
 1. **Incumbents. (Political party affiliation is of little importance.)** In 2004, 79% of PAC money went to congressional incumbents, and only 7% went to challengers (14% went to open seat campaigns).
 2. Winners.
 3. Those who share a similar philosophy.
 4. Those who are likely to grant access.
 5. Those in positions of special influence, e.g., party leaders, committee chairs.
 6. Whether or not a candidate holds a committee seat of special importance to the PAC.
 7. **PAC money makes up a higher % of congressional campaign funds than presidential campaign funds.**
 - B. Voter education projects (mailings, fliers, commercials).
 - C. Independent expenditures, issue advocacy ads
 - D. "Bundling."-look this up
 - E. 527 groups: tax exempt groups that can accept and spend money on election activities
 1. These run issue advocacy ads and voter mobilization campaigns to influence elections. Since they do not make expenditures directly to a candidate, they are not regulated by the FEC
 2. Since they are not subject to same contribution limits as PACs, many 527s are run by interest groups as a way of getting around those limits and regulations
 3. Examples: MoveOn.org, Swift Boat Veterans for Truth, America Coming Together
- IV. Who has PACs?
 - A. **Corporations: ~50% of all PACs. Largest growth in these since 1970s.**
 - B. "Nonconnected" (ideological) organizations.
 - C. Professional/trade/health associations.
 - D. Labor unions.
 - E. Leadership PACs: formed by congressional leaders. Why are these formed?

V. Dangers of PACs.

- A. Ethical concerns: does a contribution "buy" anything?
- B. Special access of PACs that the average person lacks.
- A. Drives up the cost of campaigning -> more time spent by Cong on fundraising
- D. Overrepresentation of those wealthy enough to have PAC representation.**
- E. Underrepresentation of those who lack such representation.**
- F. Further incumbency advantage in elections.

VI. In defense of PACs.

- A. PACs provide a means of participation and representation for the average person. Another linkage institution.
- B. Without PACs, perhaps only the wealthy could afford to run for office.
- C. 1st Amendment's right to **petition the government**.
- D. Contributions are nonpartisan.
- E. No conclusive evidence that PACs change congressional votes. Contributions more likely to make a difference in arcane, obscure issues with little public awareness more than in issues of major importance with much public awareness.
- F. PACs provide political education.
- G. PACs diversify political funding. W/over 4100 PACs, many interests are represented.

CAMPAIGN FINANCE

- I. Federal Election Campaign Acts, 1971-1974: disclosure, subsidies, limitations.
 - A. Established a Fed. Elections Commission to regulate fed. elections.
 - B. All candidates must disclose contributions and expenditures.
 - C. **Presidential candidates can receive fed. subsidies on a matching fund basis** (money comes from tax check-offs). In '04, Kerry and Bush each received \$74 million. Obama chose not to take federal funds in '08, and was therefore able to spend unlimited amounts. McCain accepted the federal funds.
 - D. Presidential candidates who receive fed. money are subjected to spending limitations. If they do not take the money (Bush in 2004 primaries), they are not subject to spending limitations.
 - E. **Contribution limitations:**
 - 1. **Individuals: \$1000 per candidate, per election.**
 - 2. **PACs: \$5,000 per candidate, per election, and no overall cap.**
 - F. Effect of Buckley v. Valeo (1976) on FECA:
 - 1. Court upheld limits on campaign contributions
 - 2. Court struck down limits on congressional campaign spending. 1st Amendment protects spending as a form of expression. (Limits still OK for presidential races because the fed. govt. subsidizes them).
- II. Bi-partisan Campaign Reform Act (BCRA) of 2002 (McCain-Feingold Bill)
 - A. Bans soft money donations to national political parties. Soft money: undisclosed, unlimited donations to parties for party building activities.
 - B. Limits soft money donations to state political parties to \$10,000 -> restricts use of these donations to voter registration and get-out-the-vote drives
 - A. Doubled individuals' "hard money" donations to \$2000, and indexes future increases to inflation (now \$2400 for 2009-10 election cycle). Hard money: disclosed, limited donations to candidates.
 - B. No change on PAC limits. Still \$5,000 for 2009-10 election cycle.
 - C. Unions and corporations banned from giving soft money to parties
- III. Analysis.
 - A. **No subsidies for congressional campaigns ---> further incumbency advantage.**
 - B. No limits on spending in congressional races (these were overturned in Buckley v. Valeo, 1976).
 - 1. Massive spending on congressional races and further incumbency advantage.
 - 2. Members of Congress spend great amounts of time with fund-raising projects.
 - 3. Late-starters are discouraged.
 - C. No limitations on independent expenditures, i.e., money not donated to party or candidate but rather spent on behalf of a candidate. "527s", tax exempt groups that engage in political activities, can receive unlimited contributions and spend them on voter mobilization efforts and issue advocacy ads that praise or slam a candidate (though they cannot explicitly endorse a candidate). MoveOn.org is a prominent liberal 527. "Swiftboat Veterans for Truth" was a prominent conservative 527 in the 2004 election. 527s are, in part, a response to the BCRA's ban on soft money donations to national political parties.
 - D. Minor presidential candidates cannot receive subsidies before the election unless their party earned at least 5% of the popular vote in the previous election.
 - A. Parties are weakened since presidential election funds go to the candidates themselves rather than the parties ---> rise of candidate-centered campaigns rather than party-centered campaigns.
 - F. Growth of PACs and candidate dependence on PACs
 - G. No limitations on "bundling."
 - H. Cost of campaigning has risen -> more time spent on fundraising by candidates.

INTRODUCTION TO POLITICAL PARTIES

I. 3 components of parties

- A. Party-in-Government. Party leaders occupy positions in:
 - 1. Presidency
 - 2. Congress
 - 3. State governors
 - 4. State legislatures
 - 5. Local governments (though sometimes these are nonpartisan positions)
- B. Party-in-Electorate.
 - 1. Registered Democrats
 - 2. Democratic identifiers/leaners
 - 3. Registered Republicans
 - 4. Republican identifiers/leaners
- C. Party Organizations. Parties are decentralized, along federal lines.
 - 1. National level.
 - a. National Convention. Highest authority
 - b. National Committee. When convention not in session.
 - c. National Chairperson.
 - d. Congressional Campaign Committees (for House seats).
 - e. Senate Campaign Committees.
 - 2. State Committee.
 - 3. Local Committees: city, ward, precinct levels.
 - 4. Neither DNC or RNC can "punish" state/local committees if they stray from the partyline – again, parties are decentralized.

II. Functions of political parties.

- A. Nominate candidates.
 - 1. Previously: caucuses ---> nominating conventions ---> now **primary elections**.
 - 2. **W/expansion of primaries, nominating function now seriously lessened. Party leaders no longer control nominations → more candidate-centered politics than party-centered politics.** Contrast with responsible party system in Europe where officeholders are more accountable to their parties.
- B. Raise and spend campaign funds ---> declining importance w/advent of "candidate-centered" campaigns.
- C. Register voters.
- D. Simplify decisions for voters: Provide a "shorthand" through which busy and uninterested voters can base a voting decision -- use of "party lens" by voters. In an LA Community College District election, 133 candidates were on the ballot, and without party labels -> difficult for voters to make decisions.
- E. Unify diverse interests.
 - 1. Example: FDR's grand coalition.
 - 2. However, to appeal to such a wide variety of party members, parties must avoid taking strong stands ---> charges of "tweedledee/tweedledum," "not a dime's worth of difference between the parties."
 - 3. U.S. not as party-centered as Western Europe (which has the "responsible party system") → U.S. more of a candidate-centered system.
- F. Act as moderating influence on govt.
 - 1. To win elections, parties must usually nominate moderate candidates who appeal to the vast center of the American electorate. Fringe elements squeezed out. When parties do nominate people outside the mainstream (e.g., Goldwater and McGovern), they pay the price at the polls ---> they therefore generally avoid nominating such fringe candidates.
 - 2. Again, this is in contrast to the European multi party system, where fringe parties and candidates are common.

- G. Reduce diffusion of power in govt.
 - 1. In theory, a party brings govt. together in order to overcome the systems of separation of powers and checks and balance -- parties act as a unifying force.
 - 2. In reality, people tend to split their tickets ---> divided govt.
 - 3. Office-column ballot facilitates split-ticket voting (as opposed to party column ballot, which facilitates straight ticket voting).
- H. Provide patronage.
 - 1. In theory, this should ensure that the will of the people is carried out.
 - 2. In reality, vast majority of govt. jobs are filled by Civil Service. Plus, appointment of people with political connections has often resulted in corruption and incompetence (e.g., Harding's "Ohio Gang," Nixon's "Palace Guard").
- I. Inform public through party platforms.
- J. Provide "loyal opposition" (after the "honeymoon period")
- K. Agents of **political socialization**, esp. at turn-of-century.
- L. **Linking mechanism between people and government.**

RISE OF POLITICAL PARTIES

I. Origins.

- A. Dangers of **factious** mentioned by Madison in Federalist #10 and Washington's warning about the "baneful effects of the spirit of party."
- B. Nevertheless, parties became necessary in order to get things done in government, e.g., Hamilton's financial plan and support for Jefferson's Louisiana Purchase. Necessity of an institution that unifies government in order to overcome the systems of separation of powers and checks and balances that divide government.
- C. Historical development: the Six Party Systems in American history. Realignment occurs roughly every 36 years or so.
 - 1. 1796-1820: the 1st party system: Federalists v. Jeffersonian Democratic-Republicans
 - 2. 1824-1856: the 2nd party system: Jacksonian Democrats v. Whigs
 - 3. 1860-1892: the 3rd party system: Republican dominance as the party against slavery and the party that put the Union back together.
 - 4. 1896-1928: the 4th party system: second period of Republican dominance with its coalition of big business and the working classes against the Democratic rural interests.
 - 5. 1932-1964: the 5th party system: Democratic dominance begun under FDR and the New Deal. **FDR's grand coalition included urban dwellers, labor unions, Catholics, Jews, the poor, Southerners, Blacks, farmers**
 - 6. 1968-present: the 6th party system: Era of Divided Government/Dealignment
 - a. Much split ticket voting.
 - b. Presidents of one party (typically Republican) with Congresses of the opposite party (typically Democratic).
 - c. An era of party dealignment, as voters are moving away from both parties and are increasingly independent.
 - d. Nixon ("Southern strategy") and **Reagan built a coalition of disenchanted white suburban middle class, Southern white Protestants**, big business
 - e. Clinton won twice in part because of his resurrection of FDR's grand coalition, especially Southern middle class moderates ("Reagan Democrats"). Women's votes were also decisive.
 - f. Election of 2000 gave us a Republican president who won only a minority of popular votes, a 50-50 Senate (which became a 50-49-1 Democratic Senate after Jeffords defection), and a House w/a narrow Republican majority
 - g. Election of 2004 provided a unified Republican government
 - h. Congressional elections of 2006 once again yielded divided government. Election of 2008 saw a return to unified government.

II. Relative party strengths.

- A. National govt.
 - 1. President: Democratic.
 - 2. House: 200 Democrats, 232 Republicans, 3 vacant (113th Congress of 2013-15)
 - 3. Senate: 52 Democrats, 46 Republicans, 2 independent (113th)

-- Divided government typical of the past few decades. The usual pattern has been Republican Presidents and a Democratic Congress.
- B. State governments.
 - 1. Governors: 28 Democrats, 22 Republicans (2006 figures).
 - 2. State legislatures: Democrats control 18 states, Republicans control 20 states, and the remaining states are split or nonpartisan (2006 figures).

PARTY WEAKNESSES

- I. Parties lack strong rank-and-file membership/lack strong grass roots organization
 - A. Anyone can join merely by registration.
 - A. No duties or dues.
 - B. Most activities occur only at election time
 - C. Most Americans are mere spectators, rather than participants, in party activity.
 - D. Small percentages of “Strong Democrats” and “Strong Republicans”
 - E. **Increase in percentage of Independents** (though most of these are “leaners”)
- II. Parties have lost many of their traditional functions, or these functions have been weakened:
 - A. Nomination of candidates (now done by **primary elections**)
 - B. Funding of political campaigns (trend towards candidate-centered campaigns).
 - C. Unifying govt. (we often have divided government, and intra-party conflict can be strong).
 - D. Providing patronage (jobs now filled by Civil Service).
- III. Weak party discipline
 - A. Split ticket voting. Voters feel less loyalty to parties.
 - B. Few penalties for politicians who stray from the party line. Since candidates are nominated by the people rather than by the party bosses, candidates feel less beholden to the party.
 - C. Candidates finance their campaigns on their own rather than rely upon the parties -> more willing to stray from the party line
- IV. Intra-party divisions
 - A. Between party regulars and candidate loyalists/issue advocates.
 - B. Between Dem. liberals and moderates (e.g. “Blue Dogs” in Congress).
 - C. Between Rep. conservatives and moderates.(Tea Party?)

Third parties.

- A. Types:
 - 1. Doctrinal: apply a general philosophy to wide variety of issues (e.g., Communist Party, Socialist Party).
 - 2. Issue-oriented (e.g., Free Soil, Greenback, Prohibition).
 - 3. Parties centered around a strong personality (e.g., Perot's Reform Party, TR's Bull Moose Party).
- B. Contributions of third parties.
 - 1. Raise issues that other parties must address, and often incorporate into their own party platforms. "Champions not of lost causes, but of causes yet to be won" (e.g., Populist Party: **direct election** of senators, income tax, etc.).
 - 2. Voice for the fringe elements in society.
 - 3. Safety valve for discontent in society.
- C. Effects of third parties.
 - 1. Rarely win elections
 - 2. Influence the outcome of presidential elec. (e.g., 1968, 1992, 2000): "spoiler role."
- D. Obstacles.
 - 1. Two-party tradition.
 - 2. **Single-member, winner-take-all district system for congressional seats (more associated with two party systems)**, as opposed to the multi-member, proportional system (more associated with multi-party systems) that is common in Western Europe.
 - 3. **Electoral college's winner-take-all system, e.g., Perot won 19% of the vote in 1992, but had zero electoral votes since he did not win any states.**
 - 4. Getting candidates on the ballot.
 - 5. Money.
 - 6. Media coverage.
 - 7. Exclusion from TV debates.

IMPACT OF PARTIES ON GOVERNMENT

- I. Congress.
 - A. Majority party has a majority on all committees and subcommittees.
 - B. Majority party has chairmen on all committees.
 - 1. Minority party has a “ranking member” on each committee.
 - 2. The ranking member often becomes the chairman when party control of Congress changes.
 - C. Majority party controls key leadership positions.
 - D. Staffers are partisan.
- II. Executive branch.
 - A. Nearly all appointments to White House Office are partisan (“political appointees”). Many go to people from election campaigns.
 - B. Nearly all appointments to top positions in other parts of executive branch are partisan (“political appointees”).
 - C. Development of Civil Service System has greatly reduced party influence over the bureaucracy.
- III. Judicial branch: nearly all appointments are partisan.
- IV. State and local govts.
 - A. Most state govt. positions are partisan.
 - B. Many local govt. positions (e.g., school board, city council) are nonpartisan.

PARTY REFORM

- I. Historical abuses:
 - A. Control of nominations by bosses and caucuses.
 - B. Corruption of political machines, e.g., Tweed, Daley.
 - C. Unrepresentative nature -- young, poor, and minorities often excluded.
- II. Reforms of Progressive Era.
 - A. **Direct primary elections.**
 - B. Nonpartisan elections at state and local level.
 - C. Civil Service expansion.
 - D. Initiative, referendum, and recall.
 - E. **17th Amendment.**
- III. Other factors that have weakened the parties:
 - A. Candidate-centered campaigns (esp. after FECA).
 - B. Rise of campaign consultants to take over many of the functions of parties.
 - C. Public disenchantment with parties and politics during the 60s.
 - D. Growth of interest groups -- have taken on some party functions.
 - E. Development of mass media -- candidates rely on media rather than party organization to get message across. The Internet, especially, has become important for candidate fund raising, candidate web sites, candidate Twitter/Instagram/Facebook profiles, candidate advertising on web sites. Candidates can do these themselves and do not need the parties for these things.
- IV. Evidence of "dealignment:" rejection of parties rather than changing of party membership, as in realignment.
 - D. **Growth of political independents .**
 - E. Trend to "vote the man, not the party" and rise of ticket-splitting since 1950s. (Go over congressional and presidential elections in last 50 years).
 - F. Counter arguments to dealignment theory:
 - 1. Even though % of independents has increased, 2/3 of "independents" are actually leaners." They are, in effect, "closet Democrats" and "closet Republicans."
 - 2. Same % of pure independents in 1992 as in 1956.
- V. Party resurgence.
 - A. National party organizations are better funded than in the past. Soft money donations to national parties, though now banned, were important factors in elections in 1990s.
 - B. National parties compensated for loss of soft money by raising more hard money.
 - C. Both parties, w/better funding, hold training sessions for candidates: how to plan, raise funds, organize.
 - D. Very strong party unity scores (where a majority of 1 party voted against a majority of the other party) within Congress: 70%-80%.
 - E. Party ID is still the best predictor of voting.

WHO ARE THE MASS MEDIA?

I. "Traditional" media.

- A. Newspapers: NY Times, Washington Post, Wall Street Journal. Declining circulation.
- B. Television: CBS, NBC, ABC -- decline of 3 major networks w/advent of greater competition from cable.
- C. Magazines: Time, Newsweek, US News and World Report. Declining circulation.
- G. Trend towards mergers and consolidation → less competition.

II. The "new media."

- A. Examples: Social Media, the Internet, web logs ("blogs"), YouTube, CNN, Fox News, The O'Reilly Factor, Daily Show, Colbert Report, Rush Limbaugh and talk radio.
- B. Characteristics:
 - 1. More interactive.
 - 2. More emphasis on entertainment -- "infotainment."
 - 3. Personalized.
 - 4. Emotional.
 - 5. Informal
 - 6. Opinionated
 - 7. Topical

THE MEDIA AND PUBLIC OPINION

I. Do the media influence public opinion? Mixed evidence:

- A. Yes.
 - 1. Television "personalizes" candidates and elections.
 - 2. Media stress short-term elements of elections at expense of long-term elements (e.g., party affiliation).
 - 3. Those who "consume" media in turn influence others.
 - 4. Media help set national agenda.
 - 5. Rise of advocacy journalism/adversarial journalism rather than objective journalism. Journalists "comfort the afflicted and afflict the comfortable."
 - 6. Studies show that journalists are more liberal than public as a whole.
 - 7. Media are a primary linking mechanism between public and government
 - 8. Profit motive → emphasis on boosting ratings → "trivialization" of news → people less informed on important issues
- B. No.
 - 1. Mass public pays little attention to the news (e.g., surveys showing how little people know about current affairs) and often forgets what it sees or reads.
 - 2. Selective attention: many focus in on media sources they already agree with.
 - 3. Selective perception: many perceive news in the way they want to view it -- they see what they want and filter out the rest.
 - 4. Media are only one source of influence -- **political socialization** suggests importance of family, schools, peers, and other influences.
 - 5. People consume media for variety of reasons other than information: boredom, entertainment ---> these people are less likely to pay close attention to "hard" news and analysis.

II. Impact of newspapers.

- A. Typical perception of liberal bias, but they generally endorse Republican candidates.
(Publishers tend to be Republicans.)
- B. Complaints from both liberals and conservatives:
 - 1. Conservatives claim that reporters are too liberal: college graduates (often from elite schools) with hostility towards middle class values.
 - 2. Liberals claim that publishers are conservative and therefore are more concerned with sales and profits than exposing social/political/economic evils ---> status quo bias.
- C. Lack of competition: most cities now have only one major newspaper.
- D. Largest amount of pres. campaign coverage devoted to day-to-day campaign activities**
- E. "Horse race" coverage.**

III. Impact of television.

- A. Most people now get their news from television. Most get their political info from t.v. → decline of substance in coverage and rise of image and slogans.
- B. Concern that television is allied with "big government:" use of television as electronic throne of President.
 - 1. President can now bypass journalists' annoying questions and go right to the people with a speech.
 - 2. Decline in number of presidential press conferences.
 - 3. White House manipulation of television with photo opportunities and sound bites.
- C. Concern that television has fostered cynicism, distrust and negativism towards government and politics -- adversarial journalism.
- D. Lack of competition (although advent of cable has made this less of a problem)/media conglomerates.
- E. Concern that people look at politics through the "camera lens" rather than the "party lens" ---> further decline of parties.
- F. Decline of network TV news and rise of cable TV news.

EFFECTS OF THE MEDIA ON POLITICS

- I. Symbiotic relationship between government and the press: journalists need politicians to inform and entertain their audiences, and politicians need journalists for media exposure.
- II. Roles of media.
 - A. **Gatekeeper: influence which subjects are of national importance, i.e. help to set national agenda.**
 - B. Scorekeeper: keep track of, and help make, political reputations, e.g., importance attached to Iowa caucuses and New Hampshire primary. Emphasis on **horse race** element of elections at expense of issues.
 - C. Watchdog: scrutinize people, places and events (e.g., Watergate, Iran-Contra). "Comfort the afflicted and afflict the comfortable."
- III. Nature of media influences.
 - A. Most influential at the agenda-setting phase of the policy making process.
 - B. Issue framing: once an issue is on the national agenda, media provide context for understanding that issue
 - C. "Sameness" – homogeneity of coverage
 - D. Media companies are businesses, where the main objective is to make money.
 - E. Provide forum for building candidate images.
 - F. Act as linking mechanism between govt. and people:
 - 1. In the past: People ---> Parties ---> Government.
 - 2. Now: People ---> Media ---> Government.
 - G. Contribute to higher cost of campaigning.
 - H. Contribute to candidate-centered campaigns.
 - I. Increase the role of campaign consultants. Instead of parties telling candidates what to say, media consultants report on findings of polls and focus groups and then tell candidates what to say.
 - J. White House manipulation of media (use of television as "electronic throne")
 - 1. Photo opportunities.
 - 2. Sound bites.
 - 3. Spin control.
 - 4. Staged events.
 - 5. Trial balloons.
 - 6. "Going public:" when the president takes his case directly to the people
 - K. Negative coverage of Congress. Congress seen as obstructionist foil to President.
 - L. Emphasis on sensationalism and scandal → "feeding frenzy" when a story is hot
 - M. Far less coverage of Supreme Court than of Congress and presidency.
 - N. Media most influential:
 - 1. In primary elections rather than general elections.
 - 2. On undecided voters. Most voters make up their minds before the fall campaign, and many make up their minds even before the conventions.
 - O. Increasing importance of Internet ("net roots")
 - 1. Fundraising
 - 2. Communicating w/public: web sites, YouTube, Twitter, Facebook

Unit 3 Study Guide

1. Interest Group
2. Madison's Dilemma
3. Pluralism
4. Identify reasons for the growth of interest groups
5. Identify and explain 1 interest group FROM EACH OF THE TYPES.
6. List and explain each of the tactics used by interest groups.
7. What are the reasons people join interest groups?
8. What factors influence the strength of interest groups?
9. Lobbying
10. What are the functions of lobbyists?
11. Why were the 1946 Federal Regulation of Lobbying Act and the Lobbying Disclosure Act of 1995 written?
12. Linking Mechanisms
13. Explain the case for lobbyists.
14. Explain the case against lobbyists.
15. PACs
16. Why was there an explosive growth of PACs?
17. Explain each the PAC strategies
18. Who has PACs?
19. What are the dangers of PACs
20. Defend the existence of PACs
21. Federal Election Campaign Acts
22. Disclosure
23. Subsidies/Matching funds
24. Limitations
25. What are the contribution limitations for individuals and PACs under FECA?
26. Buckley v Valeo
27. Bi-Partisan Campaign Reform Act of 2002(McCain-Feingold)
28. Soft money
29. Hard money
30. Independent expenditures
31. Citizens United v FEC
32. What is the impact of federal law and court decisions upon campaign finance?
33. What are the function of political parties in the American Political System?
34. Caucuses
35. Primaries
36. Party in Government-describe
37. Party in the electorate-describe
38. Party organizations-describe
39. Patronage
40. Federalist 10
41. What are the characteristics of the 6th party system?
42. Divided government

43. Explain the following statement, "Parties lack strong rank-and-file membership and lack strong grass roots organization"
44. Explain the following statement, "parties have lost many of their traditional functions or these functions have been weakened."
45. Explain the following statement, "parties have weak party discipline."
46. Explain the following statement, "parties have intra party divisions."
47. What are the types of 3rd parties?
48. What are the contributions of thirds parties in the American political system?
49. What are the effects of 3rd parties?
50. What are the obstacles of 3rd parties in the American political system?
51. Single-member winner take all congressional districts
52. Electoral College winner take all system.
53. What are the impacts of parties on Congress, the Executive, the Judicial Branch, and state/local governments?
54. What are the historical abuse of parties?
55. What were the reforms of the Progressive Era?
56. Dealignment
57. Realignment
58. Party Unity Scores
59. Media as Gatekeeper
60. Media as Score Keeper
61. Media as Watchdog
62. Selective attention
63. Selective perception
64. White House manipulation of the media(electronic throne)
65. Photo opps
66. Sound Bites
67. Spin Control
68. When is the media most influential?

revolving door?
gatekeeper?
scorekeeper?
watchdog?
nature of media influ.
sound bites?
photo ops
spin control
staged events
The media is the
most influential in?

Good luck

Place Tab Here

Congress

CONGRESS

- I. Intentions of Founders.
 - A. Fear of excessive power concentrated in single institution.
 - B. Fear of mob rule by impassioned majority.
 - C. Concern about manner of representation in Congress
 - D. Solution to these concerns: bicameral legislature.
 - 1. Mob rule concern addressed by creation of "upper house" in which senators would be elected by state legislatures rather than the people, and which would check the passions of the people's representatives in the House.
 - 2. Representation concern settled by a Senate w/equal representation and a House with representation based upon population.
 - E. Belief that Congress would be the dominant branch of government.
- II. Conflict over distribution of power in the Congress.
 - A. Basic conflict: centralization vs. decentralization.
 - B. Centralization would allow Congress to act quickly and decisively, but at the expense of individual members and the constituents whom they represent. It would require several conditions:
 - 1. Strong central leadership w/authority over rank and file membership.
 - 2. Restrictions on debate.
 - 3. Few opportunities for stalling tactics.
 - 4. Minimal committee interference.
 - 5. A streamlined legislative process.
 - 6. Opportunity to conduct business w/minimal public scrutiny.
 - C. Decentralization would protect and enhance the interests of individual members and their constituents, but would prevent Congress from acting quickly and decisively. It would require several conditions:
 - 1. Weak central leadership.
 - 2. Few restrictions on debate.
 - 3. Numerous opportunities for stalling tactics.
 - 4. Powerful committee influence.
 - 5. Complicated legislative process.
 - 6. Close public scrutiny.
 - D. Decentralization in the 1970s (esp. w/"class of '74").
 - 1. Power of individual members over committee chairmen rose: more input from individual members, less tyrannical rule by chairmen.
 - 2. Number of subcommittees increased.
 - 3. **Power of subcommittee chairmen increased, and the influence of committee chairmen decreased.**
 - 4. Number of staffers increased.
 - 5. Attack on the seniority system and removal of some chairmen from their positions.

E. Developments in the Senate.

1. **The Senate is a more naturally decentralized and informal body:**

- a. Fewer members, fewer formal rules.
- b. Lack of a Speaker.
- c. Lack of a strong **Rules Committee**.

2. Democratization of Senate: passage of **17th Amendment** ---> **direct election of senators.**

3. Concern over length of debate allowed on floor of Senate.

- a. Use of filibusters.
- b. In 1917, Senate provided **means to kill a filibuster: 3/5 vote for cloture.**

F. Recent developments:

- 1. Election of 104th Congress and a new Republican majority ---> Contract with America: ~12 items voted on by the House in the first 100 days, but many stalled in the Senate.
- 2. Under leadership of Speaker Gingrich, some senior Republican members of House were passed over for committee chairmanships in favor of younger, more aggressive members.
- 3. Under Gingrich, House Republicans adopted term limits for committee chairmen.
- 4. Speaker Pelosi's "Hundred Hours Congress" of 2007: In the first 100 hours of the 110th Congress, the House voted to raise the federal minimum wage, allow federally funded embryonic stem cell research, implement recommendations of the 9/11 commission, cut oil and gas tax breaks, allow Medicare to negotiate drug price discounts and cut student loan rates.
- 5. Filibuster issue has become controversial: Republicans complain that Democratic use of the filibuster to block judicial appointments is unprecedented.
- 6. Greater use of "holds." Since "unanimous agreement" is required to proceed on matters, a single senator can block a bill or presidential appointment to office.

OVERVIEW OF CONGRESS

I. Terms and sessions.

- A. Term of Congress lasts two years.
- B. Terms begin on Jan. 3 of every odd-numbered year.
- C. Terms numbered consecutively (106th Congress from 99-01, 107th from 01-03, 108th from 03-05, 109th from 05-07, 110th from 07-09, 111th from 2009-2011).
- D. Adjournment: end of a term; date must be agreed upon by both houses.
- E. Two regular sessions per term. Periodic recesses (not to be confused w/adjournment).

II. Bicameralism: two-house legislature.

- A. House of Rep's was designed to be closer to the people/more responsive to the people:
 - 1. Members elected directly by the people (rather than indirectly elected, as were Senators until 1913).
 - 2. Members are elected from smaller districts rather than on an at large basis, like the Senate
 - 3. Members elected for only a two-year term.
 - 4. Entire body elected every two years.
 - 5. Revenue bills (tax bills) must originate in the House.
- B. Senate was designed to be more removed from the people:
 - 1. Members originally were indirectly elected by state legislatures.
 - 2. Members elected on an at large basis.
 - 3. Members elected for a six year term
 - 4. Only 1/3 of Senate is up for reelection every two years – more stability/continuity

II. House of Representatives.

- A. Size.
 - 1. Determined by Congress. 435 since 1911.
 - 2. Members elected by districts, not states.
 - 3. Number of rep's a state has is determined by population.
 - 4. Demographic trends show increase in Sun Belt state representation (e.g., 53 Rep's in CA), decrease in Frost Belt representation.
- B. Terms of office are fixed, unlike in parliamentary systems.
 - 1. Two years. Entire body up for reelection every two years -- A more "responsive (and potentially "radical") body to be kept in check by the Senate.
 - 2. Term limits passed by some states, but ruled unconstitutional by Supreme Court (US Term Limits v. Thornton, 1995).
- C. Qualifications: 25 years of age, citizenship for 7 yrs., residency in state.

III. Senate.

- A. Size: 100 members, chosen in statewide elections ("at large"). **With a smaller size, the Senate has been a more informal body with less need than the House for as many strict procedures.**
- B. Terms of office: Six years. 1/3 up for reelection every two years -- Staggering of terms ensures a more stable body. No term limits allowed here, either.
- C. Qualifications: 30 years of age, citizenship for 9 yrs., residency in state.

IV. Compensation.

- A. Members set own salaries. 27th Amendment prevents salary raises from taking effect until the following term. (2009 salaries: \$174,000). Honoraria (speaking fees) now banned.
- B. Many other perks: staff, travel allowance, office space, **franking privilege**, insurance, etc.
- C. Legislative immunity: cannot be sued for something they say while on congressional business
- D. Cannot be arrested/detained while going to or from a session of Congress.

V. Membership

A. Overrepresentation of white, male, Protestant, upper-middle class lawyers in their 50's ---> charges of conservative/status quo bias.

B. Rebuttals:

1. Many more women and minorities have been elected in recent years (in 110th Congress, there were 42 blacks, 27 Hispanics, 7 Asians, and 74 women in the House. 1 black, 3 Hispanics, 2 Asians, and 16 women in the Senate).
2. Perfectly possible for white, male, Protestant, upper-middle class lawyers in their 50's to represent the poor and afflicted.
3. In any case, the people themselves are the ones who elected members.

THE INCUMBENCY ADVANTAGE

- I. Scope of incumbency advantage.
 - A. **Reelection rate in House: >90%** (96% in 2008)
 - B. **Reelection rate in Senate: >80%**. (90% in 2008)
 - C. Relatively few seats are seriously contested in the House. Most are "safe seats."
 - D. Charges of a "Permanent Congress."
 - E. The counter to the Permanent Congress argument is that reelection rates take into account only those incumbents who run for reelection. Retirements open up quite a few seats each year to new members.
- II. Advantages of incumbency.
 - A. **Franking privilege.**
 - B. Staffers.
 - C. Patronage.
 - D. Name recognition.
 - E. Casework.
 - F. Money, esp. from PACs.
- III. A special incumbency advantage for House members: **gerrymandering**.
 - A. To understand **gerrymandering**, you first need to understand **reapportionment**: the redistribution of the 435 seats in the House on the basis of changes in state populations.
 1. Number of Rep's per state is determined by population.
 2. **Census conducted every 10 years.**
 3. **Census will show population changes in states ---> these changes must be reflected in state representation in House: if a state gains significantly in population, it will probably gain some seats; if a state loses population or does not gain as much as other states, it will probably lose some seats.**
 - B. If a state has a change in the number of seats, its district boundaries must change. This is known as **redistricting, and is usually carried out by the party in power of the state legislature**. A form of redistricting is **gerrymandering: redrawing boundaries to favor the party in power of the state legislature**.
 1. Origin of the term: from 19th century Mass. governor Elbridge Gerry, who drew district lines himself. Some of his districts had such strange shapes that they looked like salamanders, prompting one wag to instead refer to them as "gerrymanders."
 2. The party in power can get a majority of seats in the House by:
 - a. "Packing:" drawing the district lines in such a way as to concentrate the opposing party in a few districts, thus preserving a majority of seats for itself.
 - b. "Cracking:" drawing the district lines in such a way as to disperse the opposing party throughout the state and thus dilute that party's strength in order to preserve a majority of seats for the majority party.
 3. Effects of **gerrymandering**:
 - a. The party in power STAYS in power.
 - b. "Safe" seats are created for incumbents, leading to further difficulties for challengers.
 - c. Strangely-shaped districts.
 - d. "Majority-minority" districts created by racial gerrymandering.
 - C. Supreme Court redistricting requirements:
 1. Districts must be as near equal in population as possible.
 - a. **Baker v. Carr, 1962: "one man, one vote" principle applied to state legislative districts to correct overrepresentation (malapportionment) of rural areas.**
 - b. Wesberry v. Sanders, 1964: applied same principle to House districts.

- c. Even if the number of rep's to which a state is entitled does not change, it redistricts anyway because of geographic shifts in population that may have occurred within the previous ten years. This solves the problem of malapportionment.
- 2. District lines must be contiguous.
- 3. Racial gerrymandering is prohibited (Shaw v. Reno, 1993). Race may not be the primary factor in drawing district lines (Miller v. Johnson, 1995).
- 4. Cannot dilute racial minority voting strength.
- 5. "Communities of interest" may be kept intact.

THE STRUCTURE AND POWERS OF CONGRESS

- I. The bicameral structure: two chambers.
 - A. Many other nations have two house legislatures, but the “upper house” is largely ceremonial (e.g., British House of Lords).
 - B. Purpose of bicameralism is to protect against an overly powerful legislature.
 - C. House of Rep’s was expected to reflect popular will of average citizen.
 - D. Senate was to provide more stability, continuity, and in-depth deliberation.
 - E. Bicameralism acts as a moderating effect on partisanship, and prevents government from steamrolling ahead and infringing on people’s rights.
 - F. Bicameralism was part of the Connecticut (Great) Compromise at the Const. Conven.
 - G. See chart in book showing differences between House and Senate.
- II. Delegated powers granted to the national government.
 - A. Expressed/enumerated: actually spelled out in the Const.
 - 1. Levy taxes (revenue bills must begin in House).
 - 2. Spend money for common defense and public welfare.
 - 3. Borrow money.
 - 4. **Regulate foreign, interstate, Indian commerce. This clause has been tested frequently in the courts due to its broad interpretation by Congress.**
 - 5. Establish naturalization and bankruptcy laws.
 - 6. Coin money.
 - 7. Establish weights and measures.
 - 8. Punish counterfeiters.
 - 9. Establish post offices.
 - 10. Grant copyrights and patents.
 - 11. Create courts inferior to Supreme Court.
 - 12. Define and punish piracy.
 - 13. Declare war.
 - 14. Raise and support an army and navy.
 - B. Implied powers: suggested, but not actually expressed, in the Const.
 - 1. Based upon **elastic clause**.
 - 2. Examples: national bank, conscription, paper money, air force, CIA
 - 3. Strict v. loose constructionist approaches.
 - C. Inherent powers
 - 1. Powers the national government has simply by virtue of being a sovereign govt.
 - 2. Examples: regulating immigration, acquiring territory, granting diplomatic recognition
- IV. Institutional powers, i.e., those that relate to system of checks and balances.
 - A. Senate ratifies treaties with 2/3 vote.
 - B. **Senate approves presidential appointments with majority vote.**
 - C. **House votes for impeachment (majority vote needed), Senate tries impeachment cases (2/3 vote needed to convict).** Who is subject to impeachment: Pres, VP, and “all civil officers of the United States”
 - D. House elects President if no electoral majority, Senate elects V.P.
 - E. Proposal of constitutional amendments with 2/3 vote in both houses.
 - F. Each can seat, unseat, and punish (e.g., censure) own members.
- V. Powers denied to Congress.
 - A. Passing ex post facto laws.
 - B. Passing bills of attainder.
 - C. Suspending habeas corpus except in cases of rebellion or invasion.

LEADERSHIP IN CONGRESS

I. House of Representatives.

- A. Speaker.
 - 1. Presides over House.
 - 2. Appoints select and **conference committees**.
 - 3. Appoints **Rules Committee** members and its chairman.
 - 4. Assigns bills to committees.
 - 5. Third in line for presidency after V.P.
 - 6. Informal powers, e.g., access to media.
 - 7. Influences agenda of the House
- B. Majority Leader/Minority Leader.
 - 1. Partisan positions chosen by party members.
 - 2. Floor leaders and legislative strategists.
- C. Majority Whip/Minority Whip.
 - 1. Assistant floor leaders.
 - 2. Inform party leaders on "mood" of House.
 - 3. Keep nose count on important votes.
 - 4. Persuade party members to vote with party.
 - 5. Liaison between party leadership and rank and file membership.
- D. Rules Committee:
 - 1. Sets legislative calendar (agenda) – “traffic cop” of the House
 - 2. Issues rules for debate and amendment (open rule allows former, closed rule does not)

II. Senate.

- A. Vice President.
 - 1. President of Senate.
 - 2. Presides over Senate.
 - 3. Votes in case of ties.
 - 4. Ceremonial job.
- B. President Pro Tempore
 - 1. Ceremonial job.
 - 2. Presides in absence of V.P.
 - 3. Fourth in line for presidency.
- C. Majority Leader.
 - 1. True leader in Senate.
 - 2. Recognized first for all debates – w/power to filibuster, this gives Majority Leader strong influence on bills.
 - 3. True leader of majority party.
 - 4. Influences committee assignments of senators.
 - 5. Influences Senate agenda, along with Minority Leader.
 - 6. Informal powers, e.g., of using the media.
- E. Minority Leader and party Whips: Same as House.
- F. Filibuster
 - 1. Nonstop debate to kill a bill.
 - 2. A threat of a filibuster is almost as good as a filibuster itself – it places pressure on bill's sponsors to change parts of the bill.
 - 3. Especially effective at the end of a term.
 - 4. Can be ended by 3/5 vote of cloture.
- G. Holds
 - 1. Any Senator can place a hold on a bill or nomination, and thus delay these indefinitely.
 - 2. In past, these were used as a courtesy for members who were absent on key votes.
 - 3. Now, however, these are used for policy purposes, e.g. to stop a judicial nomination because the nominee is ideologically unacceptable to a Senator.

4. To exercise the hold, a senator informs the floor leader that he/she does not want the bill to be considered – the implied threat of a filibuster and the need for “unanimous consent” for the Senate to proceed on business result in the bill/nomination being held up.
5. Holds can be placed anonymously

INFLUENCES ON MEMBERS OF CONGRESS

1. Constituent convictions. If a member votes according to these, he is said to act in the delegate role and engage in representational voting.
 - Of course, it is often difficult to gauge constituent opinion on a given issue.
 - Most constituents are not even aware of the issues faced by Congress.
 - Another complication is the diversity of interests throughout districts and states.
2. Members' own convictions. If a member votes according to these, he is said to act in the trustee role and engage in attitudinal voting.
3. Other members of Congress, e.g., party leaders, committee leaders, state delegations, other members with a similar ideology (e.g., conservative coalition of Republicans and Southern Democrats, "blue dog" Democrats in House), other members with similar districts. If a member votes according to these, he is said to engage in organizational voting. Go over use of reciprocity (exchange of favors) and logrolling (exchange of votes) among members.
4. Congressional staff members. As society has grown more complex, and Congress has taken on more responsibilities, Congress has needed to add staff to deal with these realities. Staff can influence by:
 - controlling information that members receive.
 - controlling access to members.
 - helping to set committee agenda.
 - making recommendations on legislation.
 - helping to write legislation.
 - analyzing info from presidential staff.

-- Discuss pros/cons of staffers representing an undemocratic aspect of Congress.
5. Interest groups/lobbies/PACs influence through:
 - campaign contributions.
 - "report cards"
 - targeting.
 - providing information.
 - testifying before committees.
 - paying for "junkets."
6. Congressional caucuses, e.g., black caucus, Hispanic caucus, blue collar caucus, women's caucus.
7. **The President can reward or punish members, particularly those within his own party. He can campaign for or against members, he can attend or not attend members' fund raisers, he can speak out for or against members, and he can use his "electronic throne" to gain leverage ("going public")**
8. Campaign contributors. Again, the evidence here is mixed. Some studies show that contributions affect voting behavior, but others have downplayed this, citing other influences such as party membership. If contributions do affect congressional voting, they probably have the greatest effect on narrow issues that are not well known or publicized.
9. The media, e.g., through its "watchdog" role.
10. **Iron triangles (also known as subgovernments, issue networks, policy networks): a congressional committee, the related federal agency, and the impacted interest groups.** For example, on the issue of airline deregulation, an **iron triangle** might consist of the Public Works and Transportation Committee, the FAA, and numerous interest groups such as the Air Transport Assn., mechanics' unions, pilots' unions, etc.
11. Party membership of members. This seems to be the best predictor of congressional voting – party unity scores are quite strong. Party affiliation is a particularly strong influence on economic and social welfare issues, and less of an influence on foreign policy and civil liberties issues.

NOTES ON HOW A BILL BECOMES LAW

I. Bill introduction.

- A. Less than 10% actually pass.
- B. Ideas for most bills originate in the executive branch.
- C. Bills can be introduced in either house, except for revenue (tax) bills (House only).
- D. Diffusion of power evident in this process: proponents need many victories, but opponents need only one. **This was the intent of the Founders: to create a cautious and deliberate process.**
- E. Two-step legislative process: 1) authorization allows for a program, 2) appropriation provides money for that program.
- F. Passage of a bill requires only a simple majority.

II. Committee and subcommittee action.

- A. Importance of "correct" committee getting a bill.
- B. Committee actions.
 - 1. Pass. Bill is "reported out" to full house for consideration.
 - 2. Kill the bill
 - 3. Amend ("markup session"). Earmarks are placed at comm. level. by indiv. members
 - 4. **Pigeonhole: postponed indefinitely; most frequent fate of a bill.**
- C. Discharge petition can be used when a bill is bottled up in committee.
- D. **Importance of Rules Committee (House only).**
 - 1. "Traffic cop" function: sets legislative calendar.
 - 2. **Issues open rule that allows amendments to a bill or closed rule that prohibits such amendments (esp. on tax bills).**
 - 3. **Establishes rules on floor debate.**
- E. Committee of the Whole used by House to act more informally, more quickly, and with less of a quorum (only 100). This helps remedy problem of the "Tuesday to Thursday Club"

III. Floor action.

- A. **Senate only allows filibusters.** (Go over "2-track" system.) These esp. effective at end of term of Congress. Even threat of filibuster is effective. **Can be ended by 3/5 vote of cloture.**
- A. Senate only allows nongermane amendments ("riders"). "Christmas tree" bills can result.
- B. Senate allows any member to place a hold on a bill or presidential nomination.
 - 1. Not in the Constitution, but another example of a Senate tradition. In the past, this was a temporary delay so that, for example: 1) a senator could have more time to consider a bill, or 2) a senator who was going to be absent when a bill was considered would request that the bill be delayed until he returned.
 - 2. Use has been expanded in 90s as a tactic to kill bills and esp. judicial nominations.

IV. **Conference committee** action: comprised of members from both houses, a temporary **conference committee** reconciles different House-Senate versions of a bill, and then sends it back to each house for a vote. Yet another "third house of Congress."

V. Presidential action.

- A. Sign the bill in full.
- B. **Veto the bill in full ---> can be overridden by 2/3 vote in both houses.**
- C. Ignore the bill.
 - 1. After 10 days of sending bill to the President, the bill automatically becomes law.
 - 2. If, however, within that ten day period, Congress adjourns (not recesses), the bill is pocket-vetoed.
- D. Congress gave the president a **line item veto** in the mid-90s; however, this was struck down in Clinton v. NY (1998) as a violation of separation of powers – in effect, use of the **line item veto** would have enabled the president to legislate, a function reserved only for Congress. However, **most governors do have the power of the line item veto.**

THE COMMITTEE SYSTEM

I. Intro.

- A. **Real work of Cong. is done in committees and subcommittees, not on the floor of the House or Senate.**
- B. Before a bill even reaches the floor, it must first pass through a committee, unless the committee has resisted "reporting out" the bill and the House votes to "discharge" it onto the floor for consideration by the full body. (Senate committees lack the power to prevent bills from reaching the floor).
- C. Committee functions:
 - 1. Analyze legislation.
 - 2. Conduct investigations of executive branch on as-needed basis.
 - 3. Conduct oversight of executive branch agencies on an ongoing basis.

II. Selection of committee members.

- A. **Importance of getting on the right committee, i.e., one in which a member can best serve his constituents, and thus increase his/her chances of reelection.**
- B. Members are assigned to committees by either the Committee on Committees (Rep.) or the Steering and Policy Committee (Dem.).
- C. Whichever party has a majority in the house will have a majority on each committee.
- D. Committee chairman is of majority party, ranking member is of minority party.

III. Selection of committee chairmen.

- A. Power of chairmen is substantial over:
 - 1. Setting committee agenda.
 - 2. Hiring staff.
 - 3. Membership on subcommittees.
 - 4. Jurisdiction of subcommittees.
- B. Chairmen are selected by secret ballot in party caucuses or conferences (of party leaders) at the beginning of the term. **Generally, the seniority system is followed, i.e., the person of the majority party with the most seniority on that committee is chosen chairman.** The 104th Congress imposed term limits of 6 years for both House and Senate chairmen. This took effect starting in 2001, and was one of the Gingrich reforms.
- C. Advantages of **seniority system**:
 - 1. Experience.
 - 2. Stability.
 - 3. **Expertise.**
 - 4. Reduces infighting among those who would be rivals for chairmen.
- D. Disadvantages of seniority system: Increases influence of 1 party states, and decreases influence of competitive states.
- E. "Ranking member:" most senior member of minority party on a committee.

IV. Important standing committees. Standing committees are the permanent committees of Congress. They have legislative, investigative, and oversight powers.

A. Types of standing committees:

1. Authorizing: allow for creation of fed. programs
2. Appropriations: provide funding for fed. programs
3. Revenue and budget: raise money for fed. programs

B. House.

1. **Rules: most powerful of all. Sets legislative calendar and establishes "rules" for debate and amendments.**
2. **Ways and Means: deals with tax bills.**
3. Appropriations: deals with spending bills.
 - a. Authorization bill allows for money to be spent, and appropriation bill provides the actual funding for the program.
 - b. "Earmarks:" special projects set aside by members to benefit home districts or states. Dramatic rise of these in recent years.

B. Senate.

1. Finance: deals with tax bills.
2. Appropriations: deals with spending bills.
3. Foreign Relations. Highly prestigious. Senate has larger role in foreign affairs than House because of **treaty ratification** and ambassador confirmation provisions in Constitution
4. Judiciary: Screens judicial nominees. Careful scrutiny given because of the power of the modern judiciary and the fact that judges have life terms. Presidents Clinton and Bush 43 both criticized the committee by holding up numerous judicial nominations. Some delays under Clinton lasted many months, and in some cases, years.

V. Conference committees.

- A. **Temporary committees comprised of members from both houses.**
- B. **Develop compromise language on a bill when House and Senate versions differ (about 10% of the time).**
- C. After **conference committee** sends bill back to each house, no amendments are allowed, and the bill generally passes.
- D. The power of these committees is such that they are often called the "third house of Congress."

VI. Other types of committees.

- A. Select: appointed by a house for a limited, temporary purpose, e.g., to study an issue or to conduct an investigation.
- B. Joint: composed of members from both houses for similar temporary purposes.

THE CASE AGAINST CONGRESS

- I. Congress is inefficient.
 - A. Bicameralism
 - B. Decentralization of Congress has excessively spread out power.
 - C. So many power centers make it difficult to get things done.
 - D. Proponents of a bill need many victories, but opponents need only one.
 - E. Excessive electioneering and fundraising are a drain on members' time.
 - F. Partisanship interferes with efficiency.
- II. Congress is unrepresentative.
 - A. Represents narrow geographical interests at expense of national interest. This helps to explain why the public likes their own representatives, but dislike the Congress as a whole.
 - B. Tip O'Neill's claim that "All politics is local" leads members to place state and local interests over the national interest in order to get reelected.
 - C. Criticism that Congress is a club for white, male, middle-aged, Protestant lawyers.
 - D. Though the seniority system has been modified, the older members still generally get chairmanships.
 - E. Unequal representation: Alaska, with only a fraction of the population of California, has the same representation as the more populous state in the Senate.
 - F. An unelected staff.
 - G. Lack of 3rd party representation.
- III. Congress is unethical.
 - A. Numerous scandals: ABSCAM, House banking scandal, Condit, Packwood, Traficante, DeLay's financial allegations, Ted Stevens financial wrongdoing
 - B. Excessive/unethical fund raising.
 - C. PAC influence
 - D. Junkets. Interest groups or donors contribute money to a non-profit organization, which then pays for trips of members of Congress. These indirect contributions are technically legal, but seem to violate the spirit of the rules against financial wrongdoing.
 - D. Logrolling
 - E. Lobbying by family members of Congress, who may not be subject to the same ethical restrictions as members of Congress themselves.
 - F. Corporate hiring of family members of Congress, e.g., Wendy Gramm, wife of TX senator Phil Gramm, was on the Enron board of directors.
 - G. Lobbying of Congress by former members of Congress.
- IV. Congress is irresponsible.
 - A. Diffusion of power allows members to be absolved of any individual responsibility. Thus, we find the curious paradox of the American people liking their own individual members of Congress, but distrusting the body as a whole.
 - B. Diffusion of power allows a "watering down" of bills when opponents throw so many obstacles at a bill that proponents simply have to give in and compromise to get any at all.
 - C. "Spending bias" of Congress. Members are more likely to receive voter approval for projects in their districts than they are for cutting federal spending -> a natural instinct for spending rather than cutting spending. "Earmarks" are consistent w/this charge against Cong.
 - D. The Gramm-Rudman-Hollings bill represents an example of irresponsibility:
 - 1. Since Congress could not simply balance the budget on its own, it passed this bill in the mid-80's as an automatic way of doing so.
 - 2. The bill provided for a mandatory gradual reduction of budget deficits each year, leading up to a balanced budget by 1991.
 - 3. If Congress was unable to reach the yearly deficit reduction target figure, across-the-board budget cuts were to automatically kick in -- funds were to be sequestered in order to meet the goal.

- 4. In effect, an automatic mechanism was developed to help Congress save it from itself.
 - 5. Effects:
 - a. Congress got around the law by simply extending the deadlines.
 - b. Congress also got around the law by excluding certain types of spending from the Gramm-Rudman limits.
- E. "Pay as you go" congressional agreement in early 90s helped produce budget surpluses in that late 90s. However, the "PayGo" system expired in 2002, and was not renewed.
- V. Congress delegates excessive power to the executive branch.
 - A. Due to diffusion of power, Congress finds it easier to write broadly-worded laws and have the bureaucracy "fill in the holes" ---> criticism that the laws are essentially being made by an unelected bureaucracy rather than by our elected representatives.
 - B. Excessive delegation of power to the President in the area of war powers.

Congress Study Guide: The terms are divided into the days we will cover them.

Day I:

Speaker of the House
filibuster
cloture
Rules committee
Intentions of the Founders
Centralization v Decentralization
17th Amendment

Day II:

apportionment
redistricting
Term and Session of Congress
adjournment and recess
Honoraria
know all the literature on incumbency
gerrymandering
packing/cracking
majority-minority districts
Baker v Carr
Wesberry v Sanders
Shaw v Reno
Miller v Johnson
Compare and Contrast the House and the Senate.
Legislative Immunity

Day III:

Bicameral Legislature
impeachment
Enumerated powers/Examples
Majority party
Minority Party
party caucus/conference
Majority leader
minority leader
whips
Source of implied powers
ex post facto
bills of attainder
habeas corpus
Be able to list 4-5 enumerated powers
Votes for (1) impeachment, (2) ratification of treaties, (3) presidential appointments, (4) conviction of impeachment, (5) veto override.
Strict constructionist/loose constructionist

Day IV:

Know all the influences on Congress.
party caucus/conference
trustee or delegate roles
logrolling/reciprocity
electronic throne
pork
junkets
Iron Triangles
unity scores

Day V:

standing committee
joint committee
conference committee
select/special committee
discharge petition
reporting out
seniority
oversight
What are the functions of committees?
How are committee chairmen chosen?
What determines the types of committees a member of congress wants to be a on?

House Committees: *Rules, Ways and Means, Appropriations, Budget and Armed Services Committees*

Senate Committees: *Finance, Appropriations, Budget, Judiciary, Foreign Relations.*

Day VI:

Know how a bill becomes a law. Detail all steps.
Use the book and handouts for the process.
Authorization
Appropriation
Hold
veto
pocket veto
line item veto and *Clinton v New York*
open rule/closed rule
riders
multiple referral
pigeonhole
filibuster
cloture
markup session
2-track system
riders, Christmas tree bills
markup session
What % of bills become law?
What % of vetoes are overridden?
Where does the Constitution say all revenue bills must start?
What is a revenue bill.

Place Tab Here

Presidency

THE PRESIDENCY

I. Deliberations at the Constitutional Convention.

A. Alternatives.

1. Some proposed a plural executive.
2. Some wanted an executive council to have veto power over presidential actions.
3. Some (e.g., Alexander Hamilton) wanted a President with a life term.
4. Eventually, compromises brought about a single, elected President with a fixed term of office.

B. Concerns of the Founders.

1. Fear of an excessively strong President.
 - a. Fear that the presidency would be the "fetus of monarchy" (Edmund Randolph).
 - b. Concern over no term limits (no 22nd Amendment until 1951).
2. Fear of an excessively weak President who would become a "tool of the Senate" because of its ratification and confirmation powers.
3. The basic problem of creating a presidency was expressed by Gouverneur Morris: "Make him too weak: the legislature will usurp his powers. Make him too strong: he will usurp the legislature."

C. Election of the President.

1. Some wanted Congress to elect the President ---> fear of congressional dominance.
2. Some wanted **direct election**. Problems:
 - a. Inordinate weight to large states.
 - b. Demagogues might have excessive appeals to the masses.
 - c. Illiteracy was common.
 - d. Communication was poor.
3. The compromise: the Electoral College.
 - a. The people had some input.
 - b. Large states had a good amount of influence, but small states were protected by having a minimum of three electoral votes.
 - c. Small states would also have a great deal of clout if the election were thrown into the House (and it was assumed that this would happen often since the two party system was not anticipated). Under this scenario, each state has one vote and small states are therefore grossly overweighted.

- D. Term of office: Fear of an unlimited number of terms of office were quieted when Washington chose not to run for a third term. This precedent was followed until 1940.

II. The first Presidents: Washington-Monroe, 1789-1825.

- A. All eminent men who were active in the movement for independence, all but Adams served two terms, all but Adams were Virginians.
- B. Though Washington warned against it, political parties developed.
- C. General "rule of fitness" prevailed in making appointments. Partisanship did become a factor, but generally only well-respected men received appointments.
- D. The presidency was kept modest. It was assumed that Congress would take the leading role in the new national government.

III. Andrew Jackson, 1829-1837, and the expansion of presidential power.

- A. Use of spoils system.
- B. Jackson vetoed 12 acts of Congress, more than all his predecessors combined.
- C. Jackson ignored a Supreme Court order regarding Indian removal.

IV. The reemergence of Congress, 1837-1932.

- A. With the end of Jackson's second term, Congress quickly reestablished its power.
- B. There were some brief flashes of presidential power, e.g., the wartime presidency of Lincoln (e.g., suspension of habeas corpus, blockading the South, raising an army, issuing the

Emancipation Proclamation -- all without congressional consent), but Congress was the dominant branch. Of the next eight Presidents after Jackson, none served more than one term of office.

- C. With the exceptions of Theodore Roosevelt and Woodrow Wilson, the presidency was seen as a negative force -- a source of opposition to Congress, not a source of initiative and leadership for it. This was best illustrated by Grover Cleveland's 414 vetoes, more than any President until FDR.
- D. Today, we are used to thinking that the President initiates legislative programs and Congress then responds; until the 1930's, however, the opposite was usually the case.
- E. In the past, it took either a strong personality (e.g., Jackson, TR, Wilson) or a crisis (e.g., Civil War, World War I) for the President to become the central figure of government.

V. Emergence of the presidency.

- A. Another crisis (the Great Depression) once again led to increased presidential power --FDR's New Deal.
- B. With the onset of World War II, a foreign policy crisis led to continued presidential power.
- C. The development of the Cold War facilitated continued presidential initiative and power: Truman, JFK, LBJ, Nixon.
- D. In the 1970's, Congress finally reasserted itself, but with mostly short-term results (as we shall see). Reagan restored the power and prestige of the presidency.
- E. Bush 43 strengthened pres. authority, e.g., with war powers and Patriot Act

OVERVIEW OF THE PRESIDENCY

I. Qualifications.

- A. Natural-born citizen.
- B. At least 35 years of age.
- C. Residency for at least 14 years.

-- The above are the Constitutional requirements ---> discuss "unwritten" requirements.

II. Term of office.

- A. Four years.
- B. Maximum of two elected terms.
 - 1. Washington's precedent was institutionalized by Amendment 22.
 - 2. Passage of 22nd Amendment was due to the Republican Congress' concern over future FDRs.
 - 3. Possible to serve just under 10 years in office if a V.P. becomes President just after the midpoint of a President's term of office. If a V.P. serves less than half of a President's term, he can be elected to the presidency twice. If a V.P. serves more than half of a President's term, he can be elected to the presidency only once.
 - a. Lyndon Johnson succeeded JFK in 1963, and was therefore eligible to be elected twice.
 - b. Gerald Ford succeeded Nixon in 1974, and was therefore eligible to be elected only once.

III. Compensation.

- A. Set by Congress. Cannot be raised or lowered during President's term of office for fear of Congress using undue influence.
- B. Salary was raised from \$200,000 to \$400,000 in 2001. (First raise since 1969)
- C. Numerous other "perks."
- D. An opportunity to make some serious money after leaving office:
 - 1. Speaking fees, e.g., Reagan was paid \$2 million by a Japanese firm to make three speeches. Clinton earns up to \$300,000 per speech.
 - 2. Writing memoirs, e.g. Nixon. Clinton received a \$12 million advance from publisher.
 - 3. Serving on corporate boards of directors, e.g. Ford.

IV. Succession.

- A. If office of presidency is vacant due to death, resignation, or **impeachment** and removal, the V.P. becomes President. (He in turn nominates, and Congress confirms, a new VP). If V.P. dies before his inauguration as President, the line of succession is as follows: Speaker, Senate President Pro Tem, Sec. of State, Sec. of Treasury, Sec. of Defense, and then the other Cabinet secretaries in the order of the creation of their offices. (Presidential Succession Act of 1947)
- B. If the President is disabled, the 25th Amendment applies:
 - 1. The President informs the Congress of disability and the V.P. becomes Acting President.
 - 2. If the President is unable to inform Congress (e.g., coma), the V.P. and a majority of Cabinet secretaries can go to the Congress and receive approval for the V.P. to become Acting President.
 - 3. In either case, the President regains powers by informing the Congress of his intent to return. In case of dispute, Congress has the power to decide who shall be President.

PRESIDENTIAL SUPPORT STAFF

I. Executive Office of the President.

A. **White House Office/White House Staff**

1. **Immediate staff of President.** Office space in West Wing of White House ---> proximity to President. Rule of Propinquity: power is wielded by people who are in the room where decisions are made.
2. Organization: two general forms:
 - a. Circular method (used by FDR and Carter): President is the "hub," and numerous assistants are the "spokes."
 - b. Pyramid method (used by Ike, Nixon, and Reagan): Assistants report through a hierarchy, ultimately to a Chief of Staff, who then reports to the President.
 - c. Analysis:
 - 1). The circular method allows for greater access and more information, but at the expense of efficiency. Presidents (e.g., Carter) can become overworked and overwhelmed by details, losing sight of the greater picture and their broad goals.
 - 2). The pyramid method allows for greater efficiency, but at the expense of access and information. Presidents can be "kept in the dark" (e.g., Reagan's ignorance during the Iran-Contra scandal) by a "palace guard" (e.g., during the Nixon presidency) and can thus "lose touch" with the nation.
3. **Appointments to the White House Office, e.g. Chief of Staff, generally do not require Senate consent** ---> officials are less subject to testifying before Congress since they have a greater degree of executive privilege protection. **Presidents typically seek people who will be loyal -- fewer divided loyalties as compared to Cabinet positions.**
4. Reliance on small circle of WHO staff can lead to problems, e.g. overly optimistic assumptions about going to war in Iraq and the prospective situation after the war.

B. **OMB: prepares the annual budget and reviews federal programs.**

- C. NSC: coordinates foreign/military policy. Increasing importance of the National Security Adviser since the Nixon presidency
- D. CEA: three-person advisory group on economic policy.
- A. Council on Environmental Quality

II. Cabinet.

- A. Definition: the heads of the Cabinet depts. and 5 others who hold "Cabinet rank" (OMB Director, CIA Director, White House Counselor, UN Ambassador, US Trade Rep).
- B. Each of these is appointed by the President w/Senate consent.
- C. In parliamentary systems:
 - 1. Cabinet officials are members of Parliament.
 - 2. The Cabinet meets regularly
 - 3. The Cabinet collectively hammers out public policy.
- D. In our system:
 - 1. Cabinet officials are constitutionally banned from also being members of Congress.
 - 2. The Cabinet meets irregularly. Only at the call of the President
 - 3. Cabinet officials are more interested in defending/enlarging their own departments than they are in meeting together to hammer out public policy. Many newly-elected Presidents speak of enlarging the Cabinet's role, but then think better of it as time goes on.
 - a. **A reason for this is the divided loyalties of Cabinet officials: are the Secretaries most loyal to the President? To the Congress (which funds the departments)? To client groups (which depend upon the departments)? To the employees within the departments (with whom the Secretaries must deal on a daily basis)?**
 - b. **Another reason is that the President's goals often conflict with Cabinet Dept. goals**, e.g., the President may want to cut spending, but Cabinet Secretaries generally want to see their departments grow rather than shrink.
- E. Presidential influence over the Cabinet: limited:
 - 1. Presidents can, of course, fire the political appointees within a department.
 - 2. However, Presidents have little control over the civil service employees of a Department. These account for > 90% of all the people who work within the Cabinet departments, and it is exceedingly difficult to fire them from their positions.
- F. Factors affecting selection of Cabinet Secretaries:
 - 1. Party affiliation.
 - 2. Interest group influence.
 - 3. Race.
 - 3. Gender
 - 4. Geographical diversity.
 - 5. "Confirmability."

III. Who gets appointed to federal positions?

- A. As mentioned, the number of appointments is large, but the percentage of appointed positions in the federal government is small. (Less than 10%).
- B. Presidents often do not know their appointees well -- They depend heavily on staff recommendations.
- C. Background of appointees:
 - 1. Tend to come from private industry, universities, law firms, think tanks, Congress, state/local government.
 - 2. Most have had some federal experience.
 - 3. Some have had some federal experience just prior to appointment.
 - 4. Some are "in-and-outers," i.e., people who alternate between jobs in the public sector and private sector -- the "revolving door."

IV. The Vice President.

- A. Only two constitutional duties:
 - 1. Become President or Acting President if the office of President is vacant.
 - 2. **Preside over the Senate**, voting only in case of ties.
- B. Traditionally, the V.P. is a dull, do-nothing job:
 - 1. "The vice presidency isn't worth a pitcher of warm spit." (John Nance Garner)
 - 2. "... the most insignificant office ever conceived." (John Adams)
 - 3. "I do not choose to be buried until I am really dead." (Daniel Webster, on refusing a v.p. nomination in 1848).
- C. The job of a V.P. is basically what the President says it is ---> often involves unappealing work (e.g., attending funerals of foreign leaders). V.P. is often selected not on basis of qualifications, but on basis of **balancing the ticket**. After he has "done his job (i.e., helped win votes)," the V.P. is often "put out to pasture" for dull work.
- D. Importance of the office:
 - 1. 9 of 44 Presidents have not finished their terms of office.
 - 2. V.P. can become Acting President if the President is disabled.
 - 3. In recent years, Presidents (e.g., Carter, Reagan, Clinton) have made more effective use of the V.P. This is especially true of Bush-Cheney.
 - 4. Vice presidency can be a steppingstone to the presidency, e.g., Bush 41.

ROLES OF THE PRESIDENT

I. Constitutional roles.

A. Chief Legislator.

1. Powers.

- a. Proposes legislation.
- b. Signs laws. Sometimes uses "signing statements:"
 - 1) Gives notice of his interpretation of the law, how he intends to enforce it, or even IF he intends to enforce it.
 - 2) Under Reagan, only 75 of these were issued. By Jan. of 2008, Bush had issued 157.
 - 3) Critics claim that, in effect, these give the president a line item veto.
- c. Vetoes legislation (but **lacks line item veto -- struck down by Supreme Court because of conflict with separation of powers**).
- d. Calls special sessions of Congress.
- e. **Makes a State of the Union Address to Congress.**

2. Checks.

- a. Congress need not pass suggested legislation.
- b. **Congress can override veto with 2/3 majority in both houses.**

B. Chief Executive.

1. Powers.

- a. "Take care" clause of Article II requires that Pres. enforces laws, treaties, and court decisions. This clause has also been used to justify:
 - 1) Impoundment
 - 2) Lincoln's suspension of habeas corpus
 - 3) Electronic eavesdropping by Bush 43 administration
 - 4) Foreign Intelligence Surveillance Act (FISA) enables President to go to secret FISA court to obtain warrants for conducting surveillance
- b. Appoints officials to office, and can fire them.
- c. Issues **executive orders** (which have the force of laws) to carry out laws. These do not need congressional approval
 - 1) FDR issue an executive order to intern Japanese-Americans during WW II
 - 2) LBJ's executive order #11246 that required affirmative action programs for federal contractors.
 - 3) Bush 43 created Office of Homeland Security after 9-11 through an executive order. (Later, made a Cabinet Dept.)

2. Checks.

- a. Congress passes the laws and has the "power of the purse."
- b. Senate can reject appointments and treaties.
- c. **Impeachment (by House) and removal (by Senate)**
- d. Supreme Court can strike down **executive orders**

C. Commander in Chief.

1. Power: Head of the armed forces (link w/civilian supremacy).

2. Checks.

- a. Congress appropriates funds for the military.
- b. Congress declares war.
- c. **War Powers Act** of 1973 (covered later).

D. Chief Diplomat.

1. Powers.

- a. Sets overall foreign policy (confirmed by US v. Curtiss-Wright, 1936)
- b. Appoints and **receives ambassadors**.

- c. Negotiates both treaties and **executive agreements**.
 - d. Negotiates “congressional-executive agreements” with leaders of other nations that require the simple majority consent of both houses of Congress.
Example: NAFTA.
 - e. Gives diplomatic recognition to foreign governments.
- 2. Checks.
 - a. Congress appropriates funds for foreign affairs.
 - b. Senate can reject ambassadors and treaties.
- E. Chief of State.
 - 1. The ceremonial head of our nation, e.g., tosses out the first ball of the baseball season, bestows the medal of honor, visits areas struck by natural disaster.
 - 2. Most nations separate the Chief Executive and Chief of State roles (e.g., Britain has a prime minister and a monarch, respectively), but the office of the presidency combines both of these roles.
- F. Chief Jurist.
 - 1. Powers.
 - a. Appoints federal judges.
 - b. Issues pardons** (e.g. Bush 43 pardon of Scooter Libby) **and amnesty**.
 - 2. Checks.
 - a. Senate can reject judicial appointments.
 - b. Senators can place “holds” on appointments.
 - c. Senators can filibuster nominations.

II. Non-constitutional roles.

- A. **Head of Political Party.**
 - 1. Selects the party's chairman of the national committee and v.p. nominee.
 - 2. Political patronage.
- B. Chief Economist.
 - 1. Responsible for the overall health of the economy.
 - 2. Proposes the federal budget (though Congress can alter it).

GROWTH OF PRESIDENTIAL POWER

- I. Original conception of the Founders: Congress, not the President, was to be the dominant power.
 - A. Some Presidents (e.g., Harding, Coolidge) have had a limited view of the office and have let Congress take the initiative.
 - B. However, recent Presidents (e.g., LBJ, Nixon, Reagan) have tried to assume more control and greater leadership by taking the initiative themselves. The power of the office has grown considerably throughout most of the 20th century.
- II. Non-constitutional sources of presidential power.
 - A. Unity of the office: the office is held by one man, as opposed to the 535-member Congress.
 - B. Presidential character and personality: Strong personalities such as the Roosevelts and LBJ can have great impact.
 - C. **Growing complexity of society: With a highly industrial and technological society, people have demanded that the federal government play a larger role in areas of public concern, e.g., pollution, labor issues, air travel safety. The executive branch has thus grown to meet those public demands.**
 - D. Congressional delegation of authority to the executive branch.
 - 1. Congress often writes broadly-worded legislation and lets executive agencies "fill in the holes."
 - 2. Congress often bows to presidential demands in time of economic or foreign crisis.
 - 3. Congress often bows to the President when he can proclaim a mandate from the people after a large electoral victory, e.g., Reagan insisting upon tax cuts and higher defense spending after the 1980 election.
 - E. Development of the mass media casts the President into the public eye ---> use of t.v. as the "electronic throne." Special addresses, press conferences, Saturday morning radio chats, photo opportunities, sound bites, staged events, "going public."
 - F. **Emergence of the U.S. as the great superpower after WWII. Development of the Cold War placed the U.S. into a virtual non-stop crisis situation after 1945 ---> assumption of great powers by the President to deal with various foreign crises.**
- III. Three rules of thumb to maximize presidential power and effectiveness.
 - E. "Move it or lose it." Presidents should get things done early in their terms when their popularity is at its highest (e.g., Reagan's tax cuts in 1981). **Popularity declines over time.**
 - F. "Avoid details." Don't try to do too much. Concentrate on a few top priorities (e.g., Reagan concentrating on tax cuts and higher defense spending)
 - G. "Cabinets don't get much done; people do." Place more trust in immediate White House staff to accomplish tasks instead of Cabinet secretaries who have divided loyalties.
- IV. Power of the office of the presidency.
 - A. President's powers are not as clearly defined in the Constitution as are Congress'. Constitution grants broadly-worded powers (e.g., "executive power") to the President, but does not spell them out very clearly.
 - B. In times of emergency, power grows to vast proportions, e.g., FDR's prerogative theory: In times of emergency, the President can assume the powers of a monarch.
 - C. In "normal" times, the President has to deal with the system of checks and balances ---> a dilemma: we expect so much of the President, but we place a number of obstacles in his path.
 - D. One way of looking at power is to recognize that the powers of the President are great, but so are the problems of the 21st century.
- V. Checks that weaken the President.
 - A. Traditional, constitutional checks: Congress, courts.
 - B. Informal checks:
 - 1. Congressional leaders.
 - 2. Cabinet members.

3. Bureaucrats.
4. Political parties.
5. Interest groups.
6. Media: adversarial journalism, "gotcha" journalism
7. Use of the independent counsel (e.g., Kenneth Starr). Law was repealed in ~1999.
President may still appoint a special prosecutor, but latter does not have the same degree of independence from the President, i.e., he can be fired by the President (as in the "Saturday Night Massacre")
8. Senators' use of "holds" and filibusters on pres. nominations
9. Divided govt.
10. More of a multilateral world than a world in which it is more difficult for the US to act unilaterally.

VI. Suggestions for strengthening the presidency: discuss these:

- A. Revitalize political parties to make it easier for the President to get things done.
- B. Revise constitutional restraints:
 1. 6-year term of office, w/no reelection.
 2. 2 or a 3 person presidency.
 3. Give the President the power to dissolve Congress and call for new elections.
 4. Allow members of Congress to take positions within the executive branch.
 5. Provide a unified party ticket of President/Senator/Congressman -- no more split tickets.

CONGRESS vs. THE PRESIDENT

I. Historical background.

- A. Founders' intent on Congress to be the dominant branch.
- B. In the 20th century, the President has generally been more dominant.
- C. Congress, however, from time to time seems to reassert itself, e.g., during the mid-70's and during the 104th Republican Congress (e.g., govt. shutdown in 1995)

II. Sources of conflict between the President and Congress.

- A. Separation of powers and checks and balances -- the Constitution is "an invitation to struggle between the President and Congress." There is supposed to be conflict.
- B. Each represents different constituencies:
 - 1. Members of Congress represent state and local interests ("All politics is local").
 - 2. The President, however, represents the national interest.
 - *This divergence can be seen in the battle over developing a nuclear waste storage facility in Yucca Mountain, Nevada. Nevada members of Congress have asserted their state/local interests in opposing the facility, but Bush supported the facility on the basis of national interests.*
- C. Different times of election ---> difficult for either to gain excessive power for any great length of time, e.g., Clinton was elected in '92 w/a majority of Democrats in Congress, but just two years later the Republicans captured a majority of both houses.
- D. Partisanship.
 - 1. Since 1952, Presidents have often faced a Congress that has had a majority of the opposing party.
 - 2. Even when the Congress has a majority of the same party as the President, intra-party struggles are common. With the weakening of political parties, the President does not have a strong "hold" on members of his own party in Congress. For example, many Democrats opposed Clinton's health care reform proposals. Some congressional Republicans want a stricter immigration policy than Bush 43.
- E. President's unity of his office conflicts with the diffusion of power among 535 members of Congress. When he was in Congress, Gerald Ford spoke of "presidential arrogance;" when he became President, he instead complained about "congressional irresponsibility."
- F. "Two presidencies" thesis: Congress tends to be more cooperative with the President on foreign policy and national security issues (esp. in a crisis), but is less cooperative on domestic and economic issues.

III. Sources of presidential influence on Congress.

- A. **Use of media. Media focuses more on a single person than on 535 people. President can easily go directly to the people with his case.** "Presidential power is the power to persuade" (Neustadt)
- B. "Mandate from the people" after winning election by a large margin.
- C. Patronage.
 - 1. Enables a President to carry out policy his way.
 - 2. Enables a President to cultivate members of Congress by seeking their input on appointments (e.g., Rudman's influence on the Souter appointment).
- D. Chief of Party role: convincing members of Congress to act in interests of "party unity."
- E. Personal lobbying of members of Congress. Use of both favors and punishment for cooperative or uncooperative members.
- F. Veto, or its threat. 93% of vetoes are not overridden, so even the threat of a veto carries weight.
- G. Presence of a national emergency.

-- Throughout much of this century, the President has been the "great engine of democracy." Seemingly, the President was supposed to exercise great power to meet his goals. In the wake of the Vietnam War and Watergate, however, Congress reasserted itself against what came to be seen as an "imperial presidency."

THE IMPERIAL PRESIDENCY

I. Intro.

- A. Arthur Schlesinger's The Imperial Presidency (1973) suggested that presidential power had grown excessive ("imperial").
- B. Theodore Lowi's response:
 - 1. Economic growth necessitated a strong executive branch.
 - 2. **Congress itself delegated strong powers to the executive branch, esp. in area of foreign policy.**

II. Areas of abuse cited by Schlesinger.

- A. War powers.
 - 1. Constitutional conflict of Congress' power to declare war vs. President's power as Commander in Chief.
 - 2. In the 18th century, Congress had more time to deliberate war issues; in the modern era, however, Presidents have argued that they need more flexibility to meet rapidly changing conditions.
 - 3. Presidents have sent troops without a congressional declaration of war more than 125 times. This has happened very frequently since 1945 (cite examples).
 - 4. Congress has in fact generally gone along with these operations, and has of course funded them, as well. When public opinion turns against the operations, however, Congress has often responded (e.g., Vietnam War).
 - 5. One of the reasons Congress has gone along with these operations without a formal declaration of war is that such a declaration carries with it the transfer of great emergency powers to the President that the Congress may not want to grant him.
- B. Emergency powers: In time of war or emergency, the President assumes great powers.
 - 1. Examples: suspension of habeas corpus, censorship of mails, control of manufacturing, control of communication and transportation, declaration of martial law, Patriot Act, analysis of citizens' telephone records by the NSA.
- C. Use of **executive agreements** rather than treaties.
 - 1. **The former does not require Senate ratification as does the latter. The former are "deals" between the President and the head of another nation** (e.g., the destroyers-for-bases deal between FDR and Churchill in 1940).
 - 2. Since WWII, the number of **executive agreements** has vastly outnumbered the number of treaties. Between 1980-1991, there were > 4100 of the former, and less than 200 of the latter.
 - 3. What is particularly galling to Congress is that treaties are often on relatively trivial issues (e.g., archaeological artifacts in Mexico), but **executive agreements** are often on matters of great importance (e.g., military commitments to various nations).
- D. **Executive privilege.**
 - 1. **Definition: the right of President to not divulge conversations between himself and his advisers.**
 - a. Example: Bush refused to tell Congress who sat in on Cheney's energy task force
 - 2. Presidents claim that if such conversations were not "privileged," advisers would be hesitant to give straightforward advice.
 - 3. Critics claim that Presidents have abused this privilege by claiming it under the guise of "national security."
 - 4. **In U.S. v. Nixon (1974), the Supreme Court stated that Presidents are in fact entitled to executive privilege most of the time, but not in criminal cases.**

E. Impoundment.

1. Definition: the refusal of the President to spend money that has been appropriated by Congress. In the past, this was done when there was an obvious need, e.g., reducing defense spending after a war ended.
2. Without a line item veto, Presidents must either sign an entire bill or veto it. As a result, Presidents may be unhappy with funding amounts for certain parts of a bill, and want to withhold such funding.
3. Nixon impounded funds for policy objectives. Some members of Congress were livid that money was not spent when it had been lawfully appropriated by legislation. Such impoundment seemed unconstitutional.

CONGRESS RESPONDS TO THE IMPERIAL PRESIDENCY

I. Background: The Vietnam War, Watergate, and the resignation of Nixon ---> a reassertion of congressional authority in mid-1970s.

II. War powers: passage of the War Powers Resolution of 1973.

- A. President can send troops overseas to an area where hostilities are imminent without a Congressional war declaration only under these circumstances:
 - 1. Must notify Congress within 48 hours.
 - 2. Must withdraw the troops after 60 days (can be extended another 30 days if the safety of the troops requires it).
 - 3. Must consult w/Congress if troops are to engage in combat.
 - 4. Cong. can pass a resolution, not subject to presidential veto, to withdraw troops.
- B. Criticisms.
 - 1. Unconstitutional – usurping President's authority as Commander in Chief.
 - 2. Ties the hands of the President -- too inflexible.
 - 3. Makes it easy on the enemy -- just wait 60-90 days for US troops to withdraw.
- C. Presidents have claimed the act to be unconstitutional and have disregarded it, but there has been no lawsuit to determine its constitutionality. A "political hot potato?"

III. Emergency powers: passage of National Emergencies Act of 1976:

- A. President must inform Congress in advance of powers to be used in emergencies.
- B. State of emergency automatically ends after 6 months.
- C. President can declare another 6 months of emergency, subject to cong. review.

IV. Congress and the CIA.

- A. Past CIA abuses (e.g., coups in Guatemala and Iran in the 1950's, operations in Chile in 1970s, domestic operations).
- B. Church Committee investigations of abuses in 1970s.
- C. Hughes-Ryan Amendment, 1974, established eight congressional oversight committees. (Later reduced to just two).
- D. Foreign Intelligence Surveillance Act (1978): established a FISA court to authorize electronic surveillance of telephones, etc. for foreign intelligence purposes. Requires fed. govt. to go through this court if it wants to conduct such surveillance.
- E. Some in Congress have demanded a "truth commission" to investigate possible CIA abuses concerning the use of torture during the Bush Administration

V. Impoundment: passage of Budget and Impoundment Control Act of 1974:

- A. If President impounds funds temporarily (deferral), either house can override.
- B. If President impounds funds permanently (rescission), that act is automatically voided unless both houses of Congress approve within 45 days.
- C. Establishment of Congressional Budget Office (CBO) as a check on OMB.
- D. Congress given three additional months to consider the President's proposed budget.
- E. Establishment of Budget Committees in each house.

VI. Confirmation of presidential appointees.

- A. Senatorial courtesy a long-established practice: before President makes an appointment within a state, he will consult with the two senators of that state to get their approval.
- B. Much closer scrutiny given by Senate to recent appointments, e.g., rejection of Bork as Supreme Court Justice, emotion-charged hearings for Clarence Thomas.
- C. Controversy over recess appointment of John Bolton as UN Ambassador
- D. "Rule of fitness" seems to no longer be sufficient; now, a nominee's policy preferences are fair game for much more senatorial scrutiny than before.
- E. Long confirmation delays (through use of the "hold") of years with some of Clinton's judicial nominees due to the belief that the nominees were too liberal/out of the judicial mainstream. Democrats in Senate returned the favor in the Bush Administration by delaying confirmations

VII. Legislative veto.

- A. In the past: Congress passed a law --->
The relevant executive agency issued regulations to enforce the law --->
Congress could then analyze those regulations and veto them if it so desired.
- B. The **legislative veto** was a way of forcing the bureaucracy to conform to congressional intent.
- C. **In the case of INS v. Chada (1983), however, the Supreme Court declared the legislative veto to be an unconstitutional violation of separation of powers.**
- D. 1996 Congressional Review Act allows Cong. to repeal regulations with approval of President
→ Congress repealed OSHA regulations on ergonomics (that had been put in place under Clinton) in 2001 – this was the first time the act was used. Congress can apparently still use the legislative veto, esp. if an agency does not challenge its use. Furthermore, Congress can use other powers (e.g. funding of agencies) to exert influence over agencies.

VIII. Foreign affairs.

- A. Use of appropriations power to influence foreign policy in the 1970s and 1980s: Congress cut off aid to South Vietnam, Angola, and the Contras. Congress tried to force Bush 43 into a deadline for withdrawing troops from Iraq by using funding as a lever.
- B. Iran-Contra hearings in the 1980s.
- C. Extensive debate over U.S. involvement in the Gulf War. Although Bush did not use the **War Powers Act**, he did go to Congress to get its approval for U.S. action.
- D. Although some in Congress grumbled over U.S. intervention in Kosovo in 1999, Congress funded the operation anyway.
- E. Congress gave strong support to Bush's war on terrorism.
- F. Extensive debate over US involvement in war against Iraq in 2003. Although Bush did not use the **War Powers Act**, he did go to Congress to get its approval for U.S. action.
- G. Increasing criticism over war in Iraq.
- H. Criticism of Patriot Act and secret domestic surveillance programs of NSA without going through FISA court for prior approval.
- I. Congressional criticism/demand for hearings of Bush Administration's handling of war in Iraq, and specifically Justice Dept. memos that gave a legal justification for use of torture.

Executive Branch Study Guide

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Place Tab Here

Bureaucracy

STRUCTURE OF THE AMERICAN BUREAUCRACY

- I. Bureaucracy: the agencies, departments, commissions, etc. within the executive branch.
- II. Executive Office of the President: already covered (White House Staff, OMB, CEA, NSC).
- III. Cabinet: 15 Cabinet Level Agencies
- IV. Independent executive agencies.
 - A. Organized much like Cabinet departments, but lack Cabinet status.
 - B. Examples: NASA, Small Business Administration
- V. **Independent regulatory commissions.**
 - A. **Created by Congress to regulate important aspects of the nation's economy.**
 - B. **Generally, the decisions of these are beyond presidential control**, though commissioners are appointed by the President with Senate consent:
 - 1. Commissioners serve rather long terms (5-14 years).
 - 2. Only a bare majority of commissioners can belong to the same party.
 - 3. Terms of commissioners are staggered.
 - 4. **Commissioners can be fired by the President only for causes that Congress has specified.**
 - These factors help to insulate regulatory commissions from political pressure.
 - C. Commissions have quasi-legislative power. They have the authority to make rules and regulations (published in the Federal Register) which have the force of law. This is "policy implementation."
 - D. They also have quasi-judicial power: they can settle disputes in their fields, e.g., the FCC fined Howard Stern \$250,000 for objectionable material that was broadcast on radio, CBS was fined \$500,000 for broadcasting the Super Bowl show in which Janet Jackson exposed her breast.
 - E. Some important regulatory commissions:
 - 1. **Federal Reserve Board**
 - 2. FCC
 - 3. FEC
 - 4. NLRB
 - 5. SEC
 - 6. FTC
- VI. Government corporations.
 - A. Created by Congress to carry out various business operations.
 - B. Examples: Postal Service, FDIC, FSLIC, TVA.

GROWTH OF THE BUREAUCRACY

I. Development of civil service system.

- A. Prior to late 19th century, the spoils system was used for filling federal jobs. Though fraught with corruption, the system did ensure a certain responsiveness of government as presidential supporters were more likely to carry out the will of the elected president.
- B. Assassination of President Garfield by a disappointed office-seeker in 1881 led to passage of the Pendleton Act (1881): this created a civil service in which an exam-based merit system would be used to fill government jobs. A Civil Service Commission was created to administer these exams (this function is now carried out by the Office of Personnel Management).
- C. Today, > 90% of federal employees are civil service workers.
- D. Well under 10% of top-level federal jobs are still filled by presidential appointment. People in this category are known as political appointees.

II. Size.

- A. There are about 3 million civilian federal employees.
- B. The number has been fairly constant since 1950. 250,000 jobs cut under Clinton.
 - 1. From one perspective, this suggests that bureaucrats have become increasingly efficient since fewer of them are called upon to administer more and more regulations and spend more and more money.
 - 2. However, a great deal of federal money has been transferred to state and local governments to administer federal programs. Not surprisingly, the number of state and local employees has risen tremendously since 1950. These facts would work against the argument that federal bureaucrats have become increasingly efficient.

III. Power of the bureaucracy: cannot be measured in the number of bureaucrats alone:

- A. Discretionary authority: agencies have the power to choose various courses of action when Congress writes broadly-worded laws that allow for bureaucratic interpretation.**
- B. Passing rules and regulations, e.g., TSA airport security regulations, OSHA workplace regulations, IRS tax code regulations (tens of thousands of pages!)
- C. Helping Congress draft legislation.
- D. Providing advice to the White House.
- E. Settling disputes.

IV. Reason for growth of power of the bureaucracy.

- A. National growth ---> need for agencies to cope with additional population.
- B. Technology ---> need for agencies to manage new technology (e.g., ICC, FAA, FCC).
- C. International crises ---> increase in power for the Defense Department, Dept. Homeland Security.
- D. Citizen demands that the federal government assume some responsibility for the welfare of the nation.
- E. Persistent nature of agencies to survive. Once they are created, they develop constituencies that make it difficult for Congress to kill them.

INFLUENCES ON BUREAUCRATIC BEHAVIOR

I. Recruitment and retention policies.

- A > 90% of bureaucrats are appointed by virtue of some sort of merit exam.
- C. Extremely difficult to fire a civil servant. Elaborate steps ensure that due process must be followed.
 - 1. In a recent year, for example, only 434 fed. employees were fired (0.014%).
 - 2. From 1984-2000, only 5 State Dept. employees were fired.
- D. Effects of the above:
 - 1. **Many bureaucrats have a "loyal" or "agency" point of view.**
 - 2. **Continuity of agency behavior.**
 - 3. **Expertise in policies and procedures among many bureaucrats.**
 - 4. Agency managers must cultivate the support of subordinates.

II. Demographic attributes of bureaucrats.

- A. Lower and middle-level bureaucrats are fairly representative of a broad cross-section of the American people on the basis of race, sex, religion, etc. They are certainly more representative on these bases than members of Congress.
- B. Upper-level bureaucrats are unrepresentative: mostly middle-aged white males with college degrees from an advantaged background ---> criticisms:
 - 1. The Left believes that upper-level bureaucrats defend class privileges ---> conservative bias.
 - 2. The Right believes that upper-level bureaucrats are trained by liberal faculty at elite colleges ---> liberal bias.
- C. Surveys reveal that bureaucrats tend to be more liberal than the general public.
- D. Bureaucrats who work in "activist" agencies (e.g., EPA, FTC, SEC) tend to be more liberal than those who work in "traditional" agencies (e.g., Justice, Defense, Treasury).
- E. Only about 10% live in Washington D.C. area.
- F. ~ 30% work in a defense agency.
- G. Contrary to popular belief, less than 15% work in a welfare agency.
- H. Most are white-collar workers.

III. Legal constraints.

- A. **Freedom of Information Act** – to prevent excessive secrecy.
- B. Hatch Act: limits political activities of bureaucrats.
- C. Affirmative action hiring guidelines.
- D. Environmental impact report requirement of projects.

IV. Organizational constraints/bureaucratic pathologies

- A. Sheer size of agencies makes it difficult for bureaucrats to take bold action.
- B. Red tape inhibits bureaucrats.
- C. Lack of monetary incentives and presence of various disincentives inhibit bureaucrats from taking bold action.

CONTROLLING THE BUREAUCRACY

I. Presidential influences

A. Powers.

1. Appointment of top-level bureaucrats.
2. Power to fire top-level bureaucrats.
3. Power to propose the reorganization of the executive branch.
4. Proposes agency budgets.

B. Checks on presidential influence.

1. Senate confirmation needed for top personnel.
2. President cannot fire vast majority of bureaucrats.
3. Reorganization must go through the Congress.
4. Agency budgets must go through the Congress.

II. Congressional influences.

A. Powers.

1. **Appropriations of agency budgets.**
2. **Standing committee oversight**, investigations, and hearings.
 - a. Power to subpoena agency employees
 - b. Power to swear agency employees under oath – threat of perjury charges
 - c. Power to charge agency employees with contempt of Congress.
3. Govt. Accountability Office (GAO, formerly General Accounting Office), a congressional watchdog agency, ensures that agencies spend money in accordance w/cong. law
4. Reorganization.
5. Appointment confirmation.
6. Sunset laws that give agencies a limited life and require that they justify their existence.

B. Limits on congressional influence: Congress may not really want to clamp down on the bureaucracy:

1. Members profit politically from the existence of federal programs within their states of districts (e.g., military base closure issue, helium reserve).
2. Easier for Congress to simply pass broadly worded laws and have experts within the bureaucracy fill in the holes.

III. Interest group influence.

A. Lobbying.

B. "Revolving door:" many agencies are staffed by people who move back and forth between the public and private sectors. The concern is that these people would not really regulate very carefully the very industries that might be their next employers.

C. Client groups: some agency-interest group relations are so close that the interest group is said to be a client of the agency (e.g., dairy groups and the Agriculture Dept., defense contractors and Defense Dept.).

D. **Iron triangles/issue networks/policy networks** (subgovernments): congressional committee, relevant agency, related interest groups. Informal groups of people within both the public and private sectors who have common interests.

IV. Media.

A. Scrutiny of agency behavior, e.g., investigations of whether FBI and CIA heeded warning signs prior to 9-11 terrorist attack.

B. Use of "whistle blowers" within the bureaucracy, e.g., FBI memo concerning ineptitude in pursuing terrorist threats before 9/11. Federal legislation protects whistle blowers.

C. Releasing "leaks" from government officials

- V. Courts: use of injunctions and writs of mandamus.
- VI. Privatization, e.g., of concessions within national parks, as a means of making the bureaucracy more efficient.

EVALUATION OF THE BUREAUCRACY

I. Public opinion.

- A. General attitude is negative (too much red tape, waste, inefficiency, bureaucrats are underworked and overpaid). Specific attitude is more favorable: public's personal dealings with bureaucrats are generally favorable.
- B. Another contradiction: some believe that bureaucrats are too lazy and ineffective, yet they also believe that bureaucrats are too powerful.
- C. Bureaucrats are often viewed as scapegoats by politicians when things go wrong.

II. Criticisms of the bureaucracy.

- A. Excessive red tape.
- B. Agency conflicts, e.g., Agriculture Dept. administers tobacco subsidies while at the same time the Surgeon General warns the public not to smoke.
- C. Agency duplication, e.g., numerous agencies are responsible for drug enforcement.
- D. Excessive waste, e.g., Defense Department procurement scandals.
- E. Excessive growth: It's true that the number of federal employees has not risen dramatically in the last 50 years; however:
 - 1. Federal government has shifted much of its work to state and local governments through grants.
 - 2. In effect, this has led to the creation of about 5 million jobs that, even though they are ostensibly state or local, are in effect federal.
 - 3. When one considers the private sector jobs that are dependent on federal spending, that makes an additional 8-10 million more jobs that are dependent on the federal govt.
 - 4. On the other hand, Congress HAS dismantled some agencies (e.g., ICC), it HAS reduced scope/funding of agencies, such as NEA. Some Republicans have furthermore stated that they would like to dismantle the Education and Energy Departments.
- F. Number of rules and regulations has dramatically grown in last 50 years.
- G. Lack of a good incentive system to encourage bureaucrats to be more efficient and productive.
- I. Due to essentially permanent job tenure, bureaucrats are part of a "permanent government" that is unresponsive to the public.

III. In defense of the bureaucracy.

- A. To correct excessive red tape would require more regulations -- more red tape!
- B. Red tape is used to ensure fairness and impartiality.
- C. To reduce agency conflicts and duplication would require Congress to set priorities. This is difficult for members of Congress to do because of the constituencies that support programs within the states or districts. "Cut programs in other states, but not mine."
- D. To reduce waste would require more regulations -- more red tape!
- E. To reduce excessive growth, Congress would have to set priorities. As we have seen, for political reasons, this is difficult for members of Congress to do.
- H. The public is inconsistent: it demands that government do things, but then gripes when government grows.
- I. Compared to other nations, the U.S. bureaucracy is fairly efficient.

Executive Branch Study Guide

1. Advice and Consent
2. Appointment Power
3. Cabinet
4. Chief Diplomat
5. Chief Executive
6. Chief Legislator
7. Commander in Chief
8. Chief Jurist
9. Formal/Expressed Powers
10. Informal/Inherent Powers
11. Executive agreement
12. Executive order
13. Executive privilege
14. Executive Office of the President
15. Federal Register
16. Line-item veto
17. National Security Council
18. Office of Management and Budget
19. Pardon
20. Patronage
21. Pocket veto
22. Veto
23. Signing statement
24. State of the Union message
25. 12th Amendment
26. 25th Amendment
27. 22nd Amendment
28. White House Office
29. War Powers Act
30. Electoral College
31. Spoils system
32. Impeachment
33. Rule of Propinquity
34. Chief of Staff
35. Balancing the Ticket
36. Electronic throne
37. Mandate
38. Two Presidencies Thesis
39. US v Nixon
40. Imperial Presidency
41. Impoundment
42. Budget and Impoundment Control Act
43. Rule of Fitness
44. Recess appointment
45. Congressional Budget Office
46. Legislative Veto
47. Bully Pulpit

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Judiciary

INTRODUCTION TO THE FEDERAL COURTS

I. Types of law.

A. Statutory: deals w/written statutes (laws).

B. Common.

1. **Based upon a system of unwritten law.**

2. **Unwritten laws are based upon precedents.**

3. Judges rely upon the principle of stare decisis ("let the decision stand"), i.e., they rule according to precedent.

4. This is the basic system of law in Britain.

C. Criminal: concerns violations of the criminal code, i.e., violations against society.

D. Civil: concerns disputes (torts) between two parties rather than violations against society.

1. Examples: breach of contract, slander, medical malpractice.

2. Writ of mandamus: court order for one party to perform a certain act.

3. Injunction: court order that forbids a party to perform a certain act.

4. A class action lawsuit involves a suit brought by a group of people who share a common grievance.

II. Judicial power is passive.

A. Courts cannot reach out and "take" cases. Cases must come to them.

B. There must be an actual case ("controversy") for a court to make a ruling. Courts cannot "create" cases.

III Only those with standing may challenge a law or govt. action, i.e., only one who has sustained or is near sustaining an "injury" may bring a case to court. One cannot challenge a law simply because one does not happen to like it.

IV Judicial law-making.

A. Judges, contrary to what some may think, are not simply impartial referees who only carry out the law. Judges interpret the law, and in so doing in fact make law. It is necessary that they make law because:

1. Statutes are often broadly-worded, unclear, or contradictory.

2. The Constitution is certainly broadly-worded, and requires interpretation.

3. Thus, interpretation of statutes and the Constitution is, in effect, making law:

a. "The Supreme Court is the Constitution." (Justice Felix Frankfurter)

b. "The Supreme Court is a constitutional convention in continuous session."
(Woodrow Wilson)

B. Evidence of judicial law-making.

1. Courts have ruled > 1000 state laws as being unconstitutional.

2. Courts have ruled > 1000 federal laws as being unconstitutional.

3. The Supreme Court has reversed itself >200 times since 1810.

4. Courts, since the 1960's, increasingly seem willing to rule on political questions rather than solely on legislative or constitutional questions (e.g., Baker v. Carr, Wesberry v. Sanders, Shaw v. Reno, Bush v. Gore).

V. Jurisdiction: 4 types:

A. Exclusive: sole authority of a federal court to try a case.

B. Concurrent: authority of both a federal and a state court to try a case.

C. Original: authority of a court to first try a case.

D. Appellate: authority of a court to hear a subsequent appeal.

VI Jurisdiction of federal courts. Federal courts may try a case if it involves:

A. The Constitution, a federal law, or a treaty.

B. Admiralty law (matters on high seas) or maritime law (matters on land but relating to water).

C. Disputes between two or more states.

- D. The U.S. government as a party.
- E. Citizens of different states.
- F. Ambassadors or diplomats..

VII Dual system of courts: In our federal system, we have both federal and state courts. We will confine our discussion to federal courts.

VIII Structure of the federal court system. Two types of federal courts.

- A. Article I (legislative, or special) courts.
 - 1. Created to carry out the enumerated powers of Congress.
 - 2. Judges in these hold fixed, not life, terms of office.
 - 3. Examples of these courts:
 - a. Claims Court: hears lawsuits against the federal government.
 - b. Court of Military Appeals.
 - c. District of Columbia Courts.
- B. Article III (Constitutional) courts.
 - 1. Article III of the Constitution deals with the judiciary, and creates a Supreme Court while also **giving Congress the power to create "inferior" (lower) courts**. These three levels of courts form the main basis of our federal court system.
 - 2. **Judges in these courts hold life terms. BE SURE THAT YOU UNDERSTAND ALEXANDER HAMILTON'S RATIONALE FOR THIS IN FEDERALIST #78.**
 - 3. The three levels of constitutional courts:
 - a. District Courts:
 - 1) Handle 90% of all federal cases.
 - 2) 94 such courts, ~610 judges.
 - 3) Cases are tried by a judge and jury.
 - 4) Use grand juries to issue indictments (orders that charge an individual with a crime. Does not mean that one is guilty; it merely means that one will be tried.)
 - 5) A petit (trial) jury decides the outcome of a case.
 - 6) Use magistrates, who issue warrants, hold preliminary hearings, and set bail.
 - 7) Jurisdiction: original.
 - 8) May try civil, criminal, or constitutional cases.
 - 9) Decisions may be appealed to Courts of Appeals.
 - 10) Recent problems of high turnover among judges.
 - b. Courts of Appeals (Circuit Courts).
 - 1) Are 12 of these, spread out in 12 districts, or "circuits."
 - 2) 156 judges try > 18,000 cases a year.
 - 3) Cases tried by a panel of three judges, except when all judges of a Circuit Court hear a case "en banc."
 - 4) Jurisdiction: appellate. Hears appeals from District Courts and regulatory commissions.
 - 5) Decisions may be appealed to the Supreme Court.
 - c. Supreme Court: covered in a separate lecture.

FEDERAL ATTORNEYS AND JUDGES

I. Federal attorneys.

- A. Attorney General.
 - 1. Appointed by President w/Senate consent.
 - 2. Head of Justice Dept.
- B. Solicitor General.
 - 1. Appointed by President w/Senate consent.
 - 2. Represents U.S. government in Supreme Court.
 - 3. Decides which cases the federal government will appeal to the Supreme Court.
 - 4. Decides the federal government's position in these cases.
 - 5. Sometimes called the "10th Justice" of the Supreme Court because of his influence there.
- C. U.S. Attorneys.
 - 1. At least one for each District Court, 94 in all.
 - 2. Prosecutes federal criminal cases before the District Courts and Courts of Appeals, though most cases are settled by plea-bargaining.
 - 3. Represents U.S. government in civil cases before these same courts.
 - 4. Appointed by the President for 4-year terms. Key patronage positions.
 - 5. Senatorial courtesy applies in their appointments.

II. Federal judges.

- A. **Appointed by President with "advice and consent" of Senate.**
- B. Article III states that **they shall hold their offices "during good behavior," i.e., for life.** They can, however, be impeached and removed by Congress (very rare -- only a handful of removals in >200 years).
- C. Compensation: Determined by Congress, though compensation cannot be lowered during judges' terms of office. 2009 salaries:

District Court: \$169,300

Courts of Appeals: 179,500

Supreme Court: 208,100 (Chief Justice: 217,400).

D. Factors affecting selection of federal judges:

- 1. Senatorial courtesy: When appointing District Court, the President must consult with the two Senators from the state in which they are to be appointed. The Senate will then show "courtesy" to those two senators by not confirming judges to whom the two senators object.
- 2. Senate Judiciary Committee:
 - a. Screens the nominees, and sends a recommendation to Senate floor for approval or rejection.
 - b. In recent years, has given more scrutiny to appointments, particularly those at the Supreme Court level (e.g., Bork hearings ("the "Bork Battle""), Thomas' "high-tech" lynching ("the Thomas Tangle")). These disputes led to the nomination of David Souter (the "Souter Solution").
 - c. The committee held up confirmation of many of Clinton's lower court judges for months, and even years (44 months in one case). Use of "hold." Democrats returned the favor by filibustering some of Bush 43 nominations
- 3. **Senate: Majority vote needed for confirmation.** Has refused to act upon, or has rejected, ~21% of Supreme Court nominees in the 20th century.
- 4. Political parties: judges are generally from the same political party as the President.
- 5. Diversity:
 - a. Race:
 - 1) Mostly white.
 - 2) Carter appointed more minorities than all the previous Presidents combined. Clinton also appointed numerous minorities to the fed. bench

- 3) "Black seat" on the Supreme Court was established by Thurgood Marshall ---> Clarence Thomas. 17% of Clinton's appointments were black.
- b. Gender
 - 1) Mostly male.
 - 2) Carter appointed more women than all the previous Presidents combined. 25% of Clinton's appts. female
 - 3) With retirement of Sandra Day O'Connor, only one woman (Ruth Bader Ginsburg) is on the Supreme Court.
6. Age: Since judges have lifetime appointments, judges may live on long after the Presidents who appoint them die. **Pres. influence continues after they leave office.**
7. Ideology of prospective judges.
 - a. **Presidents generally try to appoint people of similar philosophy.**
 - b. This is difficult to ensure, however:
 - 1) Predicting future behavior on the part of judges is at best an imperfect science.
 - 2) New issues may arise which the President could not have possibly considered.
 - 3) Since judges have life terms, Presidents can do nothing about decisions they do not like.
 - 4) Approximately 25% of Supreme Court judges "stray" from the philosophy that had been anticipated by the Presidents who appointed them (e.g., Warren, Brennan, Souter).
 - c. Ideology also can affect the decision of a judge to retire, e.g., a judge may want to delay retiring until there is a President with a more favorable philosophy.
8. American Bar Association evaluates nominees. Not used by Bush 43, but Sen. Judiciary Committee still considers ABA ratings
9. Existence of a "paper trail," e.g., with Robert Bork ("the Bork Battle"). If a prospective judge has written extensively, his writings may be used against him during confirmation hearings. Bush 41, for example, did not want to undergo a confirmation hearing battle with a nominee who had an extensive paper trail, so he played it safe by nominating David Souter, who was such an unknown that he was dubbed the "stealth candidate" ("the Souter Solution").
10. Number of judges: **Congress can increase or decrease the number of courts and judges.** If it has a President of the same party, it would be more likely to increase the number than if it has a President of the opposing party. If it had a VERY undesirable President, it could reduce the number of judges by not allowing vacancies to be filled of judges who had retired or died. This was done by Congress in the Andrew Johnson administration, when the size of the Supreme Court shrank from 9 to 7.

THE SUPREME COURT

- I. Background.
 - A. Only court mentioned in Const. (Article III).
 - B. Consists of 8 Associate Justices and 1 Chief Justice.
 - 1. Number of Justices is set by Congress.
 - 2. When position of Chief Justice is vacant, the President can appoint someone already on the Court (e.g., Rehnquist) or someone who is not on the Court (e.g., Roberts)
 - C. Highest court in the land -- the court of last resort.
 - D. Key powers:
 - 1. **Power of judicial review** (established by Marbury v. Madison, 1803).
 - a. More than 1000 state laws have been declared unconstitutional.
 - b. More than 120 federal laws have been declared unconstitutional.
 - c. Some presidential actions have been declared unconstitutional.
 - 2. Power to interpret broadly-worded laws of Congress and the Constitution.
 - 3. Power to overrule earlier Supreme Court decisions (e.g., **Brown v. Board** overturning Plessy v. Ferguson).
- II. Jurisdiction.
 - A. Original: in cases involving:
 - 1. States.
 - 2. Ambassadors.
 - B. Appellate: in cases from:
 - 1. Courts of Appeals.
 - 2. State supreme courts.

-- Cases from appellate jurisdiction are far more numerous than from original jurisdiction.
- III. How cases reach the Supreme Court.
 - A. Supreme Court controls its own docket.
 - B. Thousands of requests are made for Supreme Court decisions, but **relatively few requests are granted**. Recent trend is for even fewer cases to be accepted each year. (~80 per year)
 - C. **Rule of 4: In order for the Court to decide a case, 4 Justices must agree to do so.**
Denying a decision may mean any number of things:
 - 1. Case lacks a substantial federal issue.
 - 2. Party lacks standing.
 - 3. Court agrees with a lower court.
 - 4. Case is a "political hot potato" that the Court does not want to touch.
 - D. When a party requests a Supreme Court decision, it files a petition for a writ of certiorari ("to be made certain"). These petitions are screened by the Court's law clerks, and then reviewed by the Justices on the **rule of 4** basis noted above.
 - E. When the Justices accept a case, they then decide whether to ask for more information and oral arguments from the attorneys or whether to decide the case quickly on the basis of the attorneys' briefs. Cases decided without further information are announced with a per curiam opinion. This is a very brief unsigned statement of the Court's decision.
- IV. The Supreme Court at work.
 - A. Term begins on first Monday in October and continues until the end of June.
 - B. Hears cases from Monday-Thursday. Quorum of 6.
 - C. Before oral arguments, the Justices read the attorneys' briefs.
 - D. Justices also read **amicus curiae** ("friend of the court") briefs.
 - E. Justices hear 30 minute oral arguments from each side.
 - F. At the Friday conference, Justices discuss the cases.
 - G. Simple majority needed for decisions. In case of ties, previous court decision stands.
 - H. Written opinions:

1. Types:
 - a. Unanimous: expresses opinion of all nine Justices. ~1/3 of the cases are decided by a 9-0 vote.
 - b. Majority: expresses opinion of majority.
 - c. Dissenting: expresses opinion of minority. If the Court later overturns itself, it may draw upon a minority opinion for its reasoning.
 - d. Concurring: written by a Justice who agrees with majority's conclusions, but for different reasons.
 2. Assigning of opinions.
 - a. If Chief Justice voted with the majority, he assigns someone in the majority to write the opinion.
 - b. If the C.J. is in the minority, the most senior Justice among the majority assigns the opinion.
 3. The politics of opinion-writing.
 - a. Assigning the opinion is a key power of the Chief Justice: it enables the CJ to get the right "slant" on the issue.
 - b. Majority opinion writer must be careful not to alienate others in the majority, because they may change their minds and switch positions.
 - c. The majority opinion writer must therefore structure the argument in such a way as to keep the support of at least four other intelligent, independent Justices, any of whom may threaten to "jump ship" and switch his/her vote.
 - d. Threat of a dissenting opinion can sometimes convince the majority to bend a bit in certain parts of the decision.
 4. Purposes of opinions.
 - a. Communicate the Court's reasoning to the public.
 - b. Establish precedents for future cases -- importance of stare decisis.
 - c. Drop "hints" that Congress, the states, or the President should take certain actions, e.g., "In the absence of any action by Congress ..."
- V. Possibility of evading Court decisions: The Supreme Court is the highest court in the land, but it is possible of evading Court decisions:
- A. **Amending the Constitution. The Court cannot strike down something as unconstitutional if it is in the Constitution!**
 - B. When a decision is made, it is "remanded" to a lower court to carry out the Supreme Court's decision. The lower court will have a certain amount of leeway in doing this.
 - C. The executive branch may simply not carry out the decision (e.g., Jackson's famous line: "John Marshall has made his decision. Now let him enforce it.")
 - D. State and local governments may simply not carry it out, either (e.g., desegregation, school prayer)
 - E. "The Constitution may be what the Supreme Court says it is, but a Supreme Court opinion is what a trial judge or a policeman or a school board or a city council says it is."
- VI. Voting blocs on the current Supreme Court.
- A. Liberals.
 1. Elena Kagan (Obama appointee, 2010)
 2. Sonia Sotomayor (Obama, 2009)
 3. Ruth Bader Ginsburg (Clinton, 1993)
 4. Stephen Breyer (Clinton, 1994)
 - B. Conservatives.
 1. John Roberts (Bush 43, 2005) Chief Justice
 2. Antonin Scalia (Reagan, 1986)
 3. Clarence Thomas (Bush 41, 1991)
 4. Samuel Alito (Bush 43, 2006)
 - C. Swing/moderate conservative.
 1. Anthony Kennedy (Reagan, 1987)

JUDICIAL ACTIVISM V. JUDICIAL RESTRAINT

I. Judicial activism.

A. **Philosophy that the courts should take an active role in solving society's problems.**

B. Courts should uphold the "guardian ethic:" they act as a guardian of the people.

C. Examples of judicial activism:

1. Striking down Topeka School Board's policy of seg. in *Brown v. Board* (1954)
2. Striking down a Texas law that banned flag burning in *Texas v. Johnson*, 1989, and then striking down a congressional law that banned flag burning (*US v. Eichmann*)
3. Striking down the Gun Free School Zones Act in *US v. Lopez*, 1995.
4. Striking down **line item veto** in *Clinton v. NY* 1998
5. Striking down Florida recount in *Bush v. Gore* 2000
6. Striking down state death penalties for mentally retarded in *Atkins v. Virg.*, 2002
7. Striking down a Texas sodomy law in *Lawrence v. Texas*
8. Striking down a DC city ordinance banning handguns in *DC v. Heller*, 2008

II. Judicial restraint.

A. **Philosophy that the courts should allow the states and the other two branches of the federal government to solve social, economic, and political problems.**

B. Federal courts should act only in those situations where there are clear constitutional questions. They should otherwise defer to elected lawmakers.

C. Courts should merely interpret the law rather than make law.

D. Suggests that courts should follow **original intent of Founders: decide cases on basis of what the Founders wanted.**

III. Historical developments.

A. In 20th century, prior to 1937, liberals complained about the conservative Court being too activist when it struck down various reform-minded laws (e.g., minimum wage, banning child labor, NRA, AAA).

B. FDR responded with his "court-packing" attempt in 1937 ---> failed, but the Court, in its famous "switch in time that saved nine," began to accept New Deal legislation.

C. **Now, it was the conservatives who began to complain about the liberal Court being too activist, especially with the advent of the Warren Court (1954-1969). Conservatives began to complain about the Court's judicial activism in:**

1. **Rights of the accused, e.g., requiring the police to issue "Miranda warnings."**
2. **Civil rights, e.g., desegregating public schools in *Brown v. Board*.**
3. **Civil liberties, e.g., of prohibiting prayer in school.**
4. **Political issues, e.g., *Baker v. Carr*, 1962.**

D. The **Burger Court (1969-1986)** was less activist than the Warren Court, but still upset conservatives with decisions such as ***Roe v. Wade*** and *UC Regents v. Bakke*.

E. We have now come full circle because the Rehnquist Court (1986-2005) was accused by liberals of being too activist -- when it overturns liberal precedents, liberals accuse the Court of being excessively activist, e.g.:

1. Overturning Gun Free School Zones Act
2. Overturning Florida Supreme Court decisions in election of 2000
3. Overturning California's Proposition 215 that legalized medical use of marijuana

F. Similar views are held about the Roberts Court (2005 – present), e.g. *DC v. Heller*

IV. Restraints on judicial power.

A. Courts can make decisions, but cannot enforce them

B. Courts cannot reach out and take cases, but must wait for the cases to come to them.

C. Courts can rule only on real, live controversies. They cannot "create" cases.

C. Presidential appointment of judges.

D. Congress.

1. Senate confirmation of judges.

2. **Impeachment** and removal.
 3. **Increasing the number of courts and judges**, and thus the type of judges to Congress' and the President's liking. For example, in 1979, Congress (Democratic) created 152 new District and Appeals Court positions. Coupled with resignations and retirements, President Carter (Democratic) ended up appointing 40% of all federal judges during his one term of office.
 4. Passing constitutional amendments (e.g., 14th Amendment overturned the Dred Scott decision, 16th Amendment allowed for an income tax that the Supreme Court had struck down in the late 19th century).
 5. Repassing a law that was unconstitutional in hopes that the Supreme Court will change its mind.
 6. Determining the jurisdiction of the courts -- what kinds of cases the courts can and cannot have. Article III, Section 2 of the Constitution may give Congress the power to prevent the Supreme Court from hearing certain types of cases ("In all other cases ... the Supreme Court shall have appellate jurisdiction ...with such exceptions ... as Congress shall make.")
- E. Stare decisis.
- F. Existing laws.
- G. The Constitution.
- H. Public opinion: The Supreme Court probably does not "follow the election returns" in the short run because the Justices were appointed by previous Presidents for life terms. In the long run, however, the Court will probably reflect public opinion because the Justices are appointed by Presidents who were elected by the people.

IN CONGRESS, JULY 4, 1776

The unanimous Declaration of the thirteen united States of America



When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice by refusing his Assent to Laws for establishing Judiciary Powers.

44 He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and
45 payment of their salaries.

46 He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and
47 eat out their substance.

48 He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

49 He has affected to render the Military independent of and superior to the Civil Power.

50 He has combined with others to subject us to a jurisdiction foreign to our constitution, and
51 unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

52 For quartering large bodies of armed troops among us:

53 For protecting them, by a mock Trial from punishment for any Murders which they should commit on the
54 Inhabitants of these States:

55 For cutting off our Trade with all parts of the world:

56 For imposing Taxes on us without our Consent:

57 For depriving us in many cases, of the benefit of Trial by Jury:

58 For transporting us beyond Seas to be tried for pretended offences:

59 For abolishing the free System of English Laws in a neighbouring Province, establishing therein an
60 Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit
61 instrument for introducing the same absolute rule into these Colonies

62 For taking away our Charters, abolishing our most valuable Laws and altering fundamentally the Forms
63 of our Governments:

64 For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in
65 all cases whatsoever.

66 He has abdicated Government here, by declaring us out of his Protection and waging War against us.

67 He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

68 He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death,
69 desolation, and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the
70 most barbarous ages, and totally unworthy the Head of a civilized nation.

71 He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country,
72 to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

73 He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our
74 frontiers, the merciless Indian Savages whose known rule of warfare, is an undistinguished destruction of
75 all ages, sexes and conditions.

76 In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our
77 repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked
78 by every act which may define a Tyrant, is unfit to be the ruler of a free people.

79 Nor have We been wanting in attentions to our British brethren. We have warned them from time to time
80 of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them
81 of the circumstances of our emigration and settlement here. We have appealed to their native justice and
82 magnanimity, and we have conjured them by the ties of our common kindred to disavow these

83 usurpations, which would inevitably interrupt our connections and correspondence. They too have been
84 deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which
85 denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace
86 Friends.

87 We, therefore, the Representatives of the united States of America, in General Congress, Assembled,
88 appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by
89 Authority of the good People of these Colonies, solemnly publish and declare, That these united Colonies
90 are, and of Right ought to be Free and Independent States, that they are Absolved from all Allegiance to
91 the British Crown, and that all political connection between them and the State of Great Britain, is and
92 ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War,
93 conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which
94 Independent States may of right do. — And for the support of this Declaration, with a firm reliance on the
95 protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our
96 sacred Honor.

97

1 **Articles of Confederation**

2 To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

3

4 Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts-bay Rhode Island and Providence
5 Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

6 I.

7 The Stile of this Confederacy shall be "The United States of America".

8 II.

9 Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation
10 expressly delegated to the United States, in Congress assembled.

11 III.

12 The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties,
13 and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any
14 of them, on account of religion, sovereignty, trade, or any other pretense whatever.

15 IV.

16 The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free
17 inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of
18 free citizens in the several States; and the people of each State shall free ingress and regress to and from any other State, and shall enjoy
19 therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof
20 respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other
21 State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of
22 the United States, or either of them.

23

24 If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of
25 the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to
26 the State having jurisdiction of his offense.

27

28 Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every
29 other State.

30

31 V.

32 For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as
33 the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each
34 State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

35

36 No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate
37 for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United
38 States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

39 Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

40 In determining questions in the United States in Congress assembled, each State shall have one vote.

41 Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of
42 Congress shall be protected in their persons from arrests or imprisonments, during the time of their going to and from, and attendance on
43 Congress, except for treason, felony, or breach of the peace.

vi.

No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgement of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

vii.

When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

viii.

All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

ix.

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article -- of sending and receiving ambassadors -- entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever -- of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated -- of granting letters of marque and reprisal in times of peace -- appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the

94 matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such
95 persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that
96 number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the
97 persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so
98 always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the
99 day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall
100 proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and
101 the judgement and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the
102 parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to
103 pronounce sentence, or judgement, which shall in like manner be final and decisive, the judgement or sentence and other proceedings being in
104 either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every
105 commissioner, before he sits in judgement, shall take an oath to be administered by one of the judges of the supreme or superior court of the
106 State, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgement,
107 without favor, affection or hope of reward': provided also, that no State shall be deprived of territory for the benefit of the United States.

108 All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may
109 respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to
110 have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be
111 finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction
112 between different States.

113 The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck
114 by their own authority, or by that of the respective States -- fixing the standards of weights and measures throughout the United States --
115 regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State
116 within its own limits be not infringed or violated -- establishing or regulating post offices from one State to another, throughout all the United
117 States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office --
118 appointing all officers of the land forces, in the service of the United States, excepting regimental officers -- appointing all the officers of the
119 naval forces, and commissioning all officers whatever in the service of the United States -- making rules for the government and regulation of
120 the said land and naval forces, and directing their operations.

121
122 The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated 'A
123 Committee of the States', and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be
124 necessary for managing the general affairs of the United States under their direction -- to appoint one of their members to preside, provided
125 that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of
126 money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses -- to borrow
127 money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so
128 borrowed or emitted -- to build and equip a navy -- to agree upon the number of land forces, and to make requisitions from each State for its
129 quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each
130 State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a solid-like manner, at the expense of the United
131 States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the
132 United States in Congress assembled. But if the United States in Congress assembled shall, on consideration of circumstances judge proper that
133 any State should not raise men, or should raise a smaller number of men than the quota thereof, such extra number shall be raised, officered,
134 clothed, armed and equipped in the same manner as the quota of each State, unless the legislature of such State shall judge that such extra
135 number cannot be safely spread out in the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as
136 they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within
137 the time agreed on by the United States in Congress assembled.

138 The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any
139 treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and
140 welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor
141 agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander
142 in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to
143 day be determined, unless by the votes of the majority of the United States in Congress assembled.

144 The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no
145 period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except
146 such parts thereof relating to treaties, alliances or military operations, as in their judgement require secrecy; and the yeas and nays of the
147 delegates of each State on any question shall be entered on the journal, when it is desired by any delegates of a State, or any of them, at his or
148 their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of
149 the several States.

150 x.

151 The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as
152 the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided
153 that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the
154 Congress of the United States assembled be requisite.

155 xi.

156 Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the
157 advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

158 xii.

159 All bills of credit emitted, monies borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United
160 States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and
161 satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

162

163 xiii.

164 Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are
165 submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor
166 shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be
167 afterwards confirmed by the legislatures of every State.

168

169 And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to
170 approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know Ye that we the undersigned delegates, by
171 virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents,
172 fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters
173 and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by
174 the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And
175 that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

176

177 In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the
178 Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.

179

180 Agreed to by Congress 15 November 1777 In force after ratification by Maryland, 1 March 1781



THE
CONSTITUTION
of the United States



We the People *of the United States*

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

SECTION. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]* The actual Enumeration shall be made

within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3.

The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]* for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]*

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,]* unless they shall by Law appoint a different Day.

SECTION. 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively, If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;
-And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

[No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.]*

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

SECTION. 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]*

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:- “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

SECTION. 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

SECTION. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - [between a State and Citizens of another State;-]* between Citizens of different States, - between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof;- and foreign States, Citizens or Subjects.]*

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

SECTION. 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

SECTION. 3.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

Go. Washington--Presidt:
and deputy from Virginia

NEW HAMPSHIRE

John Langdon
Nicholas Gilman

MASSACHUSETTS

Nathaniel Gorham
Rufus King

CONNECTICUT

Wm. Saml. Johnson
Roger Sherman

NEW YORK

Alexander Hamilton

NEW JERSEY

Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

PENNSYLVANIA

B Franklin
Thomas Mifflin
Robt Morris
Geo. Clymer
Thos. FitzSimons
Jared Ingersoll
James Wilson
Gouv Morris

DELAWARE

Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco: Broom

MARYLAND

James McHenry
Dan of St. Thos. Jenifer
Danl Carroll

VIRGINIA

John Blair-
James Madison Jr.

NORTH CAROLINA

Wm. Blount
Richd. Dobbs Spaight
Hu Williamson

SOUTH CAROLINA

J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

GEORGIA

William Few
Abr Baldwin

Attest William Jackson Secretary

In Convention Monday

September 17th, 1787.

Present

The States of

New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution.

That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the unanimous Order of the Convention

Go. Washington-President:

W. JACKSON Secretary.

* Language in brackets has been changed by amendment.

THE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AS RATIFIED BY THE STATES

Preamble to the Bill of Rights

CONGRESS OF THE UNITED STATES
BEGUN AND HELD AT THE CITY OF NEW-YORK, ON
WEDNESDAY THE FOURTH OF MARCH,
ONE THOUSAND SEVEN HUNDRED AND EIGHTY NINE

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

(Note: The first 10 amendments to the Constitution were ratified December 15, 1791, and form what is known as the "Bill of Rights.")

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X.

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

AMENDMENTS 11-27

Amendment XI.

Passed by Congress March 4, 1794. Ratified February 7, 1795.

(Note: A portion of Article III, Section 2 of the Constitution was modified by the 11th Amendment.)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII.

Passed by Congress December 9, 1803. Ratified June 15, 1804.

(Note: A portion of Article II, Section 1 of the Constitution was changed by the 12th Amendment.)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.-]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

*Superseded by Section 3 of the 20th Amendment.

Amendment XIII.

Passed by Congress January 31, 1865. Ratified December 6, 1865.

(Note: A portion of Article IV, Section 2 of the Constitution was changed by the 13th Amendment.)

SECTION 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV.

Passed by Congress June 13, 1866. Ratified July 9, 1868.

(Note: Article I, Section 2 of the Constitution was modified by Section 2 of the 14th Amendment.)

SECTION 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, [being twenty-one years of age,]* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

*Changed by Section 1 of the 26th Amendment.

Amendment XV.

Passed by Congress February 26, 1869. Ratified February 3, 1870.

SECTION 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2.

The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XVI.

Passed by Congress July 2, 1909. Ratified February 3, 1913.

(Note: Article I, Section 9 of the Constitution was modified by the 16th Amendment.)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII.

Passed by Congress May 13, 1912. Ratified April 8, 1913.

(Note: Article I, Section 3 of the Constitution was modified by the 17th Amendment.)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII.

Passed by Congress December 18, 1917. Ratified January 16, 1919. Repealed by the 21st Amendment, December 5, 1933.

SECTION 1.

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX.

Passed by Congress June 4, 1919. Ratified August 18, 1920.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Passed by Congress March 2, 1932. Ratified January 23, 1933.

(Note: Article I, Section 4 of the Constitution was modified by Section 2 of this Amendment. In addition, a portion of the 12th Amendment was superseded by Section 3.)

SECTION 1.

The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2.

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3.

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4.

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5.

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Passed by Congress February 20, 1933. Ratified December 5, 1933.

SECTION 1.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII.

Passed by Congress March 21, 1947. Ratified February 27, 1951.

SECTION 1.

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII.

Passed by Congress June 16, 1960. Ratified March 29, 1961.

SECTION 1.

The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SECTION 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV.

Passed by Congress August 27, 1962. Ratified January 23, 1964.

SECTION 1.

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

SECTION 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV.

Passed by Congress July 6, 1965. Ratified February 10, 1967.
(*Note: Article II, Section 1 of the Constitution was modified by the 25th Amendment.*)

SECTION 1.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SECTION 2.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SECTION 3.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SECTION 4.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI.

Passed by Congress March 23, 1971. Ratified July 1, 1971.

(*Note: Amendment 14, Section 2 of the Constitution was modified by Section 1 of the 26th Amendment.*)

SECTION 1.

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII.

Originally proposed Sept. 25, 1789. Ratified May 7, 1992.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.

2
3 TO WHAT expedient, then, shall we finally resort, for maintaining in practice the
4 necessary partition of power among the several departments, as laid down in the
5 Constitution? The only answer that can be given is, by so contriving the interior structure
6 of the government as that its several constituent parts may, by their mutual relations, be
7 the means of keeping each other in their proper places.

8 In order to lay a due foundation for that separate and distinct exercise of the
9 different powers of government, which to a certain extent is admitted on all hands to be
10 essential to the preservation of liberty, it is evident that each department should have a
11 will of its own; and consequently should be so constituted that the members of each
12 should have as little agency as possible in the appointment of the members of the others.

13 But the great security against a gradual concentration of the several powers in the
14 same department consists in giving to those who administer each department the
15 necessary constitutional means and personal motives to resist encroachments of the
16 others. The provision for defense must in this, as in all other cases, be made
17 commensurate to the danger of attack. Ambition must be made to counteract ambition.
18 The interest of the man must be connected with the constitutional rights of the place. It
19 may be a reflection on human nature, that such devices should be necessary to control the
20 abuses of government. But what is government itself, but the greatest of all reflections on
21 human nature? If men were angels, no government would be necessary. If angels were to
22 govern men, neither external nor internal controls on government would be necessary. In
23 framing a government which is to be administered by men over men, the great difficulty
24 lies in this: you must first enable the government to control the governed; and in the next
25 place oblige it to control itself.

26 A dependence on the people is, no doubt, the primary control on the government;
27 but experience has taught mankind the necessity of auxiliary precautions.

28 In republican government, the legislative authority necessarily predominates. The
29 remedy for this inconveniency is to divide the legislature into different branches; and to
30 render them, by different modes of election and different principles of action, as little
31 connected with each other as the nature of their common functions and their common
32 dependence on the society will admit. It may even be necessary to guard against
33 dangerous encroachments by still further precautions. As the weight of the legislative
34 authority requires that it should be thus divided, the weakness of the executive may
35 require, on the other hand, that it should be fortified.

36 An absolute negative on the legislature appears, at first view, to be the natural
37 defense with which the executive magistrate should be armed.

38 The second method will be exemplified in the federal republic of the United
39 States. Whilst all authority in it will be derived from and dependent on the society, the
40 society itself will be broken into so many parts, interests, and classes of citizens, that the
41 rights of individuals, or of the minority, will be in little danger from interested
42 combinations of the majority.

43
44 Publius

1 Federalist 10- To the People of the State of New York:

2 AMONG the numerous advantages promised by a well-constructed Union, none deserves to be
3 more accurately developed than its tendency to break and control the violence of faction.

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

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

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

12 It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty
13 is to faction what air is to fire. But it could not be less folly to abolish liberty, which is essential to
14 political life, because it nourishes faction, than it would be to wish the annihilation of air, which is
15 essential to life, because it imparts to fire its destructive agency.

16 The second expedient is as impracticable as the first would be unwise. As long as the reason of man
17 continues fallible, and he is at liberty to exercise it, different opinions will be formed. The diversity in the
18 faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a
19 uniformity of interests. The protection of these faculties is the first object of government. From the
20 protection of different and unequal faculties of acquiring property, the possession of different degrees and
21 kinds of property immediately results; and from the influence of these on the sentiments and views of the
22 respective proprietors, ensues a division of the society into different interests and parties.

23 The latent causes of faction are thus sown in the nature of man; and we see them everywhere
24 brought into different degrees of activity. A zeal for different opinions concerning religion, concerning
25 government, an attachment to different leaders ambitiously contending for pre-eminence and power; or to
26 persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn,
27 divided mankind into parties, inflamed them with mutual animosity, and rendered them much more
28 disposed to vex and oppress each other than to co-operate for their common good. So strong is this
29 propensity of mankind to fall into mutual animosities, that the most frivolous and fanciful distinctions
30 have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the
31 most common and durable source of factions has been the various and unequal distribution of property.
32 The regulation of these various and interfering interests forms the principal task of modern legislation,
33 and involves the spirit of party and faction in the necessary and ordinary operations of the government.

34 From this view of the subject it may be concluded that a pure democracy, by which I mean a society
35 consisting of a small number of citizens, who assemble and administer the government in person, can
36 admit of no cure for the mischiefs of faction.

37 A republic, by which I mean a government in which the scheme of representation takes place, opens
38 a different prospect, and promises the cure for which we are seeking. Let us examine the points in which
39 it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy
40 which it must derive from the Union.

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

44 The effect of the first difference is, on the one hand, to refine and enlarge the public views, by
45 passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true
46 interest of their country. Under such a regulation, it may well happen that the public voice, pronounced by
47 the representatives of the people, will be more consonant to the public good than if pronounced by the
48 people themselves. The question resulting is, whether small or extensive republics are more favorable to
49 the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two
50 obvious considerations:

51 In the first place, if the proportion of fit characters be not less in the large than in the small republic,
52 the former will present a greater option, and consequently a greater probability of a fit choice.

53 In the next place, as each representative will be chosen by a greater number of citizens in the large
54 than in the small republic, it will be more likely to centre in men who possess the most attractive merit
55 and the most diffusive and established characters.

56 The other point of difference is, the greater number of citizens and extent of territory which may be
57 brought within the compass of republican than of democratic government; and extend the sphere, and you
58 take in a greater variety of parties and interests; you make it less probable that a majority of the whole
59 will have a common motive to invade the rights of other citizens; or if such a common motive exists, it
60 will be more difficult for all who feel it to discover their own strength, and to act in unison with each
61 other.

62 In the extent and proper structure of the Union, therefore, we behold a republican remedy for the
63 diseases most incident to republican government. *PUBLIUS*

Federalist 78

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government.

Evidence

In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient, which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. **It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.**

For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."

And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that **as nothing can contribute so much to its firmness and independence as permanency in office**, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

47 It is far more rational to suppose, that the courts were designed to be an
48 intermediate body between the people and the legislature, in order, among other things, to
49 keep the latter within the limits assigned to their authority. The interpretation of the laws
50 is the proper and peculiar province of the courts. A constitution is, in fact, and must be
51 regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its
52 meaning, as well as the meaning of any particular act proceeding from the legislative
53 body.

54
55 ...the Constitution ought to be preferred to the statute, the intention of the people
56 to the intention of their agents.

57
58 Nor does this conclusion by any means suppose a superiority of the judicial to the
59 legislative power. It only supposes that the power of the people is superior to both; and
60 that where the will of the legislature, declared in its statutes, stands in opposition to that
61 of the people, declared in the Constitution, the judges ought to be governed by the latter
62 rather than the former. They ought to regulate their decisions by the fundamental laws,
63 rather than by those, which are not fundamental.

64
65 If, then, the courts of justice are to be considered as the bulwarks of a limited
66 Constitution against legislative encroachments, this consideration will afford a strong
67 argument for the permanent tenure of judicial offices, since nothing will contribute so
68 much as this to that independent spirit in the judges which must be essential to the
69 faithful performance of so arduous a duty.

70
71 If the power of making them was committed either to the Executive or legislature,
72 there would be danger of an improper complaisance to the branch which possessed it; if
73 to both, there would be an unwillingness to hazard the displeasure of either; if to the
74 people, or to persons chosen by them for the special purpose, there would be too great a
75 disposition to consult popularity, to justify a reliance that nothing would be consulted but
76 the Constitution and the laws.

77
78 Hence it is, that there can be but few men in the society who will have sufficient
79 skill in the laws to qualify them for the stations of judges. And making the proper
80 deductions for the ordinary depravity of human nature, the number must be still smaller
81 of those who unite the requisite integrity with the requisite knowledge.
82

1 Federalist 70

2 To the People of the State of New York:

3 THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican
4 government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of
5 foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles.
6 Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the
7 community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property
8 against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security
9 of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman
10 story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable
11 title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole
12 classes of the community whose conduct threatened the existence of all government, as against the invasions of external
13 enemies who menaced the conquest and destruction of Rome.

14 There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution
15 of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it
16 may be in theory, must be, in practice, a bad government.

17 Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to
18 inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients
19 which constitute safety in the republican sense?

20 The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for
21 its support; fourthly, competent powers.

22 The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due
23 responsibility.

24 Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of
25 their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered
26 energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand,
27 while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to
28 conciliate the confidence of the people and to secure their privileges and interests.

29 That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the
30 proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the
31 number is increased, these qualities will be diminished.

32 This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority;
33 or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of
34 counsellors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the
35 constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the
36 executive authority wholly to single men.¹ Both these methods of destroying the unity of the Executive have their partisans;
37 but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and
38 may in most lights be examined in conjunction.

39 [A]ttaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to
40 approve the idea of plurality in the Executive, under any modification whatever.

41 Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of
42 opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of
43 personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to
44 spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of
45 those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a
46 plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical

emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition, vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed that is, to a plurality of magistrates of equal dignity and authority a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable. "I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?

It is evident from these considerations, that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office, and may observe or disregard the counsel given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behavior in office the reason which in the British Constitution dictates the propriety of a council, not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

98 The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that
99 maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the
100 maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not
101 counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive
102 power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid,
103 and ingenious," that "the executive power is more easily confined when it is ONE";² that it is far more safe there should be a
104 single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the Executive is rather
105 dangerous than friendly to liberty.

106 A little consideration will satisfy us, that the species of security sought for in the multiplication of the Executive, is unattainable.
107 Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united
108 credit and influence of several individuals must be more formidable to liberty, than the credit and influence of either of them
109 separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views
110 being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when
111 abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly
112 watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others.
113 The Decemvirs of Rome, whose name denotes their number,³ were more to be dreaded in their usurpation than any ONE of
114 them would have been. No person would think of proposing an Executive much more numerous than that body; from six to a
115 dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy
116 combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A
117 council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good
118 intentions, are often the instruments and accomplices of his bad and are almost always a cloak to his faults.

119 I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer
120 the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at
121 the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of
122 equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any
123 of the States, who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of
124 the distinguishing features of our constitution.

125

126 PUBLIUS.

1 Brutus 1

2 To the Citizens of the State of New-York.

3 When the public is called to investigate and decide upon a question in which not only the present
4 members of the community are deeply interested, but upon which the happiness and misery of
5 generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself
6 peculiarly interested in the result. Perhaps this country never saw so critical a period in their political
7 concerns. We have felt the feebleness of the ties by which these United-States are held together and the
8 want of sufficient energy in our present confederation, to manage, in some instances, our general
9 concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At
10 length a Convention of the states has been assembled, they have formed a constitution which will now,
11 probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it
12 of right belongs to make or unmake constitutions, or forms of government, at their pleasure.

13 The most important question that was ever proposed to your decision, or to the decision of any people
14 under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially
15 for this purpose. If the constitution, offered to [your acceptance], be a wise one, calculated to preserve the
16 invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human
17 happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn;
18 generations to come will rise up and call you blessed. But if, on the other hand, this form of government
19 contains principles that will lead to the subversion of liberty — if it tends to establish a despotism, or,
20 what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be
21 [shut] up, and posterity will execrate your memory.

22 Momentous then is the question you have to determine, and you are called upon by every motive which
23 should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is
24 insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is
25 said, they can be best amended when they are experienced. But remember, when the people once part
26 with power, they can seldom or never resume it again but by force. This is a sufficient reason to induce
27 you to be careful, in the first instance, how you deposit the powers of government.

28 With these few introductory remarks I shall proceed to a consideration of this constitution:

29 The first question that presents itself on the subject is, whether a confederated government be the best for
30 the United States or not? Or in other words, whether the thirteen United States should be reduced to one
31 great republic, governed by one legislature, and under the direction of one executive and judicial; or
32 whether they should continue thirteen confederated republics, under the direction and controul of a
33 supreme federal head for certain defined national purposes only?

34 This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with
35 respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared
36 “that the Congress shall have power to make all laws which shall be necessary and proper for carrying into
37 execution the foregoing powers, and all other powers vested by this constitution, in the government of the
38 United States; or in any department or office thereof.”

39 And by the 6th article, it is declared “that this constitution, and the laws of the United States, which shall
40 be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the
41 United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby,
42 any thing in the constitution, or law of any state to the contrary notwithstanding.”

43 It appears from these articles that there is no need of any intervention of the state governments, between
44 the Congress and the people, to execute any one power vested in the general government, and that the
45 constitution and laws of every state are nullified and declared void, so far as they are or shall be
46 inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the
47 authority of the United States. — The government then, so far as it extends, is a complete one, and not a
48 confederation. It... has as absolute and perfect powers to make and execute all laws, to appoint officers,
49 institute courts, declare offences, and annex penalties, with respect to every object to which it extends.

50 It is true this government is limited to certain objects, or to speak more properly, some small degree of
51 power is still left to the states, but a little attention to the powers vested in the general government, will
52 convince every candid man, that if it is capable of being executed, all that is reserved for the individual
53 states must very soon be annihilated. It has authority to make laws which will affect the lives, the liberty,
54 and property of every man in the United States; nor can the constitution or laws of any state, in any way
55 prevent or impede the full and complete execution of every power given.

56 The legislative power is competent to lay taxes, duties, imposts, and excises; — there is no limitation to
57 this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be
58 applied, may be said to be a limitation; but this is no restriction of the power at all, for by this clause they
59 are to be applied to pay the debts and provide for the common defence and general welfare of the United
60 States; but the legislature have authority to contract debts at their discretion; they are the sole judges of
61 what is necessary to provide for the common defence, and they only are to determine what is for the
62 general welfare: this power therefore is neither more nor less, than a power to lay and collect taxes,
63 imposts, and excises, at their pleasure; not only the power to lay taxes unlimited, as to the amount they
64 may require, but it is perfect and absolute to raise them in any mode they please.

65 No state legislature, or any power in the state governments, have any more to do in carrying this into
66 effect, than the authority of one state has to do with that of another. In the business therefore of laying
67 and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced.

68 It is proper here to remark, that the authority to lay and collect taxes is the most important of any power
69 that can be granted; it connects with it almost all other powers, or at least will in process of time draw all
70 other after it; it is the great mean of protection, security, and defence, in a good government, and the great
71 engine of oppression and tyranny in a bad one.

72 No state can lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then
73 the net produce shall be for the benefit of the United States. The only mean therefore left, for any state to
74 support its government and discharge its debts, is by direct taxation. The legislatures of the several states
75 will find it impossible to raise monies to support their governments. Without money they cannot be
76 supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the
77 general government.

78 It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure,
79 as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the
80 government, but the destruction of liberty. — I shall not, however, dwell upon these, as a few observations
81 upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the
82 position.

83 The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as
84 Congress may from time to time ordain and establish. The powers of these courts are very extensive. One
85 inferior court must be established, I presume, in each state at least, with the necessary executive officers
86 appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the
87 dignity, and take away from the respectability, of the state courts. These courts will be, in themselves,
88 totally independent of the states, deriving their authority from the United States, and receiving from them
89 fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the
90 powers of the courts in the respective states.

91 How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated
92 states, and to effect an entire consolidation of the whole into one general government, it is impossible to
93 say. The powers given by this article are very general and comprehensive, and it may receive a
94 construction to justify the passing almost any law. A power to make all laws, which shall be necessary and
95 proper, for carrying into execution, all powers vested by the constitution in the government of the United
96 States, or any department or officer thereof, is a power very comprehensive and may, for ought I know, be
97 exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature of a state

98 should pass a law to raise money to support their government and pay the state debt, may the Congress
99 repeal this law, because it may prevent the collection of a tax which they may think proper and necessary
100 to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this
101 constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any
102 thing in the constitution or laws of the different states to the contrary notwithstanding. — By such a law,
103 the government of a particular state might be overturned at one stroke, and thereby be deprived of every
104 means of its support.

105 It is not meant, by stating this case, to alarm the fears of the people, by suggesting, that the federal
106 legislature would be more likely to pass the limits assigned them by the constitution, than that of an
107 individual state. But what is meant is, that the legislature of the United States are vested with the great
108 and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating
109 trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts,
110 and other general powers. And are by this clause invested with the power of making all laws, proper and
111 necessary, for carrying all these into execution; and they may so exercise this power as entirely to
112 annihilate all the state governments, and reduce this country to one single government.

113 Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men,
114 invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that
115 stands in their way. This disposition, which is implanted in human nature, will operate in the federal
116 legislature to lessen and ultimately to subvert the state authority. It must be very evident then, that what
117 this constitution wants of being a complete consolidation of the several parts of the union into one
118 complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and
119 purposes, it will necessarily acquire in its exercise and operation.

120 Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should
121 be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever
122 government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the
123 citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The
124 question then will be, whether a government thus constituted, and founded on such principles, is
125 practicable, and can be exercised over the whole United States, reduced into one state?

126 If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on
127 the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a
128 country of such immense extent, containing such a number of inhabitants, and these encreasing in such
129 rapid progression as that of the whole United States. Among the many illustrious authorities which might
130 be produced to this point, I shall content myself with quoting only two. The one is the baron de
131 Montesquieu, spirit of laws, chap. xvi. vol. I [book VIII]. “It is natural to a republic to have only a small

132 territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and
133 consequently of less moderation; there are trusts too great to be placed in any single subject; he has
134 interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his
135 fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic,
136 the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on
137 accidents. In a small one, the interest of the public is easier perceived, better understood, and more within
138 the reach of every citizen; abuses are of less extent, and of course are less protected.” Of the same opinion
139 is the marquis Beccarari.

140 ”History furnishes no example of a free republic, anything like the extent of the United States. The
141 Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process
142 of time, extended their conquests over large territories of country; and the consequence was, that their
143 governments were changed from that of free governments to those of the most tyrannical that ever existed
144 in the world.”

145 Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an
146 extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it.
147 In every government, the will of the sovereign is the law. In despotic governments, the supreme authority
148 being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a
149 small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for
150 this purpose they must all come together to deliberate, and decide. This kind of government cannot be
151 exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at
152 least limited to such bounds as that the people can conveniently assemble, be able to debate, understand
153 the subject submitted to them, and declare their opinion concerning it. Now, in a large extended country,
154 it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds
155 of the people, without having it so numerous and unwieldy, as to be subject in great measure to the
156 inconveniency of a democratic government. The territory of the United States is of vast extent; it now
157 contains near three millions of souls, and is capable of containing much more than ten times that number.
158 Is it practicable for a country, so large and so numerous as they will soon become, to elect a
159 representation, that will speak their sentiments, without their becoming so numerous as to be incapable
160 of transacting public business? It certainly is not.

161 In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the
162 case, there will be a constant clashing of opinions; and the representatives of one part will be continually
163 striving against those of the other. This will retard the operations of government, and prevent such
164 conclusions as will promote the public good. If we apply this remark to the condition of the United States,
165 we shall be convinced that it forbids that we should be one government. The United States includes a
166 variety of climates. The productions of the different parts of the union are very variant, and their interests,

167 of consequence, diverse. Their manners and habits differ as much as their climates and productions; and
168 their sentiments are by no means coincident. The laws and customs of the several states are, in many
169 respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and,
170 of consequence, a legislature, formed of representatives from the respective parts, would not only be too
171 numerous to act with any care or decision, but would be composed of such heterogenous and discordant
172 principles, as would constantly be contending with each other. The laws cannot be executed in a republic,
173 of an extent equal to that of the United States, with promptitude.

174 When a government is to receive its support from the aid of the citizens, it must be so constructed as to
175 have the confidence, respect, and affection of the people. But the people will not be likely to have such
176 confidence in their rulers, in a republic so extensive as the United States. The confidence which the
177 people have in their rulers, in a free republic, arises from their knowing them, from their being
178 responsible to them for their conduct, and from the power they have of displacing them when they
179 misbehave: but in a republic of the extent of this continent, the people in general would be acquainted
180 with very few of their rulers: the people at large would know little of their proceedings, and it would be
181 extremely difficult to change them. The people in Georgia and New-Hampshire would not know one
182 another's mind, and therefore could not act in concert to enable them to effect a general change of
183 representatives.

184 The different parts of so extensive a country could not possibly be made acquainted with the conduct of
185 their representatives, nor be informed of the reasons upon which measures were founded. The
186 consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be
187 jealous of every measure they adopt, and will not support the laws they pass. Hence the government will
188 be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed
189 force to execute the laws at the point of the bayonet — a government of all others the most to be dreaded.

190 In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns
191 and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local
192 condition and wants of the different districts, and if it could, it is impossible it should have sufficient time
193 to attend to and provide for all the variety of cases of this nature, that would be continually arising.

194 In so extensive a republic, the great officers of government would soon become above the controul of the
195 people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. They will
196 use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition,
197 and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to
198 prevent their abuse of power.

199 These are some of the reasons by which it appears, that a free republic cannot long subsist over a country
200 of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen
201 states into one, as it evidently is, it ought not to be adopted.

202 Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the
203 whole union into one government, under the form of a republic, yet if this objection was obviated, there
204 are exceptions to it, which are so material and fundamental, that they ought to determine every man, who
205 is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate
206 attention of my countrymen while I state these objections — they are such as have obtruded themselves
207 upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded.
208 There are many objections, of small moment, of which I shall take no notice — perfection is not to be
209 expected in any thing that is the production of man — and if I did not in my conscience believe that this
210 scheme was defective in the fundamental principles — in the foundation upon which a free and equal
211 government must rest — I would hold my peace.

212 Source: *The Complete Anti-Federalist*, ed. Herbert J. Storing (Chicago: The University of Chicago Press,
213 1981) Volume Two, Part 2, 363-372.

214

1 "Letter from a Birmingham Jail [King, Jr.]"

2 16 April 1963

3 My Dear Fellow Clergymen:

4 While confined here in the Birmingham city jail, I came across your recent statement calling my present activities "unwise and
5 untimely." Seldom do I pause to answer criticism of my work and ideas. If I sought to answer all the criticisms that cross my
6 desk, my secretaries would have little time for anything other than such correspondence in the course of the day, and I would
7 have no time for constructive work. But since I feel that you are men of genuine good will and that your criticisms are sincerely
8 set forth, I want to try to answer your statement in what I hope will be patient and reasonable terms.

9 I think I should indicate why I am here in Birmingham, since you have been influenced by the view which argues against
10 "outsiders coming in." I have the honor of serving as president of the Southern Christian Leadership Conference, an
11 organization operating in every southern state, with headquarters in Atlanta, Georgia. We have some eighty five affiliated
12 organizations across the South, and one of them is the Alabama Christian Movement for Human Rights. Frequently we share
13 staff, educational and financial resources with our affiliates. Several months ago the affiliate here in Birmingham asked us to be
14 on call to engage in a nonviolent direct action program if such were deemed necessary. We readily consented, and when the
15 hour came we lived up to our promise. So I, along with several members of my staff, am here because I was invited here. I am
16 here because I have organizational ties here.

17 But more basically, I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left their
18 villages and carried their "thus saith the Lord" far beyond the boundaries of their home towns, and just as the Apostle Paul left
19 his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco Roman world, so am I compelled to
20 carry the gospel of freedom beyond my own home town. Like Paul, I must constantly respond to the Macedonian call for aid.

21 Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be
22 concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an
23 inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never
24 again can we afford to live with the narrow, provincial "outside agitator" idea. Anyone who lives inside the United States can
25 never be considered an outsider anywhere within its bounds.

26 You deplore the demonstrations taking place in Birmingham. But your statement, I am sorry to say, fails to express a similar
27 concern for the conditions that brought about the demonstrations. I am sure that none of you would want to rest content with
28 the superficial kind of social analysis that deals merely with effects and does not grapple with underlying causes. It is
29 unfortunate that demonstrations are taking place in Birmingham, but it is even more unfortunate that the city's white power
30 structure left the Negro community with no alternative.

31 In any nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices exist; negotiation;
32 self purification; and direct action. We have gone through all these steps in Birmingham. There can be no gainsaying the fact
33 that racial injustice engulfs this community. Birmingham is probably the most thoroughly segregated city in the United States.
34 Its ugly record of brutality is widely known. Negroes have experienced grossly unjust treatment in the courts. There have been
35 more unsolved bombings of Negro homes and churches in Birmingham than in any other city in the nation. These are the hard,
36 brutal facts of the case. On the basis of these conditions, Negro leaders sought to negotiate with the city fathers. But the latter
37 consistently refused to engage in good faith negotiation.

38 Then, last September, came the opportunity to talk with leaders of Birmingham's economic community. In the course of the
39 negotiations, certain promises were made by the merchants--for example, to remove the stores' humiliating racial signs. On the
40 basis of these promises, the Reverend Fred Shuttlesworth and the leaders of the Alabama Christian Movement for Human
41 Rights agreed to a moratorium on all demonstrations. As the weeks and months went by, we realized that we were the victims
42 of a broken promise. A few signs, briefly removed, returned; the others remained. As in so many past experiences, our hopes
43 had been blasted, and the shadow of deep disappointment settled upon us. We had no alternative except to prepare for direct
44 action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the
45 national community. Mindful of the difficulties involved, we decided to undertake a process of self purification. We began a
46 series of workshops on nonviolence, and we repeatedly asked ourselves: "Are you able to accept blows without retaliating?"
47 "Are you able to endure the ordeal of jail?" We decided to schedule our direct action program for the Easter season, realizing
48 that except for Christmas, this is the main shopping period of the year. Knowing that a strong economic-withdrawal program

would be the by product of direct action, we felt that this would be the best time to bring pressure to bear on the merchants for the needed change.

Then it occurred to us that Birmingham's mayoral election was coming up in March, and we speedily decided to postpone action until after election day. When we discovered that the Commissioner of Public Safety, Eugene "Bull" Connor, had piled up enough votes to be in the run off, we decided again to postpone action until the day after the run off so that the demonstrations could not be used to cloud the issues. Like many others, we waited to see Mr. Connor defeated, and to this end we endured postponement after postponement. Having aided in this community need, we felt that our direct action program could be delayed no longer.

You may well ask: "Why direct action? Why sit ins, marches and so forth? Isn't negotiation a better path?" You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent resister may sound rather shocking. But I must confess that I am not afraid of the word "tension." I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood. The purpose of our direct action program is to create a situation so crisis packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in a tragic effort to live in monologue rather than dialogue.

One of the basic points in your statement is that the action that I and my associates have taken in Birmingham is untimely. Some have asked: "Why didn't you give the new city administration time to act?" The only answer that I can give to this query is that the new Birmingham administration must be prodded about as much as the outgoing one, before it will act. We are sadly mistaken if we feel that the election of Albert Boutwell as mayor will bring the millennium to Birmingham. While Mr. Boutwell is a much more gentle person than Mr. Connor, they are both segregationists, dedicated to maintenance of the status quo. I have hope that Mr. Boutwell will be reasonable enough to see the futility of massive resistance to desegregation. But he will not see this without pressure from devotees of civil rights. My friends, I must say to you that we have not made a single gain in civil rights without determined legal and nonviolent pressure. Lamentably, it is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals.

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct action campaign that was "well timed" in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait" has almost always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied."

We have waited for more than 340 years for our constitutional and God given rights. The nations of Asia and Africa are moving with jetlike speed toward gaining political independence, but we still creep at horse and buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six year old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to concoct an answer for a five year old son who is asking: "Daddy, why do white people treat colored people so mean?"; when you take a cross county drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to

expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness"--then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience. You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: "How can you advocate breaking some laws and obeying others?" The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that "an unjust law is no law at all."

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority. Segregation, to use the terminology of the Jewish philosopher Martin Buber, substitutes an "I it" relationship for an "I thou" relationship and ends up relegating persons to the status of things. Hence segregation is not only politically, economically and sociologically unsound, it is morally wrong and sinful. Paul Tillich has said that sin is separation. Is not segregation an existential expression of man's tragic separation, his awful estrangement, his terrible sinfulness? Thus it is that I can urge men to obey the 1954 decision of the Supreme Court, for it is morally right; and I can urge them to disobey segregation ordinances, for they are morally wrong.

Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal. Let me give another explanation. A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law. Who can say that the legislature of Alabama which set up that state's segregation laws was democratically elected? Throughout Alabama all sorts of devious methods are used to prevent Negroes from becoming registered voters, and there are some counties in which, even though Negroes constitute a majority of the population, not a single Negro is registered. Can any law enacted under such circumstances be considered democratically structured?

Sometimes a law is just on its face and unjust in its application. For instance, I have been arrested on a charge of parading without a permit. Now, there is nothing wrong in having an ordinance which requires a permit for a parade. But such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the First-Amendment privilege of peaceful assembly and protest.

I hope you are able to see the distinction I am trying to point out. In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.

Of course, there is nothing new about this kind of civil disobedience. It was evidenced sublimely in the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar, on the ground that a higher moral law was at stake. It was practiced superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire. To a degree, academic freedom is a reality today because Socrates practiced civil disobedience. In our own nation, the Boston Tea Party represented a massive act of civil disobedience.

We should never forget that everything Adolf Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. If today I lived in a Communist country where certain principles dear to the Christian faith are suppressed, I would openly advocate disobeying that country's antireligious laws.

150 I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the past few years
151 I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's
152 great stumbling block in his stride toward freedom is not the White Citizen's Council or the Ku Klux Klanner, but the white
153 moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a
154 positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree
155 with your methods of direct action"; who paternalistically believes he can set the timetable for another man's freedom; who
156 lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season." Shallow
157 understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm
158 acceptance is much more bewildering than outright rejection.

159 I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice and that
160 when they fail in this purpose they become the dangerously structured dams that block the flow of social progress. I had hoped
161 that the white moderate would understand that the present tension in the South is a necessary phase of the transition from an
162 obnoxious negative peace, in which the Negro passively accepted his unjust plight, to a substantive and positive peace, in which
163 all men will respect the dignity and worth of human personality. Actually, we who engage in nonviolent direct action are not
164 the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open,
165 where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with all
166 its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the
167 light of human conscience and the air of national opinion before it can be cured.

168 In your statement you assert that our actions, even though peaceful, must be condemned because they precipitate violence.
169 But is this a logical assertion? Isn't this like condemning a robbed man because his possession of money precipitated the evil act
170 of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical inquiries
171 precipitated the act by the misguided populace in which they made him drink hemlock? Isn't this like condemning Jesus
172 because his unique God consciousness and never ceasing devotion to God's will precipitated the evil act of crucifixion? We must
173 come to see that, as the federal courts have consistently affirmed, it is wrong to urge an individual to cease his efforts to gain
174 his basic constitutional rights because the quest may precipitate violence. Society must protect the robbed and punish the
175 robber. I had also hoped that the white moderate would reject the myth concerning time in relation to the struggle for
176 freedom. I have just received a letter from a white brother in Texas. He writes: "All Christians know that the colored people will
177 receive equal rights eventually, but it is possible that you are in too great a religious hurry. It has taken Christianity almost two
178 thousand years to accomplish what it has. The teachings of Christ take time to come to earth." Such an attitude stems from a
179 tragic misconception of time, from the strangely irrational notion that there is something in the very flow of time that will
180 inevitably cure all ills. Actually, time itself is neutral; it can be used either destructively or constructively. More and more I feel
181 that the people of ill will have used time much more effectively than have the people of good will. We will have to repent in this
182 generation not merely for the hateful words and actions of the bad people but for the appalling silence of the good people.
183 Human progress never rolls in on wheels of inevitability; it comes through the tireless efforts of men willing to be co workers
184 with God, and without this hard work, time itself becomes an ally of the forces of social stagnation. We must use time
185 creatively, in the knowledge that the time is always ripe to do right. Now is the time to make real the promise of democracy and
186 transform our pending national elegy into a creative psalm of brotherhood. Now is the time to lift our national policy from the
187 quicksand of racial injustice to the solid rock of human dignity.

188 You speak of our activity in Birmingham as extreme. At first I was rather disappointed that fellow clergymen would see my
189 nonviolent efforts as those of an extremist. I began thinking about the fact that I stand in the middle of two opposing forces in
190 the Negro community. One is a force of complacency, made up in part of Negroes who, as a result of long years of oppression,
191 are so drained of self respect and a sense of "somebodiness" that they have adjusted to segregation; and in part of a few
192 middle-class Negroes who, because of a degree of academic and economic security and because in some ways they profit by
193 segregation, have become insensitive to the problems of the masses. The other force is one of bitterness and hatred, and it
194 comes perilously close to advocating violence. It is expressed in the various black nationalist groups that are springing up across
195 the nation, the largest and best known being Elijah Muhammad's Muslim movement. Nourished by the Negro's frustration over
196 the continued existence of racial discrimination, this movement is made up of people who have lost faith in America, who have
197 absolutely repudiated Christianity, and who have concluded that the white man is an incorrigible "devil."

198 I have tried to stand between these two forces, saying that we need emulate neither the "do nothingism" of the complacent
199 nor the hatred and despair of the black nationalist. For there is the more excellent way of love and nonviolent protest. I am
200 grateful to God that, through the influence of the Negro church, the way of nonviolence became an integral part of our
201 struggle. If this philosophy had not emerged, by now many streets of the South would, I am convinced, be flowing with blood.

202 And I am further convinced that if our white brothers dismiss as "rabble rousers" and "outside agitators" those of us who
203 employ nonviolent direct action, and if they refuse to support our nonviolent efforts, millions of Negroes will, out of frustration
204 and despair, seek solace and security in black nationalist ideologies--a development that would inevitably lead to a frightening
205 racial nightmare.

206 Oppressed people cannot remain oppressed forever. The yearning for freedom eventually manifests itself, and that is what has
207 happened to the American Negro. Something within has reminded him of his birthright of freedom, and something without has
208 reminded him that it can be gained. Consciously or unconsciously, he has been caught up by the Zeitgeist, and with his black
209 brothers of Africa and his brown and yellow brothers of Asia, South America and the Caribbean, the United States Negro is
210 moving with a sense of great urgency toward the promised land of racial justice. If one recognizes this vital urge that has
211 engulfed the Negro community, one should readily understand why public demonstrations are taking place. The Negro has
212 many pent up resentments and latent frustrations, and he must release them. So let him march; let him make prayer
213 pilgrimages to the city hall; let him go on freedom rides -and try to understand why he must do so. If his repressed emotions
214 are not released in nonviolent ways, they will seek expression through violence; this is not a threat but a fact of history. So I
215 have not said to my people: "Get rid of your discontent." Rather, I have tried to say that this normal and healthy discontent can
216 be channeled into the creative outlet of nonviolent direct action. And now this approach is being termed extremist. But though
217 I was initially disappointed at being categorized as an extremist, as I continued to think about the matter I gradually gained a
218 measure of satisfaction from the label. Was not Jesus an extremist for love: "Love your enemies, bless them that curse you, do
219 good to them that hate you, and pray for them which spitefully use you, and persecute you." Was not Amos an extremist for
220 justice: "Let justice roll down like waters and righteousness like an ever flowing stream." Was not Paul an extremist for the
221 Christian gospel: "I bear in my body the marks of the Lord Jesus." Was not Martin Luther an extremist: "Here I stand; I cannot
222 do otherwise, so help me God." And John Bunyan: "I will stay in jail to the end of my days before I make a butchery of my
223 conscience." And Abraham Lincoln: "This nation cannot survive half slave and half free." And Thomas Jefferson: "We hold these
224 truths to be self evident, that all men are created equal . . ." So the question is not whether we will be extremists, but what kind
225 of extremists we will be. Will we be extremists for hate or for love? Will we be extremists for the preservation of injustice or for
226 the extension of justice? In that dramatic scene on Calvary's hill three men were crucified. We must never forget that all three
227 were crucified for the same crime--the crime of extremism. Two were extremists for immorality, and thus fell below their
228 environment. The other, Jesus Christ, was an extremist for love, truth and goodness, and thereby rose above his environment.
229 Perhaps the South, the nation and the world are in dire need of creative extremists.

230 I had hoped that the white moderate would see this need. Perhaps I was too optimistic; perhaps I expected too much. I
231 suppose I should have realized that few members of the oppressor race can understand the deep groans and passionate
232 yearnings of the oppressed race, and still fewer have the vision to see that injustice must be rooted out by strong, persistent
233 and determined action. I am thankful, however, that some of our white brothers in the South have grasped the meaning of this
234 social revolution and committed themselves to it. They are still all too few in quantity, but they are big in quality. Some -such as
235 Ralph McGill, Lillian Smith, Harry Golden, James McBride Dabbs, Ann Braden and Sarah Patton Boyle--have written about our
236 struggle in eloquent and prophetic terms. Others have marched with us down nameless streets of the South. They have
237 languished in filthy, roach infested jails, suffering the abuse and brutality of policemen who view them as "dirty nigger-lovers."
238 Unlike so many of their moderate brothers and sisters, they have recognized the urgency of the moment and sensed the need
239 for powerful "action" antidotes to combat the disease of segregation. Let me take note of my other major disappointment. I am
240 have been so greatly disappointed with the white church and its leadership. Of course, there are some notable exceptions. I am
241 not unmindful of the fact that each of you has taken some significant stands on this issue. I commend you, Reverend Stallings,
242 for your Christian stand on this past Sunday, in welcoming Negroes to your worship service on a nonsegregated basis. I
243 commend the Catholic leaders of this state for integrating Spring Hill College several years ago.

244 But despite these notable exceptions, I must honestly reiterate that I have been disappointed with the church. I do not say this
245 as one of those negative critics who can always find something wrong with the church. I say this as a minister of the gospel,
246 who loves the church; who was nurtured in its bosom; who has been sustained by its spiritual blessings and who will remain
247 true to it as long as the cord of life shall lengthen.

248 When I was suddenly catapulted into the leadership of the bus protest in Montgomery, Alabama, a few years ago, I felt we
249 would be supported by the white church. I felt that the white ministers, priests and rabbis of the South would be among our
250 strongest allies. Instead, some have been outright opponents, refusing to understand the freedom movement and
251 misrepresenting its leaders; all too many others have been more cautious than courageous and have remained silent behind
252 the anesthetizing security of stained glass windows.

253

254 In spite of my shattered dreams, I came to Birmingham with the hope that the white religious leadership of this community
255 would see the justice of our cause and, with deep moral concern, would serve as the channel through which our just grievances
256 could reach the power structure. I had hoped that each of you would understand. But again I have been disappointed.

257 I have heard numerous southern religious leaders admonish their worshipers to comply with a desegregation decision because
258 it is the law, but I have longed to hear white ministers declare: "Follow this decree because integration is morally right and
259 because the Negro is your brother." In the midst of blatant injustices inflicted upon the Negro, I have watched white churchmen
260 stand on the sideline and mouth pious irrelevancies and sanctimonious trivialities. In the midst of a mighty struggle to rid our
261 nation of racial and economic injustice, I have heard many ministers say: "Those are social issues, with which the gospel has no
262 real concern." And I have watched many churches commit themselves to a completely other worldly religion which makes a
263 strange, un-Biblical distinction between body and soul, between the sacred and the secular.

264 I have traveled the length and breadth of Alabama, Mississippi and all the other southern states. On sweltering summer days
265 and crisp autumn mornings I have looked at the South's beautiful churches with their lofty spires pointing heavenward. I have
266 beheld the impressive outlines of her massive religious education buildings. Over and over I have found myself asking: "What
267 kind of people worship here? Who is their God? Where were their voices when the lips of Governor Barnett dripped with words
268 of interposition and nullification? Where were they when Governor Wallace gave a clarion call for defiance and hatred? Where
269 were their voices of support when bruised and weary Negro men and women decided to rise from the dark dungeons of
270 complacency to the bright hills of creative protest?"

271 Yes, these questions are still in my mind. In deep disappointment I have wept over the laxity of the church. But be assured that
272 my tears have been tears of love. There can be no deep disappointment where there is not deep love. Yes, I love the church.
273 How could I do otherwise? I am in the rather unique position of being the son, the grandson and the great grandson of
274 preachers. Yes, I see the church as the body of Christ. But, oh! How we have blemished and scarred that body through social
275 neglect and through fear of being nonconformists.

276 There was a time when the church was very powerful--in the time when the early Christians rejoiced at being deemed worthy
277 to suffer for what they believed. In those days the church was not merely a thermometer that recorded the ideas and principles
278 of popular opinion; it was a thermostat that transformed the mores of society. Whenever the early Christians entered a town,
279 the people in power became disturbed and immediately sought to convict the Christians for being "disturbers of the peace" and
280 "outside agitators." But the Christians pressed on, in the conviction that they were "a colony of heaven," called to obey God
281 rather than man. Small in number, they were big in commitment. They were too God-intoxicated to be "astronomically
282 intimidated." By their effort and example they brought an end to such ancient evils as infanticide and gladiatorial contests.
283 Things are different now. So often the contemporary church is a weak, ineffectual voice with an uncertain sound. So often it is
284 an archdefender of the status quo. Far from being disturbed by the presence of the church, the power structure of the average
285 community is consoled by the church's silent--and often even vocal--sanction of things as they are.

286 But the judgment of God is upon the church as never before. If today's church does not recapture the sacrificial spirit of the
287 early church, it will lose its authenticity, forfeit the loyalty of millions, and be dismissed as an irrelevant social club with no
288 meaning for the twentieth century. Every day I meet young people whose disappointment with the church has turned into
289 outright disgust.

290 Perhaps I have once again been too optimistic. Is organized religion too inextricably bound to the status quo to save our nation
291 and the world? Perhaps I must turn my faith to the inner spiritual church, the church within the church, as the true ekklesia and
292 the hope of the world. But again I am thankful to God that some noble souls from the ranks of organized religion have broken
293 loose from the paralyzing chains of conformity and joined us as active partners in the struggle for freedom. They have left their
294 secure congregations and walked the streets of Albany, Georgia, with us. They have gone down the highways of the South on
295 tortuous rides for freedom. Yes, they have gone to jail with us. Some have been dismissed from their churches, have lost the
296 support of their bishops and fellow ministers. But they have acted in the faith that right defeated is stronger than evil
297 triumphant. Their witness has been the spiritual salt that has preserved the true meaning of the gospel in these troubled times.
298 They have carved a tunnel of hope through the dark mountain of disappointment. I hope the church as a whole will meet the
299 challenge of this decisive hour. But even if the church does not come to the aid of justice, I have no despair about the future. I
300 have no fear about the outcome of our struggle in Birmingham, even if our motives are at present misunderstood. We will
301 reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned
302 though we may be, our destiny is tied up with America's destiny. Before the pilgrims landed at Plymouth, we were here. Before

the pen of Jefferson etched the majestic words of the Declaration of Independence across the pages of history, we were here. For more than two centuries our forebears labored in this country without wages; they made cotton king; they built the homes of their masters while suffering gross injustice and shameful humiliation -and yet out of a bottomless vitality they continued to thrive and develop. If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands. Before closing I feel impelled to mention one other point in your statement that has troubled me profoundly. You warmly commended the Birmingham police force for keeping "order" and "preventing violence." I doubt that you would have so warmly commended the police force if you had seen its dogs sinking their teeth into unarmed, nonviolent Negroes. I doubt that you would so quickly commend the policemen if you were to observe their ugly and inhumane treatment of Negroes here in the city jail; if you were to watch them push and curse old Negro women and young Negro girls; if you were to see them slap and kick old Negro men and young boys; if you were to observe them, as they did on two occasions, refuse to give us food because we wanted to sing our grace together. I cannot join you in your praise of the Birmingham police department.

It is true that the police have exercised a degree of discipline in handling the demonstrators. In this sense they have conducted themselves rather "nonviolently" in public. But for what purpose? To preserve the evil system of segregation. Over the past few years I have consistently preached that nonviolence demands that the means we use must be as pure as the ends we seek. I have tried to make clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or perhaps even more so, to use moral means to preserve immoral ends. Perhaps Mr. Connor and his policemen have been rather nonviolent in public, as was Chief Pritchett in Albany, Georgia, but they have used the moral means of nonviolence to maintain the immoral end of racial injustice. As T. S. Eliot has said: "The last temptation is the greatest treason: To do the right deed for the wrong reason."

I wish you had commended the Negro sit inners and demonstrators of Birmingham for their sublime courage, their willingness to suffer and their amazing discipline in the midst of great provocation. One day the South will recognize its real heroes. They will be the James Merediths, with the noble sense of purpose that enables them to face jeering and hostile mobs, and with the agonizing loneliness that characterizes the life of the pioneer. They will be old, oppressed, battered Negro women, symbolized in a seventy two year old woman in Montgomery, Alabama, who rose up with a sense of dignity and with her people decided not to ride segregated buses, and who responded with ungrammatical profundity to one who inquired about her weariness: "My feet is tired, but my soul is at rest." They will be the young high school and college students, the young ministers of the gospel and a host of their elders, courageously and nonviolently sitting in at lunch counters and willingly going to jail for conscience' sake. One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judaeo Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.

Never before have I written so long a letter. I'm afraid it is much too long to take your precious time. I can assure you that it would have been much shorter if I had been writing from a comfortable desk, but what else can one do when he is alone in a narrow jail cell, other than write long letters, think long thoughts and pray long prayers?

If I have said anything in this letter that overstates the truth and indicates an unreasonable impatience, I beg you to forgive me. If I have said anything that understates the truth and indicates my having a patience that allows me to settle for anything less than brotherhood, I beg God to forgive me.

I hope this letter finds you strong in the faith. I also hope that circumstances will soon make it possible for me to meet each of you, not as an integrationist or a civil-rights leader but as a fellow clergyman and a Christian brother. Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear drenched communities, and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.

Yours for the cause of Peace and Brotherhood, Martin Luther King, Jr.