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# UNITED STATES Government

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Luis Ricardo Fraga

Developed in Partnership with



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Dr. Fraga's primary interests are urban politics, education politics, voting rights policy, and the politics of race and ethnicity. He has published extensively in scholarly journals and edited volumes including the *American Political Science Review*, *the Journal of Politics*, *Urban Affairs Quarterly*, *Dubois Review*, and *the Harvard Journal of Hispanic Policy*.

Dr. Fraga served as the Secretary of the American Political Science Association (APSA) in 2006–2007. He has also served on the APSA standing committee on Civic Engagement and Education and as

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Dr. Fraga has served on the faculty at Stanford University, the University of Notre Dame, and the University of Oklahoma. He has received numerous teaching awards, including the Rhodes Prize for Excellence in Undergraduate Teaching and the Dinkelspiel Award for Distinctive Contributions to Undergraduate Education.

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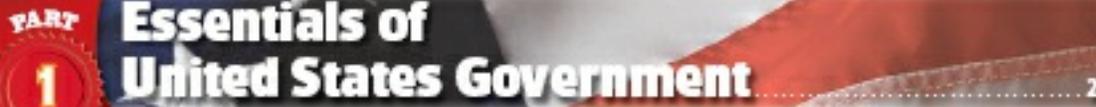
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## Basic Principles of the U.S. Constitution To the Student Skills Handbook



**PART 1** Essentials of United States Government



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# Basic Principles of the U.S. Constitution

The U.S. Constitution outlines six fundamental principles that have guided American government for more than 200 years. The Framers of the Constitution established these six principles—popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism—as the basis of our national government.

## POPULAR SOVEREIGNTY



Popular sovereignty is the concept that a government’s power comes from the people it rules. Our government was created by and for the people of the United States, and power remains in the hands of the people. So important is the concept of popular sovereignty that the Constitution begins with the words “We the People.”

**“Governments are instituted among Men, deriving their just powers from the consent of the governed.”**

—Declaration of Independence, 1776

## LIMITED GOVERNMENT

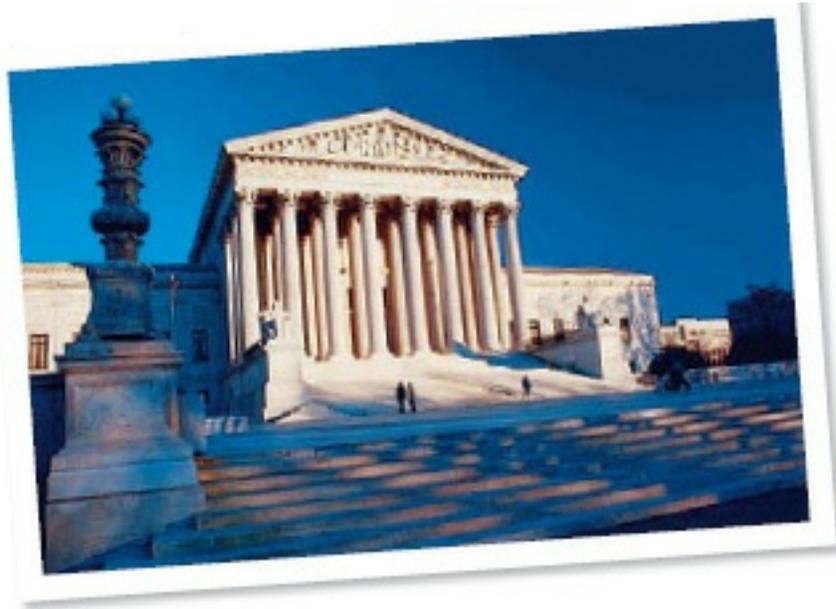
The Constitution also established a limited government to guide the United States. In order to protect the people from an all-powerful government, much of the Constitution deals with setting limits on the powers and functions of government. This idea that government

is limited by the laws is one of the fundamental principles of our nation.

**“A sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government.”**

—Alexander Hamilton, letter III to the American Daily Advertiser,  
1794

## JUDICIAL REVIEW



The principle of judicial review is designed to ensure that the government obeys the laws set forth in the Constitution. Judicial review grants courts the power to review government actions and judge their constitutionality. Although not specifically mentioned in the Constitution, judicial review is a concept that has been promoted since the early days of the United States

**“The interpretation of the laws is the proper and peculiar province of the courts.”**

—Alexander Hamilton, Federalist Paper No. 78, 1788

## CHECKS AND BALANCES



To prevent any branch from exercising too much power, the Framers of the Constitution established a system of checks and balances. This system gives each branch certain powers to change or negate acts of the other two branches. The system of checks and balances prevents any one branch from dominating the national government.

**“The powers of government should be so divided and balanced among several bodies ... as that no one could transcend their legal limits.”**

—James Madison, Federalist Paper No. 48, 1788

## SEPARATION OF POWERS

Another way to ensure that the powers of government are limited was to create three distinct branches with separate duties and powers. This separation of powers among the legislative, executive, and judicial branches is designed to prevent any one person or branch from becoming too powerful.

**“The first principle of a good government is certainly a distribution of its powers into executive, judiciary and legislative.”**

—Thomas Jefferson, letter to John Adams, 1787

## FEDERALISM

In order to protect the power of individual states and strengthen the national government, the Framers of the Constitution established a federal system. The principle of federalism divides power between the national government and state governments.

**“The federal and State governments are in fact but different agents and trustees of the people.”**

—James Madison, Federalist Paper No. 46, 1788





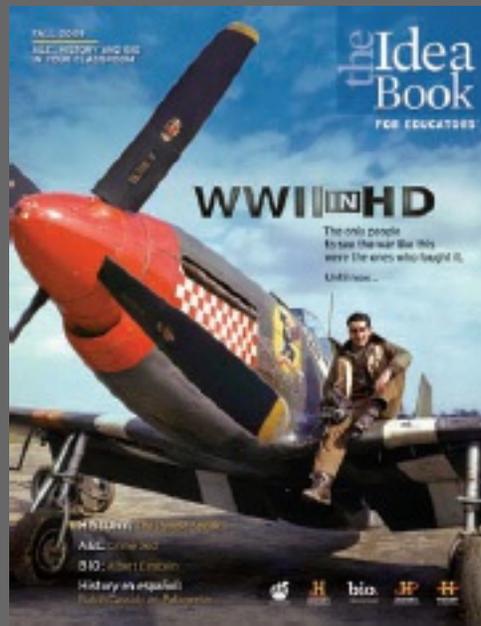
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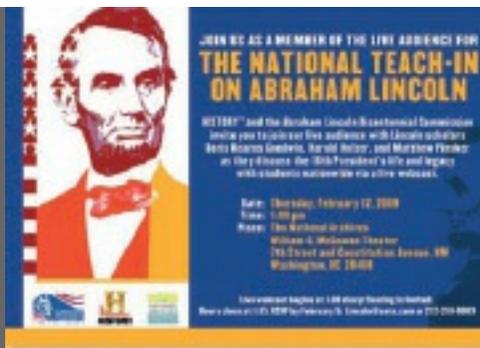
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# To the Student

The opportunity that citizens have to participate in public affairs and to influence government decision making is the most important feature of American government. Active participation in the political and social life of the United States is essential to maintaining a vibrant democracy. As such, citizen participation is an act of leadership.

One cannot understand—or participate effectively in—the structure and operation of American government without a full appreciation of three dimensions of leadership: the leadership of ideas, the leadership of decision making, and leadership in learning.

The leadership of ideas was the type of leadership that the Framers of the Constitution demonstrated when they adopted untried ideas such as individual liberty, limited government, and federalism to guide how our government should be structured.

The leadership of decision making reflects the type of leadership required to make difficult choices about how governmental power should be used. When making these choices, leaders have always decided who wins and who loses in American politics, as well as by how much and how often.

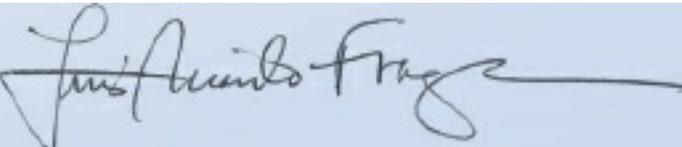
Leadership in learning represents the type of leadership shown when one learns from what has worked well in American government—as well as from what has failed—and then uses this learning to fashion future public policy.

Taken together, these dimensions of leadership in ideas, decision-making, and learning make up what I call the **responsibilities of**

## Leadership.

The goal of this textbook is to help you understand how our nation, through both its leaders and its people, has accepted the responsibilities of leadership—from the founding of the nation to the present day. My hope is that by focusing your study of American government on these responsibilities, you are each more fully informed and able to accept the responsibilities required of all citizens and residents who are effectively engaged in American politics today.

All of us, whatever our ideological positions and policy preferences, must accept responsibility for the ideas, choices, and consequences that we choose to support in our collective life as a nation. If more of us accept the responsibilities of leadership to propose new ideas, make informed choices, and learn from the consequences of those choices, our nation will be better prepared to confront the complex, ever-changing challenges that confront it today and in the future.



Luis Ricardo Fraga

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# SKILLS HANDBOOK

To maximize your study and understanding of United States government, use the Skills Handbook to review and practice a variety of key skills.

**Distinguishing Fact from Opinion**

**Identifying Cause and Effect**

**Analyzing Points of View and Frames of Reference**

**Recognizing Bias and Propaganda**

**Analyzing Primary Sources**

**Analyzing Secondary Sources**

**Analyzing Political Cartoons**

**Making Inferences**

**Determining Relevance**

**Developing and Testing Hypotheses**

**Evaluating Sources**

**Using Electronic Media**

**Synthesizing Information from Multiple Sources**

**Creating a Multimedia Presentation**

**Making Decisions**

**Solving Problems**



# Distinguishing Fact from Opinion

## Define the Skill

In order to be a critical thinker, you must know how to distinguish fact from opinion as you read. A **fact** is a statement that can be proved or disproved. An **opinion** is a personal belief or attitude, so it cannot be proved true or false. Distinguishing fact from opinion can help you make reasonable judgments about what you read.

## Learn the Skill

Use the following strategies to distinguish between fact and opinion.

**1 Examine the source carefully.** Look at the language the author uses. Consider which statements may be facts and which may be opinions.

In 1776 Thomas Paine wrote the pamphlet *Common Sense*, arguing against British rule in the American colonies.

“In short, monarchy and succession have laid (not this or that kingdom only) but the world in blood and ashes . . .

If we inquire into the business of a king, we shall find that in some countries they have none; and after sauntering away their lives without pleasure to themselves or advantage to the nation, withdraw from the scene, and leave their successors to tread the same idle round. In absolute monarchies the whole weight of business, civil and military, lies on the king; the children of Israel in their request for a king, urged this plea “that he may judge us, and go out before us and fight our battles.” But in countries where he is neither a judge nor a general, as in England, a man would be puzzled to know what is his business.

The nearer any government approaches to a republic the less business there is for a king.”

**2 Identify facts.** Consider what evidence the author uses to support his or her statements. If a statement can be proved, it is a fact. Check other sources to determine if a statement is a fact. Be careful with statistics. They can be used incorrectly to mislead the reader.

**3 Identify opinions.** Determine if a statement can be proved or not. If it cannot, it is an opinion. Opinions may use positive or negative words, such as *outstanding* and *poor* and phrases such as *I believe*, *probably*, and *should*.

## Apply the Skill

- 1 What language does the author use that might indicate facts or opinions?
- 2 What facts does the author cite?
- 3 What opinions does the author cite?

# Identifying Cause and Effect

## Define the Skill

Identifying cause and effect can help you to become a critical thinker and to better understand what you read. A **cause** is something that brings about an action or condition. Often, a cause will be directly stated in the text, but sometimes it will be implied, or stated

indirectly. An **effect** is an event that happens as the result of a cause. A cause may have more than one effect. Similarly, an effect may have several causes. By identifying causes and effects, you will be able to determine why certain events occurred, whether certain events are related, and what the relationship is between events.

## Learn the Skill

Use the following strategies to identify cause and effect.

*From Chapter 2, Section 2*

**The Stamp Act Congress** The colonists' reaction to the Stamp Act of 1765, Parliament's first attempt to tax the colonists directly, should have been a warning sign of the rough times to come. The Stamp Act infuriated colonists, who responded with organized protest. Secret colonial societies called the Sons of Liberty sprang up across the colonies. Their goal was to intimidate the stamp agents charged with collecting Parliament's taxes. In many places, mobs forced stamp agents out of office. In Philadelphia, colonists even conducted a mock hanging of a stamp agent.

In October 1765 nine colonies sent delegates to the Stamp Act Congress in New York to craft a united response to the new tax measure. The congress was the colonies' first attempt at forging a plan to work together since the 1754 Albany meeting. It sent a petition to the king that declared their loyalty but voiced a strong protest, asserting that the power to tax colonies should belong solely to the colonial assemblies.

**1 Identify the causes of events.** Look for reasons that prompted a given event to occur. Words such as *since, because, so, therefore, and due to* can signal a causal relationship among events.

**2 Identify the effects of events.** Look for phrases and clue words that indicate consequences, such as *thus, brought about, led to, consequently, and as a result.*

**3 Connect causes and effects.** Consider why certain causes led to an event and why the event turned out as it did. Remember that an event can be both a cause and an effect.

## Apply the Skill

- 1** What was the cause of the events described in the passage?
- 2** List the various effects described in the passage.
- 3** What is the ultimate outcome described in the passage? Why might that outcome have resulted from the cause you identified?

# Analyzing Points of View and Frames of Reference

## Define the Skill

A **point of view** is a person's outlook or attitude. It is the way that he or she looks at a topic or an issue.

Each person's point of view is shaped by his or her frame of reference. A frame of reference refers to a person's background and experiences. Because people's **frames of reference** are different, so are their points of view. Understanding frames of reference can help you to better analyze a person's point of view and understand what

## Learn the Skill

Use the following strategies to analyze points of view and frames of reference.

### 1 Examine information about the author's background.

Knowing the author's background can give you insight into his or her frame of reference. You may need to conduct research to learn more about the author.

*Democratic Senator Hubert Humphrey, speech accepting nomination as the Democratic vice presidential candidate, June 1964*

“We of the Democratic Party call upon all Americans to join us in making our country a land of opportunity for our young, a home of security and dignity for our elderly, and a place of compassion and care for our afflicted . . . Let us take those giant steps forward . . . to build the great society.”

*Republican Senator Barry Goldwater, speech announcing candidacy for the presidency, January 1964*

“I've always stood for government that is limited and balanced and against the ever increasing concentrations of authority in Washington . . . I believe we must now make a choice in this land and not continue drifting endlessly down and down for a time when all of us, our lives, our property, our hopes, and even our prayers will become just cogs in a vast government machine.”

2 Identify the author's opinions. A person's opinions can provide clues to his or her point of view.

3 Consider how the author's frame of reference might influence his or her beliefs. Consider such factors as age, occupation, education, personal experiences, and political affiliations, as they might indicate the author's point of view.

## Apply the Skill

- 1 What can you determine about the frame of reference, or background, of each author?
- 2 What is the point of view of each author?
- 3 Why might the authors' frames of reference influence their opposing views?

# Recognizing Bias and Propaganda

## Define the Skill

Many sources you encounter may contain bias or propaganda. **Bias** is information that indicates a preference or an inclination that prevents a person

from making an impartial judgment. Bias can be influenced by a person's political, social, or personal beliefs. **Propaganda** is information designed to persuade a person to think or act in a particular way. Propaganda can be used by governments or political parties to convince people to espouse a particular issue or course of action. In order to analyze documents effectively, you must be able to recognize the presence of bias or propaganda.

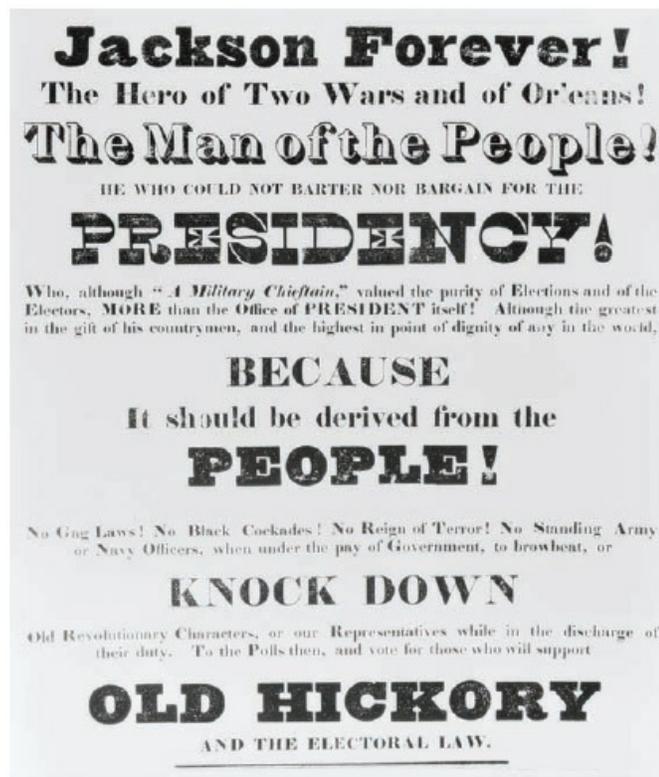
## Learn the Skill

Use the following strategies to recognize bias and propaganda.

**1 Identify facts and opinions stated by the author.** Analyze the facts and opinions presented. Unsupported facts and opinions are often indicators of bias and propaganda.

**2 Analyze the language the author uses.** Look for emotional, persuasive, or exaggerated language that is trying to sway the reader to a particular point of view.

**3 Examine the author's point of view.** Analyze what beliefs the author is trying to convey to his or her audience. Bias and propaganda often provide one-sided information on a subject.



## Apply the Skill

- 1 What is the subject of the poster?
- 2 What opinions and emotional language does the poster use? What purpose do they serve?
- 3 What point of view is presented by the poster?
- 4 Is there bias or propaganda in the poster? Explain.

# Analyzing Primary Sources

## Define the Skill

A **primary source** is a document or other artifact created by people who are present at historical events either as witnesses or participants. Usually, you can identify a primary source by reading for first-person clues, such as I, we, and our. Primary sources are valuable tools because they give firsthand information about an event or a time period and are the work of people who have created or witnessed history.

## Learn the Skill

Use the following strategies to analyze primary sources.

**1 Identify the author or creator of the primary source and when the source was created.** The author and the date the primary source was created give you a historical context in which to place the document.

**2 Compare details in the primary source to what you know about the historical event or time period.** The time frame of the primary source allows you to make connections between your previous knowledge and the information the document provides.

**3 Determine why the author created the primary source.** Each document has a particular purpose and can be used by its author to inform, persuade, direct, or influence the audience.

*In 1796 George Washington chose not to seek re-election for a third term as president. Washington gave the nation advice in his Farewell Address.*

“I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but, in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of public liberty.”

## Apply the Skill

- 1 What was Washington’s purpose in writing this portion of his Farewell Address?
- 2 Why might Washington have given the advice he did at this time?
- 3 What does this primary source tell you about the time in which it was written?

# Analyzing Secondary Sources

## Define the Skill

Produced after a historical event, a secondary source

is an account created by people who were not present at the actual event. These people rely on primary sources in order to write their secondary source accounts. Secondary sources often contain summaries and analyses of events and time periods. Your textbook, for example, can be considered a secondary source. Before determining whether a document is a primary or secondary source, you must pay attention to how the document is presented.

## Learn the Skill

Use the following strategies to analyze secondary sources.

**1 Identify the source.** Examine any source information to learn the origins of the document and its author.

*From Chapter 9, Section 3*

**Criticisms of Political Parties** Some critics argue that by trying to appeal to as many types of voters as possible, the major parties lack unity, discipline, and loyalty. As a result, parties may not be able to fulfill all the campaign promises they make.

Critics also charge that parties are full of office seekers who are interested more in their own personal success than in serving the public good. For example, a candidate may express support for a certain policy during a campaign because doing so helps the person get elected—even though in a previous campaign or office, the candidate had held, and stated, a position directly contrary to his or her new position.

Finally, some people are angered by the partisan bickering between the two major parties. They charge that parties offer simple, narrow solutions to complex problems and are more interested in winning public opinion—and votes—than in solving the complex issues confronting the nation.

**2 Analyze the summary of historical events provided by the source.** The author of a secondary source usually offers a summary of events or of a time period.

**3 Identify the author's purpose.** Look for clues that indicate the intention of the author.

## Apply the Skill

- 1 What clues indicate that this passage is a secondary source?
- 2 What information about political parties does this

source present?

3 What is the author's purpose and point of view?

# Analyzing Political Cartoons

## Define the Skill

A **political cartoon** is a type of visual we can use to understand a particular time period or issue. Unlike other visuals such as photographs and fine art, the primary goal of political cartoons is to express a specific point of view. Political cartoons often use exaggerated characteristics of subjects or events in order to convey a specific message, either about politics in particular or society in general. To interpret a political cartoon, examine all the elements while considering the social, political, and historical context of the time in which it was created.

## Learn the Skill

Use the acronym **BASIC** to analyze political cartoons.



## Apply the Skill

- 1 What symbols are used in the political cartoon? What do they mean?
- 2 What caricature does the artist use? What point do you think the artist is trying to make through the use of caricature?
- 3 What is the artist's message?

# Making Inferences

## Define the Skill

Sometimes reading effectively means understanding both what the writer tells you directly and what the writer implies. When you fill in the gaps, you are **making inferences**, or educated guesses. Making inferences involves using clues in the text to connect

implied ideas with what is stated. You also draw on your own prior knowledge and use common sense to help make inferences.

## Learn the Skill

Use the following strategies to practice making inferences.

*Supreme Court Justice Robert H. Jackson, West Virginia State Board of Education v. Barnette, 1943*

“The very purpose of a Bill of Rights was to withdraw certain subjects from . . . political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections . . .

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”

**1 Identify the main idea and details in the passage.** Take note of stated facts and information in the reading passage.

**2 Identify implied ideas in the text.** Look for ideas that are suggested but not directly stated. Noting statistics and opinionated language can help you understand what is being implied.

**3 Compare stated and unstated ideas with your prior knowledge.** Use facts from the reading, your common sense, and what you already know about a topic or an event to make a valid inference about it.

## Apply the Skill

- 1** What does the author believe about the purpose of the Bill of Rights?
- 2** What does the author mean by the statement “One’s right to life, liberty, and property . . . may not be submitted to vote”?
- 3** Using the reading and your prior knowledge, what can you infer about the protections provided in the Bill of Rights?

# Determining Relevance

## Define the Skill

When conducting research, you will likely be faced with a great variety of different sources. Identifying which sources will help you is an important task. One step in identifying your sources is to determine their relevance. **Determining relevance** means deciding if a piece of information is related to your topic. It also involves identifying how something is related to your topic.

## Learn the Skill

Use the following strategies to determine the relevance of information.

**1 Identify the specific topic.** Determine what types of sources address your research topic. Define your specific task to narrow down what types of information you need. Write down any questions for which you need answers.

**2 Locate a variety of sources.** Use several resources to track down sources. Textbooks, encyclopedias, periodicals, and electronic databases are just a few types of resources you can use.



The screenshot shows a search engine interface with a search bar containing 'juvenile crime' and a 'Search' button. Below the search bar are buttons for 'New Search', 'Advanced Boolean', and 'Additional Search'. Below the search bar are buttons for 'Save Checked' and 'Save All on Page'. Below the search bar is a table with the following data:

Num	Mark	Search Results	Type of Source	Year Published
1		Teenage Offenders: myths and realities/edited by Rebecca Ortiz and Katie Chow	Book	2005
2		Journal of Criminal Justice	Periodical	1967-present
3		Behind Bars: a novel/by Rod Thomas	Book	2002
4		Forensic science and juvenile crime	Video	1993
5		Changing face of juvenile crime/Time magazine	Magazine article	2004

**3 Examine the sources carefully.** Identify the purpose of the source and the information it provides.

**4 Determine what information is useful for your topic.** Decide if the information in the sources can help you answer the list of questions you created.

## Apply the Skill

**1** List several resources you might use to find

- 1 List several resources you might use to find information on the topic of juvenile crime.
- 2 How might you evaluate each of the sources listed above?
- 3 What sources from the list above would be relevant to your research? Explain.

# Developing and Testing Hypotheses

## Define the Skill

A **hypothesis** is a testable statement about the relationship between two or more factors. Hypotheses are possible explanations based on facts. Because they can be tested, hypotheses can be proved or disproved.

## Learn the Skill

Use the following strategies to learn to develop and test hypotheses.

**1 Identify the question.** Examine the issue at hand to find the trend, relationship, or event that you want to explain.

**Question:** What has caused the drop in Monroeville's crime rate?

**2 Examine the facts.** Identify all the facts surrounding the question. The facts may support several different conclusions.

**FACTS:**

- Crime rates in the city of Monroeville have declined for five consecutive years.
- Monroeville's crime rate used to be the highest in the county.
- This year unemployment rates dropped to an all-time low.
- The population of Monroeville has increased by 26 percent since the new factory opened six years ago.
- Monroeville has hired three new police officers in the last three years.

**3 Consider what you already know about the issue.** Use your own prior knowledge to help you formulate a hypothesis.

**Hypothesis:** The availability of jobs in Monroeville has led to the drop in the town's crime rate.

**FACTS THAT SUPPORT HYPOTHESIS:**  
Monroeville's population has increased 25 percent in six years.

**FACTS THAT REFUTE HYPOTHESIS:**  
Monroeville has three new police officers.

**4 Develop a hypothesis that addresses the question.** Analyze the facts and your own knowledge to form a conclusion, explanation, or prediction.

**5 Test your hypothesis.** Conduct research to test your hypothesis. Identify facts that support or refute your conclusion. Depending on your findings, you may need to modify your hypothesis.

## Apply the Skill

- 1 Develop a list of facts and a hypothesis that might explain why voter turnout rates among young voters has increased in recent years
- 2 Use a graphic organizer like the one above to test your hypothesis

# Evaluating Sources

## Define the Skill

Not all the sources you will come across in your research will be useful. By evaluating your sources, you can identify reliable and valid sources of information. Evaluating sources means that you

determine the reliability and validity of the information in your sources. A **reliable** source is one that is trustworthy and verifiable. In other words, it is a respected source of information. A **valid** source is one that is accurate and free from error. Strive to use only sources that are both reliable and valid.

## Learn the Skill

Use the following strategies to evaluate sources.

**1 Identify the author of the source.** Consider the author's background and determine if the author is an authoritative source on the topic.

**2 Examine the language used in the source.** Look for bias in the source. Sources that lack objectivity may not be reliable or valid.

**3 Identify the author's purpose, point of view, and frame of reference.** Information about the author and source may help you determine the source's reliability and validity.

**4 Determine if the source is valid and reliable.** Compare the source with other information on the topic to determine if the source is valid, or accurate. Use what you know of the author to determine if the source is reliable, or a respected source of information.

*James Madison, Journal of the Constitutional Convention, July 16, 1787*

“On the morning following before the hour of the Convention a number of the members from the larger States, by common agreement met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal Representation in the 2d branch, and the apparent inflexibility of the smaller states on that point. Several members from the latter States also attended. The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared indeed that the opinions of the members who disliked the equality of votes differed much as to the importance of that point, and as to the policy of risking a failure of any general act of the Convention by inflexibly opposing it. Several of them supposing that no good Governmt. could or would be built on that foundation, and that as a division of the convention into two opinions was unavoidable; it would be better that the side comprising the principal States, and a majority of the people of America, should propose a scheme of Govt. to the States, than that a scheme should be proposed on the other side, would have concurred in a firm opposition to the smaller States, and in a separate recommendation, if eventually necessary.”

## Apply the Skill

- 1 What is the purpose of this source?
- 2 Do you think this source presents a balanced or biased point of view? Explain your answer.
- 3 Is this source valid? Is it reliable? Explain your answers.

# Using Electronic Media

## Define the Skill

Much of your research will come from books and periodicals and also from electronic media.

**Electronic media** are digital sources of information such as the Internet and electronic databases. Because a great deal of research information has been digitized, it is often available through electronic sources. The Internet is one such electronic medium. Electronic databases are digital collections of records, books, periodicals, and other reference material. They can be found in most libraries. Using both the Internet and databases requires that you employ careful search techniques.

## Learn the Skill

Use the following strategies to learn to use electronic media.

**1 Determine the information you need.** Identify what specific information you need to search for. Write down keywords associated with your topics.

**Topic:** State transportation projects  
**Keywords:** transportation costs, department of transportation, transportation projects, highway construction

**2 Conduct a careful search.** Use databases and Internet search engines to identify possible sources of information. Use your list of keywords to search for sources. Be sure to analyze the search results carefully to determine if they are appropriate for your needs. You may need to adjust your topic or keywords based on the information you find.



**3 Evaluate your sources.** Once you have located several sources, investigate who wrote or created each one. Determine if the sources are balanced, reliable, and valid. Do not use sources that are questionable.

**4 Cite your sources.** Be sure to keep information about where you located your sources. Write down Web site URLs and the names of electronic databases.

## Apply the Skill

- 1 Who created the Web site pictured above?
- 2 Do you think the Web site above presents a balanced or biased point of view? How can you tell?
- 3 What other keyword search terms might you use to find information on state transportation projects?

# Synthesizing Information from Multiple Sources

## Define the Skill

An important critical thinking skill is synthesizing information. **Synthesizing information** means combining information from different sources. Each

source you use might provide different information on a particular topic or issue. Synthesizing the information from all of your sources will help you to produce a new idea, point of view, or interpretation.

## Learn the Skill

Use the following strategies to practice synthesizing information from multiple sources.

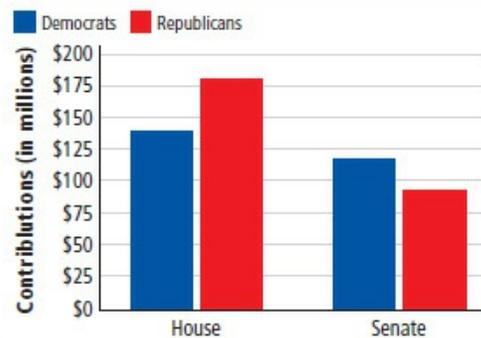
**1 Evaluate each source.** Analyze each source to determine if the source is valid and reliable. Determine if the various sources are comparable.

**2 Examine the information from each source.** Identify the key facts presented in each source separately. Make a list of the information each source provides.

**3 Compare the information from your various sources.** Identify similarities and differences between the sources and analyze relationships between the sources.

**4 Synthesize the information from the sources.** Draw conclusions based on the information from each of your sources. Use your conclusions to create your own interpretation, point of view, or idea on the topic.

### TOTAL CAMPAIGN CONTRIBUTIONS IN THE 2006 CONGRESSIONAL ELECTION



Source: Federal Election Commission

#### Chapter 12, Section 2

**Contributions by PACs** After individual donations, PACs are the most important source of campaign funding. In the 2006 House and Senate races, about 25 percent of the money raised came from PACs. This figure compares to about 60 percent that came from individuals' donations. Some candidates receive more PAC money than others, however. For example, in Tom DeLay's final race in 2004, almost half of his campaign funds came from PACs.

## Apply the Skill

- 1 Are the sources above valid and reliable? How can you tell?
- 2 What similarities and differences exist between the two sources?
- 3 What conclusions can you draw based on the information in these two sources?

# Creating a Multimedia Presentation

## Define the Skill

A **multimedia presentation** is a speech or presentation that uses a variety of media to present information to an audience. Multimedia presentations are used to help speakers convey engaging messages to their audiences. These presentations might include text, graphics, audio, video, and even animation.

## Learn the Skill

Use the following strategies to create a multimedia presentation.

**1 Plan your presentation.** Determine the main points of your presentation and conduct research to prepare. Write an outline or take notes on your key points.

**2 Determine what types of media best suit your presentation.** Music, audio, graphs, and charts are some of the media to consider. Keep in mind any time constraints you may have. Make a list of ways in which you might present certain information in your presentation.

**3 Identify the media available to you.** Consider what equipment and software are necessary to use the types of media you have identified. If necessary, revise your list of ways to present information.

**4 Prepare and deliver the presentation.** Use your outline to help guide your presentation. Use available resources to prepare the multimedia content. Practice your entire presentation before delivering it to your audience.

### TOPIC: HOW A BILL BECOMES A LAW

NOTES FOR PRESENTATION	TYPES OF MEDIA	AVAILABILITY OF MEDIA
<ul style="list-style-type: none"><li>• Bill is introduced into the House and Senate.</li></ul>	<ul style="list-style-type: none"><li>• video of news report; computer animation</li></ul>	<ul style="list-style-type: none"><li>• video from school library</li></ul>
<ul style="list-style-type: none"><li>• Bill is assigned to committee.</li></ul>	<ul style="list-style-type: none"><li>• text; chart listing different committees</li></ul>	<ul style="list-style-type: none"><li>• word processor or spread sheet program in computer lab</li></ul>
<ul style="list-style-type: none"><li>• Committee debates bill, makes changes, and votes.</li></ul>	<ul style="list-style-type: none"><li>• graphic organizer showing the actions taken in committee</li></ul>	<ul style="list-style-type: none"><li>• computer graphics program in computer lab</li></ul>
<ul style="list-style-type: none"><li>• Bill reaches floor where it is debated and voted on.</li></ul>	<ul style="list-style-type: none"><li>• text; audio of floor debate; graph of results of floor vote</li></ul>	<ul style="list-style-type: none"><li>• audio recordings available on Internet</li></ul>
<ul style="list-style-type: none"><li>• Bill goes to conference committee.</li></ul>	<ul style="list-style-type: none"><li>• text listing changes and summarizing debate</li></ul>	<ul style="list-style-type: none"><li>• word processor in computer lab</li></ul>
<ul style="list-style-type: none"><li>• Approved bill goes to president for signature.</li></ul>	<ul style="list-style-type: none"><li>• video or photo of president signing bill into law</li></ul>	<ul style="list-style-type: none"><li>• video from school library</li></ul>
<ul style="list-style-type: none"><li>• If vetoed, bill goes back to Congress for further action.</li></ul>	<ul style="list-style-type: none"><li>• text; chart of bills that have been successfully overridden</li></ul>	<ul style="list-style-type: none"><li>• word processor or spread sheet program in computer lab</li></ul>

## Apply the Skill

**1** Use a table like the one above to prepare a

multimedia presentation on the principles of the U.S. Constitution.

- 2 What types of media might help enhance your presentation? Why?

# Making Decisions

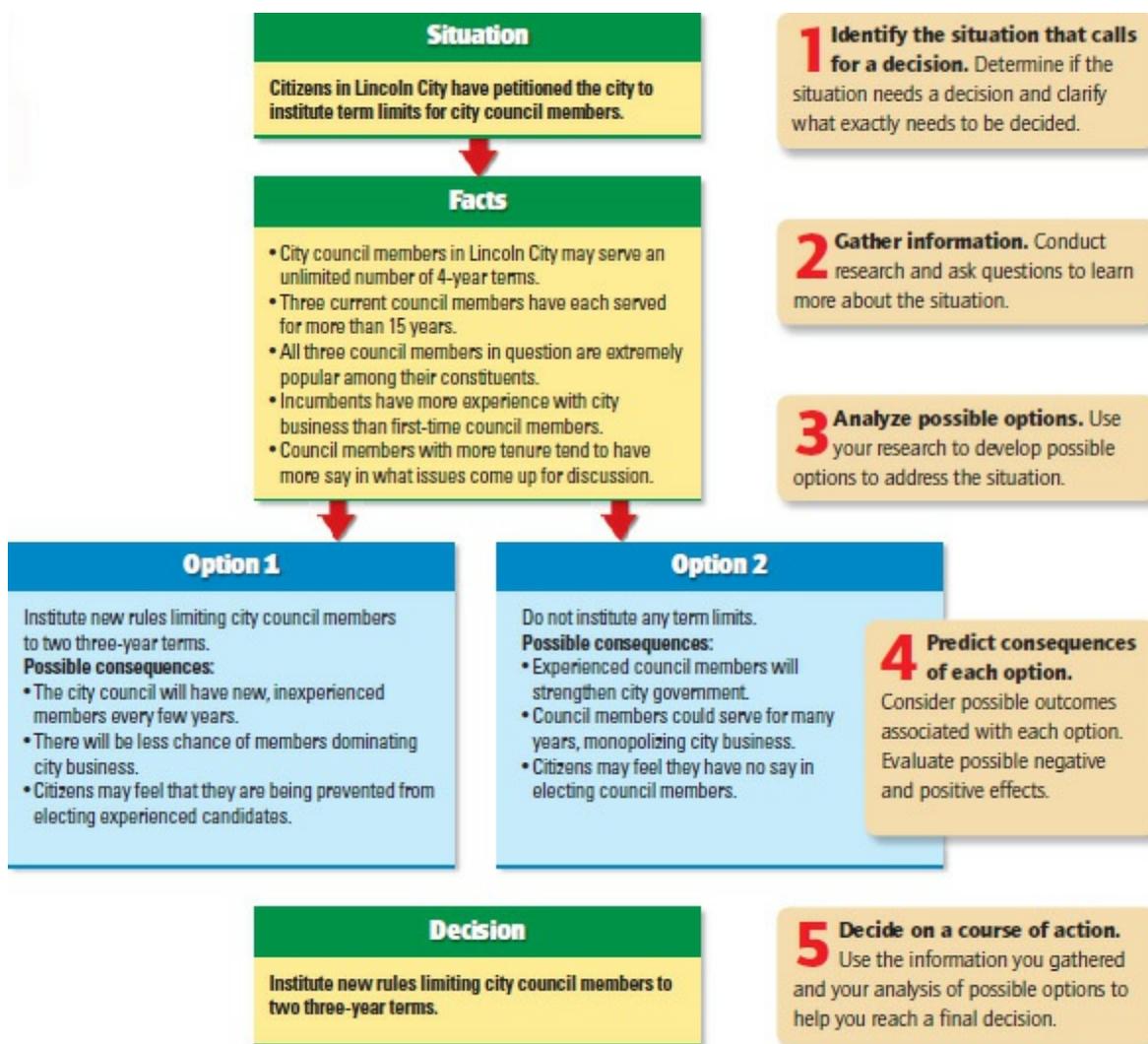
## Define the Skill

Making decisions is a skill that people use every day.

**Making decisions** involves gathering information, weighing possible options, and deciding on a course of action. Making reasoned decisions is an important critical thinking and citizenship skill.

## Learn the Skill

Use the following strategies to practice making decisions on a public policy issue.



## Apply the Skill

Use a graphic organizer like the one above to make a decision regarding the need for campaign finance reform.

# Solving Problems

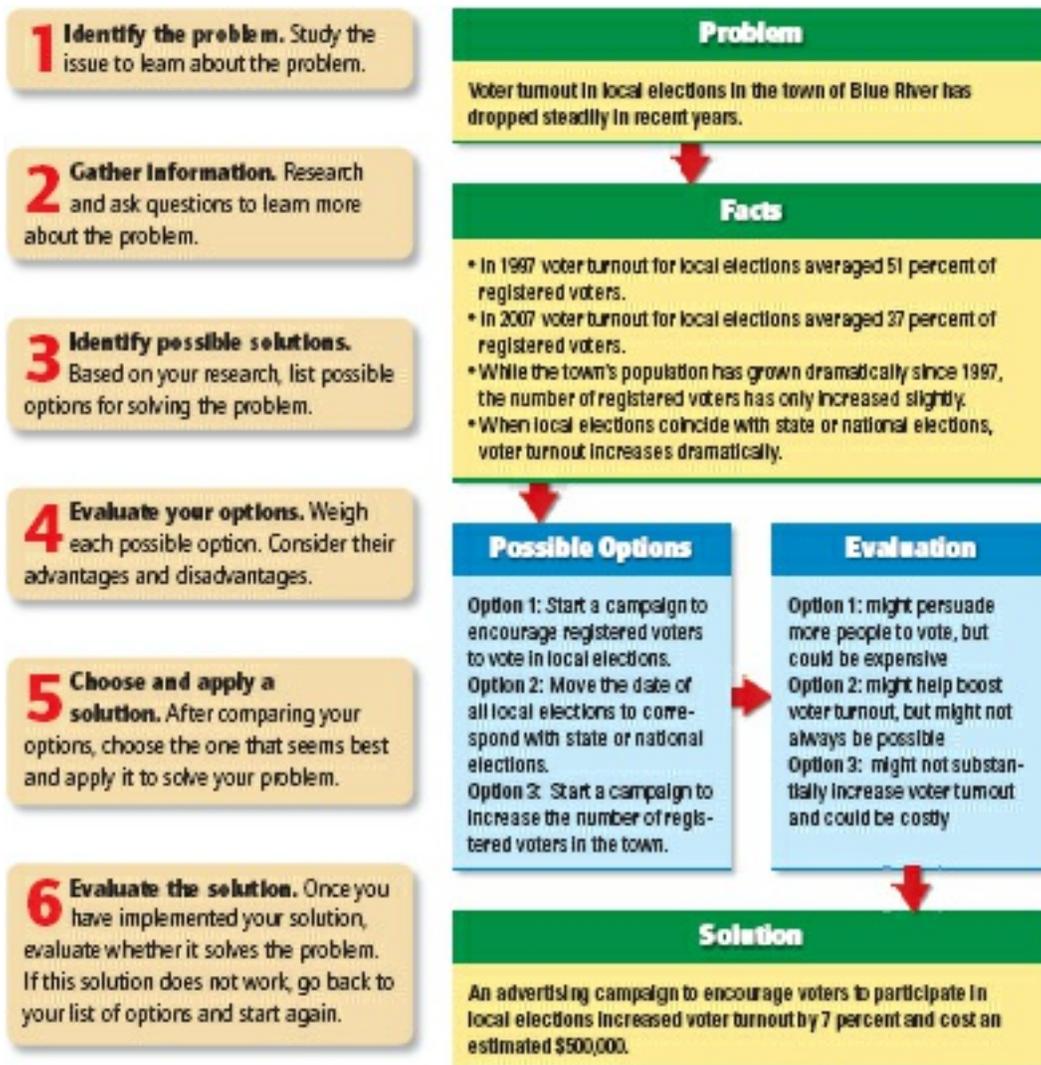
## Define the Skill

Solving problems is a process for finding solutions to difficult situations. It involves asking questions, identifying and evaluating information, analyzing a variety of solutions, and making judgments. Knowing how to solve problems is an important citizenship

skill.

## Learn the Skill

Use the following strategies to solve problems



## Apply the Skill

- 1 Use a graphic organizer like the one above to address the problem of a rise in graffiti at a local park.
- 2 Do you think your solution would be successful in solving the problem? Explain.

**PART**

**1**

# Essentials of United States Government



2

## **PART 1 CONTENTS**

### **CHAPTER 1**

**Foundations of Government**

### **CHAPTER 2**

**Origins of American Government**

### **CHAPTER 3**

**The Constitution**

**CHAPTER 4**

**Federalism**

**CHAPTER 5**

**Congress: The Legislative Branch**

**CHAPTER 6**

**The Presidency**

**CHAPTER 7**

**The Executive Branch at Work**

**CHAPTER 8**

**The Federal Courts and the Judicial Branch**

**CHAPTER 9**

**The Political Process**

**CHAPTER 10**

**Civil Liberties**

**CHAPTER 11**

**Civil Rights**

# Foundations of Government

**Essential Question** What are the ideals and key principles that characterize American democracy?

**About the Photo** Remind students that the current U.S. flag with its 50 stars dates from July 4, 1960, following the admission of the 50th state, Hawaii. Hawaii was admitted in 1959, but it had been decided in 1918 that new stars, representing new states, would be added to the flag on July 4th.

## CHAPTER AT A GLANCE

### SECTION 1 The Purposes of Government

- Government is the formal structures and institutions through which decisions are made for a body of people.
- Most governments today exercise power within the context of a state.
- Governments function to ensure national security, maintain order,

resolve conflict, provide services, and provide for the public good.

- Many theories have been put forth to explain why governments exist and the source of government's authority.

## **SECTION 2 Forms of Government**

- Forms of government can be grouped into categories based on who exercises authority and how power is distributed.
- Within a government, how power is shared between a central government and local governments determines whether a government has a unitary, federal, or confederal system.
- Most democratic governments have either a presidential or parliamentary system of government. In presidential systems, power is divided between executive and legislative branches. In parliamentary systems, the functions of the executive and legislative branches are often combined.

## **SECTION 3 Democracy in the United States**

- American democracy has been guided by a core set of democratic ideals—liberty, equality, and self-government—since our nation's earliest days.
- U.S. citizens ensure the continuation of democracy by committing to uphold basic principles of American democracy, including the worth of the individual, the rule of law, majority rule/minority rights, compromise, and participatory citizenship.
- Economic freedom and the free enterprise system have a special place in American democracy and help preserve liberties and limit government.



Our nation’s system of government is based on constitutional law established by the United States Constitution. See the “We the People: The Citizen and the Constitution” pages in this chapter for an in-depth exploration of why our nation’s Founders chose constitutional government.



## The Purposes of Government

### BEFORE YOU READ

#### Main Idea

Understanding major political ideas and classic forms of government will help you understand the purposes of government.

#### Reading Focus

1. What is government?
2. Which major characteristics do all states share?
3. What are the major functions of government?
4. What theories of rule have

#### Key Terms

government  
 power  
 policy  
 state  
 sovereignty  
 politics  
 legitimacy  
 divine right of kings  
 social contract  
 theory

been put forth  
to explain  
government?



Use the graphic organizer online to take notes on the purposes of government.



**Life without Government** In 1992 the world caught a glimpse of what life without government would be like when war broke out in what is today Bosnia-Herzegovina.

The war was a result of the collapse of Yugoslavia. It pitted two once friendly ethnic groups—the Bosnians and the Serbs—against one another.

The Bosnian capital of Sarajevo was particularly hard hit. For 44 months, Serbian forces laid siege to the city, blocking all roads leading in and out of Sarajevo. Approximately 400,000 residents were trapped in the city, subjected to daily sniping and shelling and cut off from food, medicine, water, and electricity. Even United Nations peacekeepers were unable to stem the violence. By the end of the siege, nearly 12,000 civilians had died.

The daily terror in Sarajevo calls to mind a bleak vision put forth by the English philosopher Thomas Hobbes nearly 400 years ago. According to Hobbes, without government, people would find themselves in a “war of all against all” that made life “nasty, brutish, and short.” Peace and security could only be achieved by establishing government. In fact, Hobbes argued, that achievement was government’s primary purpose. ■

## A Government Collapses



**These photos show Sarajevo in 1992. At left, rubble and burned-out buildings line a city street. Above, UN peacekeepers take cover as residents run under sniper fire in Sarajevo’s “Sniper Alley.”**

# What Is Government?

Americans sometimes complain that the problem with government is that there is just too much of it. The collapse of Yugoslavia, however, makes clear just how much people count on government in their daily lives. Strong national defense, law and order, and clean water are just a few of the services that most people, Americans included, expect of “good” government.

Before examining the workings of the U.S. government, it is important to first understand a number of major political ideas. Top among these ideas is the concept of government itself. **Government** is made up of the formal institutions and processes through which decisions are made for a group of people. Most governments consist of three main components: people, powers, and policies.

In terms of people, government includes both elected officials who have authority and control over others as well as all of the public servants who carry out the day-to-day business of government. So the postal carrier on your block, the president, a paratrooper in the armed forces, a judge in traffic court, your state and national legislators—all these people and more—make up government.

Another component of government, **power**, refers to the government’s authority and ability to get things done. The people in government exercise three basic types of power. First, a government must have legislative power, or the power to make laws. Second, government exercises executive power to carry out, enforce, and administer the law. Third, a government must have judicial power, which is the power to interpret the laws and to settle disputes between members of society.

Governments also carry out policies. A **policy** is any decision made by government in pursuit of a particular goal. A policy can take the form of a law, a government program, or even a set of government actions. Taxation, defense, environmental protection, health care, and transportation are just some of the policy areas that concern government.

**READING CHECK** **Summarizing** Describe the three main

components of most governments.

## Characteristics of a State

Today most governments exercise power within the context of a state. A **state** is a political unit with the power to make and enforce laws over a group of people living within a clearly defined territory. Used in this sense, the term *state* does not refer to one of the 50 states in the United States. Instead, it stands closer in meaning to the terms *country* and *nation-state*. All such states are characterized as having a population, a territory, a government, and sovereignty.

**Population** A state must have people, but the size of a population does not determine whether or not a place is a state. For example, Tuvalu, a group of nine tiny islands in the South Pacific with fewer than 12,000 people, is one of the world's smallest states. By contrast, more than 1 billion people live in Henan Province in China. Because its people, land, and government are subject to the laws of China, Henan is not an independent state.

**Territory** States must have clearly defined and recognized borders. Throughout history, border disputes, and the wars they often trigger, have shaped relations between states. Today members of the United Nations, the world's chief body for international cooperation, pledge to respect the territorial boundaries of every other member state.

## Origins of the State

**Many theories have been put forth to explain how and why the state came into being. Among them are**

### **Divine Right Theory**

**States are founded by God or the gods, and the ruler possesses a “divine right” to rule.**

## Evolution Theory

States form gradually over time, growing from family and extended kinship groups.

## Social Contract Theory

States form when people reach a “contract” to surrender some power to a common authority in return for security.

## Force Theory

States form when an individual or group uses force to make enough people submit to a central authority.



### INTERPRETING CHARTS

How do social contract theory and force theory differ in their explanations of the origins of the state?

**Government** All states are politically organized. In other words, they have governments that issue and enforce rules for the people living within their territories. These governments are recognized from within by their own people as well as by other nation states in the international community. The United States, France, Japan, China, Nigeria, Brazil, and Mexico are just a handful of the nearly 200 recognized states in the world today.

**Sovereignty** Every state is said to have **sovereignty**, or the supreme power to act within its territory and to control its external affairs. Sovereignty includes independence from other states as well as the freedom to establish a form of government. The individual states of the United States do not have this authority; therefore, they are not states in the sense of international law.

A state’s sovereignty does not mean that its government is above the law. Most states limit the sovereign power of their governments with a set of rules that restricts the lawful use of power. Usually, these rules are outlined in a constitution, or a written plan of government.

**READING CHECK** **Identifying the Main Idea** Why is sovereignty important to a state?

How does government function in people's everyday lives? What roles does it play? Most governments, including the U.S. government, perform a number of key functions.

## Functions of Government

**Ensure National Security** One of the most basic purposes of government is to guard its territory and its people against external threats, such as those posed by enemy states and terrorists. Toward this end, most states devote a great deal of their resources to national defense forces, including armies, navies, and air forces. For example, in 2007 the United States spent about \$600 billion on defense. That paid for more than 2.5 million military personnel and their weaponry, active military operations, and numerous peacekeeping missions as well as the nation's intelligence-gathering activities.

Because national security also depends on maintaining good relations with other nations, the United States spent an additional \$35 billion on diplomacy. This money helped support U.S. embassies, treaty negotiations, and other efforts to build strong relationships with foreign countries. In all, roughly one-fifth of our nation's 2007 federal budget was spent on national defense measures and international relations.

**Maintain Order** As you read in *Why It Matters* that opened this section, the philosopher Thomas Hobbes (1588–1679) asserted that life without government was like a war pitting each individual against the other. Universal war—who would want to live in such an environment?

Only when government was established, Hobbes argued, could order be brought to society. Indeed, one of the chief tasks of government is to establish and maintain order within its territory, thereby securing the safety of people and property. To do this, governments establish laws and a means to enforce those laws. Laws must set clear rules about

unacceptable behavior. Stealing and killing, for example, are behaviors societies typically categorize as unlawful. Laws must also clearly set forth the consequences for violating the rules.

Ideas about lawful behavior differ from society to society and are often quite complicated. In the United States, for example, blatant bribery of a government official—such as giving a politician money with the intention of influencing his or her decision making—is illegal. Elected officials can, however, receive gifts, campaign contributions, and offers of employment so long as nothing is promised or expected in return. In some nations, all such gifts are unlawful.

Likewise, societies hold different ideas about what constitutes appropriate punishment. In the United States, the death penalty is a legally accepted punishment for murder in 36 states. By contrast, most European and Latin American countries no longer practice capital punishment.

Laws without enforcement serve little purpose, so governments have means to identify and punish wrongdoers. Usually, these functions are divided among three institutions. First, the police identify alleged wrongdoers. Then courts determine their guilt or innocence and assign a punishment. Lastly, in the penal system, or prisons, the punishment is carried out.

**Resolve Conflict** The ability of government to maintain order is closely tied to its ability to resolve conflict. Some governments maintain order through intimidation and force. Most governments, however, rely on other means—such as politics and the judicial system—for the peaceful resolution of conflict.

**Politics** is the process by which government makes and carries out decisions. The political process provides people with an arena for pursuing different and often competing interests. By participating in the political process, groups try to influence the decisions that government makes. Politics is also about debating issues and policies. In democratic societies, groups with different interests frequently must compromise

with their opponents in order for government to make decisions. In this way, the political process helps resolve conflicts about what government should do—what laws it should create, what programs it should enact, and what policies it should pursue.

Government also establishes a system of justice in which conflicts can be resolved. Parties who feel they have been wronged can seek relief in courts. Courts determine whether a law has been broken or whether a party has been wronged and decide what should happen as a result.

**Provide Services** Today residents in most developed nations expect government to provide an array of services. The U.S. government, for example, spends billions of dollars every year on dozens of public policies and projects, ranging from building roads and providing parks and recreational facilities to delivering the mail and educating young people. The people of the United States pay local, state, and national taxes to fund these services.

# FUNCTIONS OF GOVERNMENT

QUICK  
FACTS

## Ensure National Security

- Protect the nation's people and territory from external threats

## Maintain Order

- Maintain internal order through police and the legal system

## Resolve Conflict

- Provide means to resolve conflicts through politics and the legal system

## Provide Services

- Provide a variety of services, ranging from education to public transportation, which are paid for by tax dollars

## Provide for the Public Good

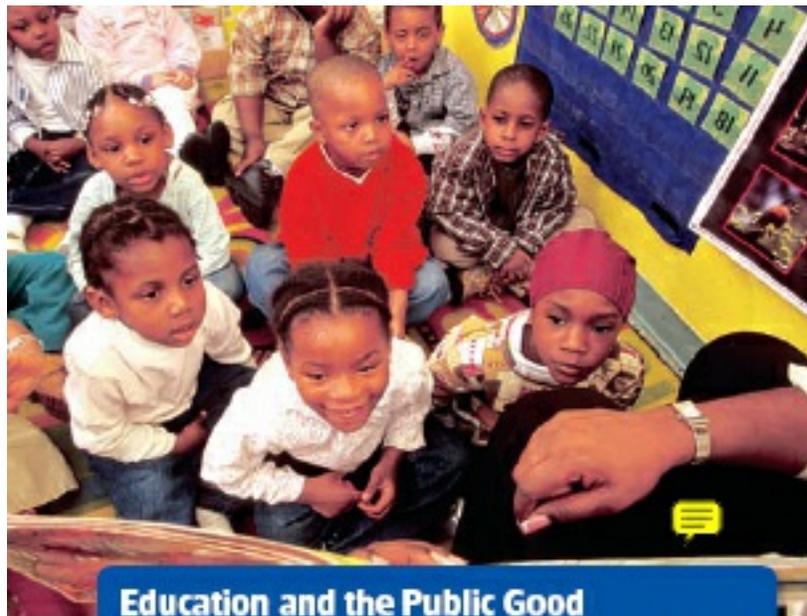
- Make decisions and policies that attempt to balance the public good with the needs of smaller segments of the population

Some U.S. government services, such as clean water, roads, and public parks, are available for everyone's use and cannot be denied to any particular person or group. Such services are called *public goods*. Other services, such as medical care, high schools, and public housing may be restricted to people who meet specific qualifications.

**Provide for the Public Good** The Preamble to the U.S. Constitution lays out as one of its goals the promotion of "the general welfare." Another name for the general welfare is the public good—the needs and interests of the people as a whole. In the United States, as in many countries, people believe that government must balance the public good with the needs of select groups within the population.

## What might be the consequences to individuals and society if too great an emphasis is placed on protecting the public good at the expense of individual rights?

The notion of the public good is an abstract one. What does it mean? Who defines it? There may be agreement about some things considered in the public good. Building roads, for example, potentially benefits everyone, or at least everyone who uses the road. But what about the person whose house must be removed or whose land is taken by the government to make way for the road? Defining the public good involves making tough choices that often do not benefit everyone equally.



### Education and the Public Good

An educated citizenry is key to the maintenance of democracy. In the United States, students start school as young as age three, and more than one-half of high school graduates continue to college.

The definition of the public good changes over time. Before 1900, for example, the United States had few national laws to ensure a safe supply of food. Surely there could be no clearer example of serving the public good than putting in place regulations designed to safeguard food. Still, at the time, many people disagreed, including members of the Supreme Court. In their view, the public good was better served by minimizing government regulations on business.

Even the definition of “public” can change. For much of our nation’s

history, most African Americans and Native Americans were not considered part of the “public,” nor did the government consider their needs or desires when making decisions designed to meet the public good. Moreover, because of restrictions on voting rights, all women and many men had no voice in defining the public good.

## ACADEMIC VOCABULARY

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**absolute** not limited by restrictions

Over time, however, the definition of “public” has expanded to become a more inclusive concept. In 1868 African Americans became citizens. In 1920 women gained voting rights. Still, the debate over who to include in the “public” continues. For example, are people convicted of crimes part of the public whose interests must be served? What about undocumented immigrants and their children, who may be U.S. citizens?

Because our government is a government of, by, and for the people, it is our job to address these difficult questions. We do this through the process of politics. Being effective citizens and civic participants requires a solid understanding of the government we have.

**READING CHECK** **Making Inferences** How might ideas about the public shape policy?

### Theories of Rule

Political philosophers have long wondered why the majority of people allow others to rule them. Certainly, some governments rule through force and fear. But even in states ruled through force, rebellions can occur. What makes some forms of rule more acceptable than others?

To explain why people accept some forms of rule and not others, political philosophers have developed the idea that rulers often have **legitimacy**. That is, rulers are seen as right and proper by important segments of a nation’s population. As a result, people voluntarily accept governance from those they see as their rightful leaders.

**Divine Right** Throughout history, the belief that a ruler is chosen by God or the gods has been a powerful source of legitimacy. In ancient China, emperors were said to rule with the “Mandate of Heaven.” In ancient Egypt, in the Inca Empire, and in Japan until the mid-twentieth century, rulers were seen as divine, as gods on earth. Roman emperors, often merely successful generals, routinely declared themselves to be gods.

In seventeenth century Europe, to reinforce the absolute power they held over their kingdoms, kings often claimed that their power stemmed from the will of God. In the mid-1600s a French religious leader named Jacques-Bénigne Bossuet put forth a political and religious theory based on this idea. Bossuet argued that the French king Louis XIV possessed the **divine right of kings**. This made the king answerable only to God, not to the people he ruled. To disagree with the king was to disagree with God.

Combining the power of earthly rule with divine sanction, or approval, can be a remarkably effective means of asserting legitimacy—at least for a while. About 100 years after Bossuet defended the French crown, King Louis XVI was beheaded during the French Revolution.

**Natural Law and Natural Rights** An alternate theory of rule rests on the idea of natural law, a system of rules derived from the natural world. As a system, natural law is said to provide a just and rational order to all things in the world, including human behavior. Following the logic of natural law, all people, by virtue of their being human, possess natural rights. Today these rights are commonly understood as human rights.

Notions of natural law have a long history. The ancient Greek philosopher Aristotle wrote of natural law, as did the ancient Roman leader Cicero. Medieval Christian thinkers, such as Augustine and Thomas Aquinas, linked the idea of natural law to their faith. Aquinas argued that since human nature comes from God, natural law, too, must come from the same divine source.

Natural law binds citizens and rulers alike. As a result, according to many philosophers, a legitimate government does not violate natural law. In this line of thinking, citizens are not obligated to follow a ruler who

acts against natural law. “If the subjects have a government which commands unjust things,” wrote Thomas Aquinas, “they have no obligation to obedience.”

**The Social Contract** Beginning in the 1600s, a number of influential European thinkers contributed to a new theory of rule. **Social contract theory** holds that the first governments formed as a result of people agreeing among themselves to submit to the authority of a state. In return, the state would provide people protection and support. Under this theory, a government is legitimate only so long as the parties to the agreement hand over their power to the state.

The theory dates back to the English philosopher Thomas Hobbes. In his classic work *Leviathan* (1651), Hobbes argues that people originally lived in a “state of nature” without government or laws. In the state of nature, people enjoyed complete personal freedom but were also driven by self-interest and were constantly at war with one another over scarce resources:

### **PRIMARY SOURCE**

**„ In such condition there is no place for industry, because the fruit thereof is uncertain ... no arts, no letters, no society, and, which is worst of all, continual fear and danger of violent death, and the life of man solitary, poor, nasty, brutish, and short.”**

—Thomas Hobbes, *Leviathan*, 1651

Because the state of nature is so violent, Hobbes reasons, humans decide to cooperate. That is, they enter into a social contract and form a government.

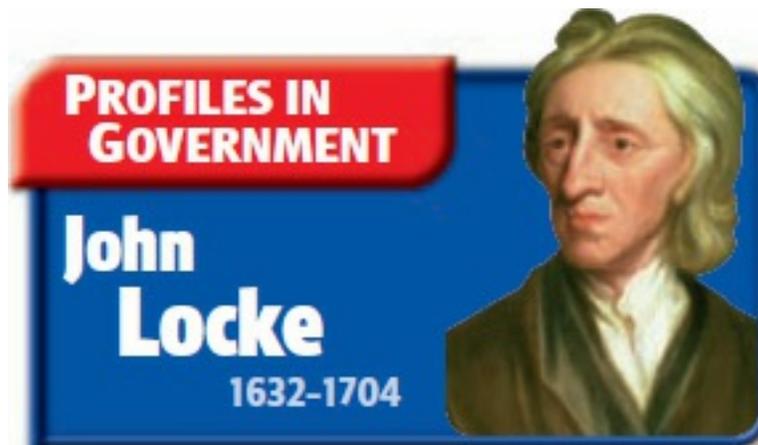
Hobbes argues that government must have great power to defend itself and compel people to obey its laws. To describe the enormous

power wielded by such a state, Hobbes uses the metaphor of a leviathan, a monstrous and powerful biblical sea creature. The state's power is enormous because it contains all the power given up by the people. In exchange, the people gain peace and security. This, Hobbes asserts, works to everyone's advantage.

## Sources of Power

Chinese emperors, such as the Emperor Qianlong (left, ruled 1735–1796) had to serve their people well to keep the “Mandate of Heaven.” By signing the Mayflower Compact in 1620, the Pilgrims (below) agreed to a social contract and formed a government “for the general good of the colony.” *How did the will of the people figure into both approaches to rule?*





English philosopher John Locke (1632–1704) also saw government as the product of a social contract built on the consent of the governed. Locke, however, emphasized that people had natural rights. In his view of the state of nature, people are governed by natural law. They consent to government solely to protect their natural rights, including life, liberty, and property.

Locke believed that in order to protect natural rights from government interference government power had to be limited, or subject to certain restrictions. Any violation of the people's natural rights by government provided grounds for rebellion. In other words, people could withdraw their consent from government and start anew.

French philosopher Jean-Jacques Rousseau (1712–1778) introduced a third vision of the state of nature and the social contract. According to Rousseau, humans lived independent lives in the state of nature, but they were happy, good, and free. It was the formation of societies and government that corrupted the human condition and introduced inequality.

In *The Social Contract* (1762), Rousseau argues that the only way people could regain their freedom was by establishing a government that was both based on a social contract and responsive to the “general will” of the people. As you will read, Rousseau’s ideas, as well as Locke’s, would profoundly influence early American political leaders.

**READING CHECK Summarizing** What assumptions about human nature did Locke and Rousseau make?

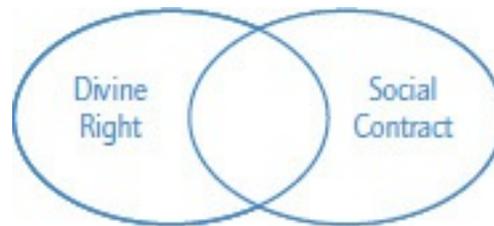
## Reviewing Ideas and Terms

- Describe** What is government?
  - Make Inferences** How did Chinese culture change during the Period of Disunion?
- Identify** What are the four characteristics of a state?
  - Make Inferences** What might happen if a state is not recognized by other states?
- Summarize** What are the major functions of government?
  - Rate** Which function of government do you think is most important? Explain.
- Explain** How is natural law related to natural rights?

**b. Compare** How do Hobbes, Locke, and Rousseau understand the state of nature and the social contract differently?

## Critical Thinking

**5. Compare and Contrast** Copy the diagram below to contrast theories of rule based on divine right and the social contract.



## FOCUS ON WRITING



**6. Persuasive** Imagine what life would be like if you lived in the “state of nature” described by Thomas Hobbes. Write a speech to convince others to join with you and form a government.

## DEBATING THE ISSUE

**Eminent Domain:**

**Public Good over Private Property**

*What rights should the government have over private property?*

### THE ISSUE

The Fifth Amendment to the U.S. Constitution guarantees “life, liberty, and property,” and states that no person’s property can be taken by the government for public use without just compensation. Still the national and state governments can exercise eminent domain, or the power to take private property for public use, presumably to serve the public good. In exchange, eminent domain compels the

government to pay property owners a fair price for their land. In cases where the rights of property owners and the power of government are at odds, conflicts arise. Who decides what amounts to “the greater public good”? Whose rights are more important? Who determines a fair price?



**In 2000 the city of New London, Connecticut, condemned Susette Kelo’s house to make way for new housing, offices, and a marina that would generate more money for the city. Kelo fought the**

## VIEWPOINTS

**Enabling Eminent Domain** Enabling Eminent Domain Do the economic benefits of private development constitute public use under the Fifth Amendment? In *Kelo v. City of New London* (2005), the Supreme Court ruled that private, for-profit development—in this case, tearing down private residences in order to build restaurants, shops, offices, apartments, a hotel—indeed qualifies as public use. The Fifth Amendment did not require a literal definition of public use, the Court held, but instead the “broader and more natural interpretation of public use as ‘public purpose.’” The Court reasoned that because it benefited the economic development of the community, the plan did indeed fit the definition of public use.

**Restricting Eminent Domain** Many Americans worry that the *Kelo* ruling gave local government too much power to seize private property. Some states have already passed legislation to restrict the use of eminent domain. In November 2005, about four months after the *Kelo* decision, the U.S. House of Representatives overwhelmingly voted to pass the Private Property Rights Protection Act. The act specified that federal funds would be withheld from state and local governments that exercise eminent domain over property intended for private economic development. The bill makes allowances for public projects such as building hospitals and roads and in cases of abandoned private property.

## What Is Your Opinion?

1. Should government exercise the power of eminent domain to boost a city's or a state's economy? What constitutes abuse of eminent domain?

2. Is the public good always best served through eminent domain? Under what circumstances, if any, might your opinion change?



## Forms of Government

BEFORE YOU READ

### Main Idea

Different forms of governments are categorized based on who exercises authority and how power is organized.

### Reading Focus

1. What are the classic forms of government?
2. How is national power organized differently in unitary, federal, and confederal systems?
3. In what ways do presidential and parliamentary systems

### Key Terms

monarchy  
dictatorship  
oligarchy  
direct democracy  
republic  
unitary system  
federal system  
confederal system  
presidential system  
parliamentary system

differ?



Use the graphic organizer online to take notes on different types of government systems.

## ONE PEOPLE Two Koreas



**The Power of Government** More than 50 years ago, during the Korean War (1950–1953), the border between North Korea and South Korea was shut down. In the years since, the two countries have followed dramatically different paths.

In the 1980s South Korea developed into a vibrant multiparty democracy and an economic powerhouse. Today South Korea is the world's fourteenth-largest economy and a leading exporter of cars and personal electronics. It is also one of the most digitally connected countries in the world. Wireless Internet, cell phones, and online gaming dominate the nation's popular culture.

Meanwhile, North Korea turned to totalitarianism and communism and sank into poverty. Backed by nuclear capabilities and the world's fifth-largest army, the nation's dictator Kim Jong Il tightly controls all aspects of life in North Korea. Although information about life in North Korea is closely guarded, reports of mass famine, torture, slave labor, prison camps, and public executions have reached the outside world.

The divide between the two Koreas shows just how deeply forms of government affect people's lives. Put simply, it matters a great deal who rules a nation and what form of government is in place. ■



**Despite their differences, South Korean president Roh Moo-hyun (above, with his wife) and North Korean dictator Kim Jong Il (right)**

**signed a wide-ranging peace and prosperity pact on October 4, 2007.**

## **The Classic Forms**

“Democracy is the worst form of government,” British politician Winston Churchill once commented, “except all others that have been tried.” One might expect a democratic leader like Churchill to vigorously defend democracy. Instead, he suggests that all forms of government have their problems, and all have the power to do great harm or good to those under their rule. One way to understand how different forms of government affect people’s lives is to ask: Who has the authority to rule?

**Monarchy** In a **monarchy** the government is headed by one person, such as a king or a queen, who exercises supreme authority. Monarchs inherit their position and their power by virtue of being born into a royal family. In an absolute monarchy, their powers are unlimited and unchecked.

Monarchies have been the most common form of rule in world history. Today though, monarchies are rare. In some nations, such as Saudi Arabia, the royal family still exercises ultimate authority. Most present-day kings and queens, however, are ceremonial heads of state for constitutional monarchies. The real power lies in another part of government, such as a legislative body. Spain, Great Britain, and Japan are just a few of the world’s 30 constitutional monarchies.

Monarchy is an example of autocracy, any form of government in which a single individual—an autocrat—controls most governing decisions. Placing the bulk of government power in the hands of one person is risky business. As the British historian Lord Acton once commented, “Power tends to corrupt and absolute power tends to corrupt absolutely.” In the modern world, Acton’s maxim is most clear in nations under the rule of autocrats called dictators.

**Dictatorship** A **dictatorship** is a system of rule in which one person, a dictator, or a small group of people can hold unlimited power over government. Dictators often achieve power by violently overthrowing a

government. They maintain power by force, stifling even peaceful opposition with varying degrees of repression and brutality.

# CLASSIC FORMS OF GOVERNMENT

FORM	CHARACTERISTICS
<p><b>Monarchy</b> Example: Jordan</p>	<ul style="list-style-type: none"> <li>• Ruled by a monarch, usually a king or a queen, who belongs to a royal family</li> <li>• Power is inherited</li> <li>• Absolute monarchs have unlimited power</li> </ul>
<p><b>Constitutional Monarchy</b> Example: United Kingdom</p>	<ul style="list-style-type: none"> <li>• Based on the idea that there are limits to the rightful power of a government over its citizens</li> <li>• Power of the monarch is limited by law; the real power lies in another branch of government</li> <li>• May coexist with other forms of government, such as representative democracy</li> </ul>
<p><b>Dictatorship</b> Example: Cuba</p>	<ul style="list-style-type: none"> <li>• Single dictator or a small group holds absolute authority and makes all decisions</li> <li>• Violence and force used to maintain rule</li> </ul>
<p><b>Totalitarian Regimes</b> Example: North Korea</p>	<ul style="list-style-type: none"> <li>• Dictator holds ultimate authority</li> <li>• Government tightly controls all aspects of life—political, social, and economic</li> <li>• No formal or informal limits on government</li> </ul>
<p><b>Oligarchy/ Aristocracy</b> Example: ancient Greece (Sparta)</p>	<ul style="list-style-type: none"> <li>• Small group of powerful people make most government decisions for their own benefit</li> <li>• Membership in the ruling group may be based on wealth, family, or military power</li> </ul>
<p><b>Theocracy</b> Example: Iran</p>	<ul style="list-style-type: none"> <li>• Rulers claim to represent and be directed by a set of religious ideas</li> <li>• Laws are rooted in a particular religion or religious doctrine</li> <li>• Government power is unlimited</li> </ul>
<p><b>Direct Democracy</b> Example: ancient Greece (Athens)</p>	<ul style="list-style-type: none"> <li>• Government by the people; citizens are the ultimate source of government authority</li> <li>• Citizens come together to discuss and pass laws and select leaders</li> <li>• Works best in small communities</li> </ul>
<p><b>Republic/ Representative Democracy</b> Example: ancient Rome, United States</p>	<ul style="list-style-type: none"> <li>• Government by the people; citizens are the ultimate source of government authority</li> <li>• Indirect form of democracy; citizens elect representatives to make government decisions on their behalf</li> <li>• Representatives elected for set terms</li> </ul>



### The Roman Republic

In 509 BC the Romans established a new form of government—the republic. The essence of the Roman Republic was the Senate, a body of 300 members who advised elected officials, controlled public finances, reviewed proposed laws, and handled all foreign relations.

Dictators may claim that they respond to the will of the people or even that they head democratic states. In reality, most dictators head authoritarian regimes, under which people are subject to various forms of state control. At its most extreme, authoritarianism becomes totalitarianism. Totalitarian governments seek to dominate all aspects of society—the government, the economy, and even people’s personal beliefs and actions. Nazi Germany under Hitler, the Soviet Union under Joseph Stalin, China under Mao Zedong, and North Korea under Kim Jong Il are examples of totalitarian regimes.

Some dictatorships may be led by small groups of people, usually members of the military or the economic elite. This state of affairs is sometimes called an **oligarchy**, meaning rule by a few, or an aristocracy. Many dictatorships are secular governments, meaning that their laws and political institutions are independent of religion. Others, however, are theocracies, or governments under the rule of a small group of religious leaders.

**Democracy** The term democracy means “rule by the people.” Strictly speaking, in a pure democracy, the people make major government decisions through a process of majority rule. Whatever the majority of voters wants becomes law.

Such was the state of affairs in Athens and other ancient Greek city-states. Athenian democracy was a **direct democracy**. Citizens met regularly in a popular assembly to discuss issues and vote for leaders. Athenians liked to boast that in their government everyone had equal say. In truth, Athenian democracy was an elite-based system. Only a small fraction of the male population was eligible to participate in political life. Neither women nor slaves, who formed the majority of the population, could participate.

Direct democracy works best in small communities, where people are able to meet face to face. For large, industrialized nations, however, direct democracy is an impractical option. For this reason, most of the world's democracies—the United States included—are republics. A **republic** is an indirect form of democracy that places political decision making at least one step away from the people. In a republic, the people elect representatives to make decisions on their behalf.

Still, forms of direct democracy persist within republics. In the United States, for example, a handful of New England towns govern by holding town meetings, in which all townspeople have a say in setting policy.

People often use the terms *republic* and *representative democracy* interchangeably to describe the U.S. political system. The main point about a representative democracy is that people are the ultimate source of government authority. In such a system, elected representatives closely follow the wishes of the people, elections are free and fair, and everyone has equal opportunity to participate in the political process.

**READING CHECK** **Identifying the Main Idea** Who holds political power in a representative democracy?

## Organizing National Power

Most national governments consist of a number of smaller administrative units—states, cities, or provinces. The power to govern these units can be spread across different geographic regions or it can be centralized. In

addition to understanding who governs, it is important to ask: How is national power organized across regions?

**Unitary Systems** The vast majority of the world's nations have unitary systems of government. In a **unitary system**, sovereignty, or ultimate authority, rests in a single, national government. The United Kingdom, France, and Japan are leading examples of unitary governments.

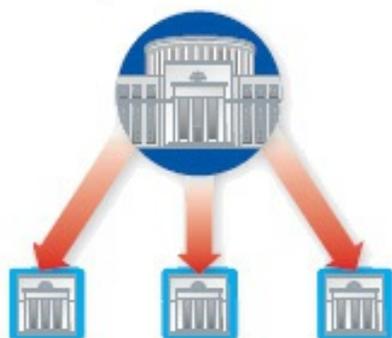
In unitary systems, local levels of government may be active and important agencies of rule, but the national government has ultimate authority. It also has the power to change or abolish local governments as it sees fit. In the United Kingdom, for example, the British Parliament still has authority to override and even dismantle the parliaments of Northern Ireland and Scotland.

**Federal Systems** A **federal system** of government divides power over people and territory between a national government and smaller, regional levels of government. As it exists today, the federal system is largely an American invention—the product of compromises made by the Framers of the U.S. Constitution over balancing national power and states' rights.

The U.S. federal system consists of two levels—an overarching national government and 50 state governments. Both levels have the power to make their own laws, elect officials, and create agencies. A significant feature of American federalism is that each level has the power to act independently of the other level, and neither level can abolish or reorganize the other level at will. For example, Congress cannot redraw the boundaries of California to give more land to Oregon and Nevada.

# POWER IN THREE SYSTEMS OF GOVERNMENT

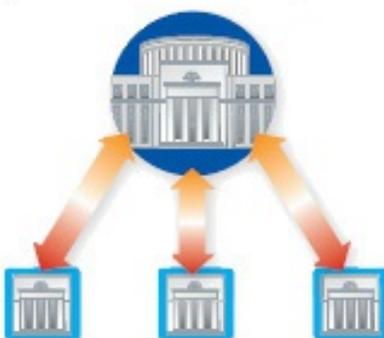
● Central government   ■ States and regions   ⇄ Flow of power



## Unitary

Power is concentrated in the central government. Regional governments carry out decisions made by the central government.

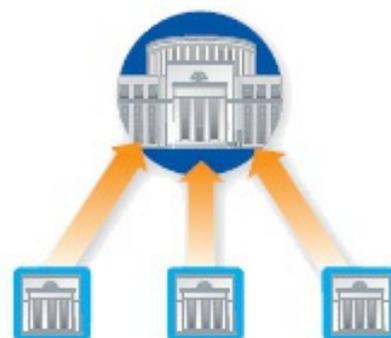
**Examples:** United Kingdom, Japan



## Federal

National, state, and regional governments share power. All levels have the power to make their own laws, elect officials, and create agencies.

**Examples:** United States, India



## Confederal

Independent states join together in a *confederation* and delegate limited powers to a central government. The central government only has powers given to it by the states.

**Examples:** United States under the Articles of Confederation, European Union

**Skills  
FOCUS**

### INTERPRETING CHARTS

In which system of government do states and regions exercise the most power?

While it is no longer uniquely American, the federal system is still a comparatively uncommon form of government. Only 25 of the world's 190 or so nations have federal systems. Among these are Canada, India, Germany, Mexico, Nigeria, and Brazil.

**Confederal Systems** In a **confederal system** independent states join forces by forming a central government, called a confederation. The states keep full control over their own territories and people. However, the states delegate limited powers to a central government to pursue areas of common interests, such as providing for national defense and regulating trade.

In its earliest days under the Articles of Confederation, the United States operated as a confederal system. With the exception of the United Arab Emirates and the European Union, present-day confederations are rare.

**READING CHECK** **Comparing** How is power divided in federal, unitary, and confederal systems?

## **Presidents and Parliaments**

People often believe that their government is the only or even the best way of doing things. But, as the discussion of unitary, federal, and confederal systems shows, there is no one way for a nation to organize power. All governments are born out of unique historical circumstances, developing their own special features and institutions. This is true, too, for democracy. Today most countries have adopted some form of democratic government. Even as they follow their own particular paths, the world's democracies fall into two types of political systems—presidential and parliamentary.

**Presidential Systems** Many of the world's governments are modeled after the presidential system of the United States. In general, a **presidential system** is distinguished by having a president that is elected by the people for a limited term of office.

In addition to performing the symbolic duties of a head of state, the president is in charge of the executive branch of government. He or she appoints cabinet members to oversee major state bureaucracies, executes policy, serves as the head of the armed forces, and is responsible for setting foreign policy and initiating domestic legislation.

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# **Presidential and Parliamentary Systems**

**Many of the world's presidential systems have been modeled on the U.S. system, while the world's parliamentary systems have taken the British system as a model. In July 2007, President George Bush**

welcomed a newly elected British Prime Minister, Gordon Brown, on his first official visit to the United States.



### Presidential

#### ADVANTAGES

- President is elected by the people for a fixed term and cannot be dismissed
- Separation of powers prevents abuses of authority
- Independent of other branches of government
- President is able to make decisions quickly and independently

#### DISADVANTAGES

- Difficult to remove an unsuitable president from office
- Separation of powers may lead to gridlock
- Branches of government may have different agendas
- Presidents may become too strong
- Many presidential systems have become authoritarian

### Parliamentary

#### ADVANTAGES

- The legislative and executive branches are often united in purpose
- Prime minister directly accountable to parliament
- Easier to pass legislation

#### DISADVANTAGES

- Few checks and balances
- Prime minister selected by the legislative branch, not by the people
- Prime minister lacks independence



### INTERPRETING CHARTS

Which of the advantages and disadvantages listed in the chart might explain why more of the world's democracies follow a parliamentary system of government?

A key feature—and an important strength—of presidential systems is that the president's powers are balanced by a legislature, which is both popularly elected and independent of the president. This has important implications for how a president exercises power. Because the president and the legislature are independent of one another, they must work together to get things done. For example, in the United States, the president may be commander in chief of the armed forces, but only Congress can declare war. Similarly, Congress relies on the president to approve and carry out the laws that it passes.

Divided government can also be a drawback to presidential systems. In the United States, if the president and members of Congress hold opposing political views, they may refuse to cooperate. The result is political stalemate. In the worst of such situations, little gets accomplished' Congress is unable to pass laws without the president's

support. Without Congress's support, an otherwise powerful president becomes immobilized.

**Parliamentary Systems** Most of the world's democracies, by contrast, are modeled after Great Britain's parliamentary system. In a **parliamentary system**, the executive and legislative branches of government are combined. In place of a popularly elected president, parliamentary systems have a prime minister. An elected legislature called parliament chooses the prime minister.

The prime minister is not only a member of parliament; he or she is also the leader of parliament's majority party. Once selected, the prime minister appoints cabinet members from the ranks of the majority party. Should the prime minister ever lose support of the majority party, he or she must resign immediately, as do the cabinet members. Members of parliament then choose another prime minister, or else a new election is called in which voters choose a new parliament.



What might happen in a government in which there was no agreed on or peaceful means for removing officials? Give a recent example to support your answer.

Combining the executive and legislative branches is both an advantage and a disadvantage for parliamentary systems. Some observers argue that it is easier to pass laws in a parliamentary system. Others take issue with the fact that prime ministers are neither directly elected by the people nor able to effectively take a stand against parliament.

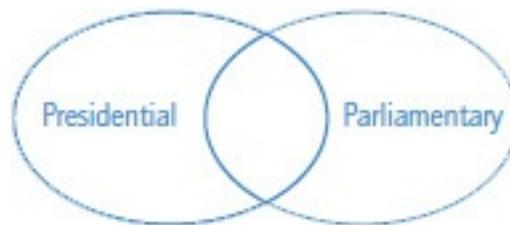
**READING CHECK** **Contrasting** How does electing a president differ from electing a prime minister?

## Reviewing Ideas and Terms

1. **a. Define** What is the meaning of the following terms: **direct democracy, republic, monarchy, dictatorship?**
  - b. Compare and Contrast** How are democracies and republics similar to and different from one another?
  - c. Predict** What circumstances might lead to people's rights being denied in a direct democracy?
  
2. **a. Identify** How is power organized in a **unitary system?**
  - b. Draw Conclusions** Why do you think a federal system replaced the confederal form of government that was first tried in the United States?
  
3. **a. Describe** What are the potential disadvantages of a presidential system?
  - b. Design** If you were designing a plan of government for a new democracy, would you plan for a presidential or parliamentary system? Explain.

## Critical Thinking

4. **Compare and Contrast** Copy the graphic organizer below, and compare and contrast how power is shared and limited in presidential and parliamentary systems.



5. **Persuasive** Write a speech arguing in favor of a particular form of

government for a newly founded nation. Be sure to address the question of who should hold power and how power should be organized.



# Democracy in the United States

## BEFORE YOU READ

### Main Idea

American democracy is characterized by core democratic ideals and principles, as well as by the free enterprise system.

### Reading Focus

1. Why are the ideals of liberty, equality, and selfgovernment important to American democracy?
2. What are the principles of American democracy?
3. Why is the free enterprise system important to American democracy?

### Key Terms

ideal  
liberty  
equality  
self-government  
majority rule  
minority rights  
liberal democracy  
free enterprise

Use the graphic organizer online to take notes on the roots of American democracy.

## Small Steps toward Democracy



**First-grade student Ruby Bridges leaves William Frantz Elementary School in New Orleans under protection of federal marshals in 1960.**

**Approaching an Ideal** In 1954 the U.S. Supreme Court issued a ruling that struck down state-sponsored racial segregation in public schools. The ruling was hailed by many people as a bold step toward the realization of one of the most cherished ideals of American democracy—equality.

The next steps, however, would require much more courage. These steps were often taken by young African American children. In order to make the ruling a reality, these children would have to walk past crowds of angry white protestors and into the school.

In 1960 six-year-old Ruby Bridges, flanked by federal marshals, made this walk to reach her first-grade classroom. She was the only African American student assigned to the all-white school in her New Orleans, Louisiana, neighborhood.

Ruby and her family faced many challenges. People threatened them. Ruby's father lost his job and her grandparents, who lived in Mississippi, were forced to move when the white people who owned the land they farmed found out about the events in New Orleans. Still, the Bridges family supported Ruby through what they knew was a key battle in the struggle for social equality—school integration. Ruby, with the federal government and her family's support, bravely met the challenges.

## **Ideals of American Democracy**

An **ideal** is a conception of something in its most perfect form. Liberty, equality, and self-government are the core ideals of American democracy. These ideals have been with us since the earliest days of our republic. They were put into words in our nation's founding documents, and they have guided the expansion of American democracy for more than two centuries.

At our nation's beginning, these ideals applied to only a small set of people. When the Framers of the Constitution set pen to paper on behalf

of “We, the People,” they did not speak for all Americans. If they had, women, free African Americans, men without property, and slaves would have had a voice in the political process.

American democracy has evolved over time, and it is still changing. As they have in the past, Americans today look to the ideals of liberty, equality, and self-government while shaping the democratic experiment.

**Liberty** More than anything, the Founders of our nation aspired to **liberty**, or the ability of people to act and think as they choose, so long as their choices do no harm to the liberty or well-being of others. Another word for liberty is freedom. It was for liberty that the American patriot Patrick Henry declared himself ready to die; it was in the name of “Life, Liberty, and the Pursuit of Happiness” that the 13 American colonies banded together to declare independence. And, once the Revolutionary War was over, the Framers of the Constitution crafted a new plan for government to “secure the Blessings of Liberty to Ourselves and our Posterity.”

In the early days of the republic, liberty was thought of mainly as *freedom from* government control. The Framers carefully identified the basic rights of the people and then declared them off-limits from government interference. “Congress shall make no law,” the First Amendment says, that restricts an individual’s right to speak, assemble, publish, or worship freely.

Liberty also refers to a person’s *freedom to* exercise the rights guaranteed to all U.S. citizens under the Constitution. In this sense, citizens are free to vote, free to exercise their right to counsel, free to experience equal rights and equal protection under the law, and free to fulfill their potential. In this last sense, liberty is clearly not defined by the absence of government restraints. Government intervention may in fact be required to protect the rights of citizens. For example, extensive government action was necessary to protect the right of Ruby Bridges to an education and to ensure her equal protection under the law.

## Ideals of American Democracy

- **Liberty** All people have the ability or freedom to act and think as they choose.
- **Equality** All people possess the same fundamental moral worth that entitles them to fair treatment.
- **Self-Government** Ordinary people can rule themselves and do so as political equals.

**Equality** Like liberty, Americans have embraced equality as a worthy democratic pursuit. **Equality** is the principle that all people possess a fundamental, moral worth that entitles them to fair treatment under the law and equal opportunity in all aspects of life—political, social, and economic. It was in this sense that Thomas Jefferson eloquently argued that “We hold these truths to be self-evident, that all men are created equal, and they are endowed by their Creator with certain unalienable rights.”

In *Democracy in America* (1835), the French noble Alexis de Tocqueville was among the first to seriously explore the meaning of equality in American culture. Tocqueville saw the United States leading “a great democratic revolution” that would sweep the world. In the 1830s, he travelled to the United States, where he set off on a journey that led him across the nation, from New York, down the Mississippi River, and into the lower South. Tocqueville deeply admired the widespread political and economic equality he observed. He saw this as American democracy’s great promise but also worried that equality was incomplete and that it could even be a peril to liberty.

Tocqueville was among the first to note that the American quest for equality was unfinished business. On his travels, he witnessed firsthand glaring examples of inequality, including the poor treatment of Native Americans and what he called “the abomination of slavery.”

# Democracy in America



Alexis de Tocqueville took note of two aspects of American culture that he saw as central to self-government: participation in voluntary associations and a commitment to the common good.

“ I must say that I have often seen Americans make great and real sacrifices to the public welfare; and I have noticed a hundred instances in which they hardly ever failed to lend faithful support to one another. The free institutions which the inhabitants of the United States possess, and the political rights of which they make so much use, remind every citizen, and in a thousand ways, that he lives in society. They every instant impress upon his mind the notion that it is the duty as well as the interest of men to make themselves useful to their fellow creatures; and as he sees no particular ground of animosity to them... his heart readily leans to the side of kindness. Men attend to the interests of the public, first by necessity, afterwards by choice; what was intentional becomes an instinct, and by dint of working for the good of one’s fellow citizens, the habit and the taste for serving them are at length acquired.”

Alexis de Tocqueville, *Democracy in America* 1835



## INTERPRETING PRIMARY SOURCES

Although Tocqueville applauded the goals of American democracy,

he feared that people might give too much power to a central government to achieve equality. He called this democratic despotism, a subtle form of tyranny that could reduce a nation's people to a "herd of timid and industrious animals." This was democracy's peril. For democracy to truly work, equality had to be kept in balance with liberty.

## ACADEMIC VOCABULARY

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**despotism** a political system in which the ruler exercises absolute power

**Self-Government** From the beginning of our republic, Americans have held fast to the ideal of **self-government**, or the belief that ordinary people could aspire to rule themselves and do so as political equals. The key to self-government is that people are the ultimate source of government authority.

The belief that the only just government was a government that derived its powers directly from the consent of the people set the American Revolution in motion. The Declaration of Independence plainly states this ideal: "Governments are instituted among Men, deriving their just powers from the consent of the governed." Moreover, the Declaration contends that, should a government lose consent, it is "the Right of the People to alter or to abolish it, and to institute new Government." In short, the people have a right to revolution. This is, of course, exactly what happened.

**READING CHECK** **Summarizing** What steps did the Founders take to protect liberty?

## Principles of American Democracy

Today our sense of who we are as Americans is deeply bound—indeed, inseparable from—our belief in the democratic ideals of liberty, equality, and self-government. But ideals are goals, and democracy is not something that already exists or something that just happens. A

commitment to uphold and act upon each of the following principles is necessary to maintain American democracy.

**Worth of the Individual** American democracy places a high value on individual freedom, personal responsibility, self-reliance, and individual achievement. The deep respect that Americans hold for the individual is strongly tied to the belief that, if left free to pursue their own path, people can reach their highest potential.

These beliefs are rooted in the values our nation's Founders held for the individual's natural capacity for reason, intellect, and self-determination. The words in the Declaration of Independence that express the Founders' sentiments bear repeating: "all men are created equal" and are born with rights to "Life, Liberty, and the Pursuit of Happiness." For the Founders, this positive estimation of human nature and natural rights was the foundation of self-rule.

**Rule of Law** The Framers of the U.S. Constitution aimed to create a government under the rule of law. John Adams described the United States as "a government of laws, not of men." In other words, the U.S. government and its officials are subject to recognized and enforced limits on their powers. These limits are spelled out in the U.S. Constitution. Ideally, the rule of law forces leaders to act according to the law and holds them accountable when they do not.

**Majority Rule, Minority Rights** A basic principle of democracy is that decisions are made by **majority rule**. Ideally, a candidate wins an election by a majority, by getting more than half of the votes cast. In fact, candidates typically win by a plurality, or by getting more votes than any other candidate.

The Framers fretted over granting any group—even a majority—too much political power. Any such imbalance, they believed, could pose a direct threat to the rights of individuals and to the common good. For this reason, they took measures to protect individual rights, such as freedom of speech, as well as government institutions, such as the Supreme Court, against what they called the "tyranny of the majority."

Americans believe strongly that a balance must be struck between majority rule and protecting minority rights. **Minority rights** are the political rights held by groups who make up less than half of the population. In a **liberal democracy**, such as the United States, the individual rights and liberties of all people, including those in the minority, are protected. In addition, all citizens have the right to express their opinions, even if their views are not popular. In turn, those in the majority have a responsibility to respect the views of the minority. Successful liberal democracies achieve balance between majority and minority groups through debate, political persuasion, and elections.

**Compromise** Another key principle of American democracy is compromise, the ability of two opposing groups to give up some of their demands and come to an agreement. In part, the necessity for compromise is a by-product of the diversity of the American people. In the American political system, there is rarely a shortage of political interests and issues. For example, some people may think that government should raise taxes to fund math and science training for young people entering today's competitive technological job market. Others might argue that they are taxed unfairly and that they should have their taxes cut. When such conflicts occur, compromise is necessary to keep the political process moving.

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## Key Principles of American Democracy

- **Worth of the Individual** All people are created equal and deserve an opportunity to pursue their potential.
- **Rule of Law** Government is subject to recognized and enforced limits.
- **Majority Rule/Minority Rights** The majority rules but the rights

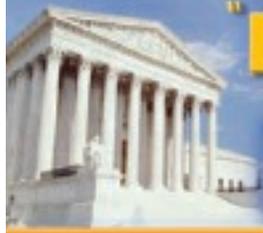
of the political minority are protected.

- **Compromise** Despite their differences, opposing groups can reach agreements.
- **Citizen Participation** A healthy democracy requires active citizen participation at all levels.

**Citizen Participation** To be successful, self-government requires participation from citizens. At the very least, citizens must be informed about public issues so that they can participate effectively, whether by voting or by running for office. In a strong democracy people participate in the political process at all levels. They become informed of the issues, speak their minds, serve on juries, debate public issues, hold their leaders accountable, attend community meetings, volunteer for military and social service, pay taxes, and join political parties. They must even be willing, on occasion, to stand in protest for what they believe. Yet participation must also be peaceful, respectful of the law, and tolerant of the rights and liberties of others.

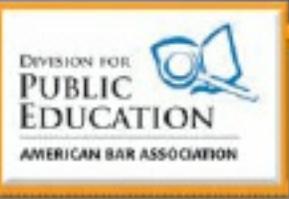
**READING CHECK** **Drawing Conclusions** Why is it important to protect minority rights in a democracy?





# "LANDMARK SUPREME COURT CASES"

Constitutional Issue: Due Process



## *Gideon v. Wainwright* (1963)

### WHY IT MATTERS

*The U.S. Supreme Court has ruled on a number of cases concerning democratic ideals and principles. In *Gideon v. Wainwright*, the Court considered whether the right to counsel was necessary to guarantee a defendant's liberty and ensure equality under the law.*

### Background

On June 3, 1961, someone broke into the Bay Harbor Pool Room in Panama City, Florida, and smashed a cigarette machine and a jukebox, stealing money from both machines. Later that day, Clarence Earl Gideon was arrested and charged with the crime of breaking and entering. Gideon, a known drifter, was found with change in his pockets and a bottle of wine. A witness later told police that he had seen Gideon in the poolroom on the day of the burglary.

Gideon could not afford a defense attorney, and a Florida judge refused to appoint him one. Forced to defend himself, Gideon was found guilty and sentenced to five years in a state penitentiary. In prison, Gideon studied the law. He determined that his lack of legal counsel was a denial of due process, meaning that without a lawyer,

Gideon had been unfairly deprived of “life, liberty, and property.” Armed with this argument, Gideon appealed his case to the Florida Supreme Court, but the lower court’s decision was upheld. The U.S. Supreme Court agreed to review his case in 1963.

## Arguments for Gideon

Gideon argued that the court’s failure to appoint him counsel violated his right to a fair trial and due process of law as protected by the Sixth and Fourteenth Amendments of the U.S. Constitution. In prison, Gideon filed a petition with the Florida Supreme Court for release because of unjust imprisonment. The court denied his request. Gideon appealed to the U.S. Supreme Court, filing suit against the Secretary of the Florida Division of Corrections, Louie L. Wainwright.

## Arguments for Wainwright

In *Betts v. Brady* (1942) the U.S. Supreme Court had previously ruled that, in criminal trials, states only had to provide defendants with counsel under special circumstances, including the complexity of the criminal charges as well as the defendant’s mental state and ability to read and write. Since Gideon had not claimed any special circumstances, the Florida Supreme Court had upheld the lower court’s decision. At the time, Florida state law only provided defendants with lawyers in capital cases, or cases in which the death penalty could be inflicted.



On March 18, 1963, in a unanimous decision, the U.S. Supreme Court overturned *Betts* and ruled in favor of Gideon. The Court held that the right to counsel was essential to a fair trial. Thus, a person who could not afford legal counsel had to be provided with counsel by the state or the national government. Subsequent Court decisions extended the *Gideon* ruling to all felonies and misdemeanors that can result in prison time. Because the quality of state-provided defense counsel varies from state to state, the Court established in *Strickland v. Washington* (1984) a two-part test for

determining the adequacy of any counsel, including a court-appointed one. Such rulings have changed the nation's perspective on the rights of criminal defendants.

### CRITICAL THINKING

**What Do You Think?** Today all states are required to provide lawyers for criminal defendants who can not afford to pay for legal representation on their own. What measures do you think states should take to ensure quality legal representation for all criminal defendants?

## Free Enterprise

Of all the freedoms held dear to American democracy—freedom of speech, religion, and the press—economic freedom holds a special place. This freedom is best expressed in the economic system of the United States, the free enterprise system. **Free enterprise** allows for people and businesses to make their own economic choices about how best to produce, distribute, and exchange goods and services with limited interference from government. It also protects rights of ownership to the results of one's labor and to one's property.

Our nation's Founders believed deeply that safeguarding economic freedom was key to preserving other freedoms. In this regard, they were influenced by John Locke, who asserted that people have a natural right to "life, liberty, and property." Equally important, the Founders believed that economic freedom allowed people to build wealth that would empower them to limit the power of government.

Like all freedoms, free enterprise is a matter of degrees. Over time, the U.S. government has often intervened in the economy, for example, by creating consumer protection laws and agencies. Still, the U.S. economy holds true to the basic principles of the free-enterprise system.

As you will read in Chapter 15, every country handles its economy differently. In some countries, like the United States, the government's role in the economy is minimal. In other countries the government completely controls the economy. A government's role in the economy

affects the economic freedoms of individuals. In countries where the government does not interfere in the economy, economic freedoms thrive. Where governments play a major role in the economy, people may have fewer economic freedoms or none at all. The proper balance between government intervention in and noninvolvement with the economy will continue to change over time.

### **Economic Freedoms**

In the United States, each person has the right to

- Earn money
- Purchase property
- Spend income on goods and services
- Choose an occupation or change jobs
- Determine where to save money and how much
- Open new businesses

**READING CHECK** Summarizing Why did the Founders think protecting economic freedom was important?

SECTION

3

ASSESSMENT



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ONLINE QUIZ

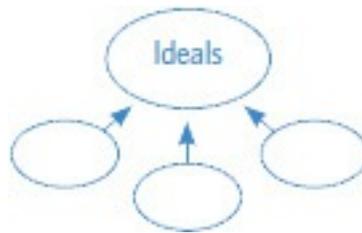
### **Reviewing Ideas and Terms**

1. **a. Describe** What are the ideals of American democracy?  
**b. Evaluate** Which ideal of American democracy do you think is most important? Explain.

- 2. a. Define** What is the rule of law?  
**b. Predict** What would happen to American democracy if citizens stopped participating in political and social life?
- 3. a. Explain** Why was protecting economic freedom important to the Founders?  
**b. Elaborate** Under what circumstances do you think government involvement in the economy might be justified?

### Critical Thinking

- 4. Analyze** Copy the graphic organizer below, and identify and describe three core ideals of American democracy.



### FOCUS ON WRITING



- 5. Expository** Write a letter to the editor urging either more or less government involvement in the U.S. economy. Draw on democratic ideals and principles to support your argument.

### CONNECTING TO THE CONSTITUTION



### Constitutional Government

Our nation's Founders struggled with how best to

**prevent government abuse of power. Their answer was to establish a constitutional government that protected individual rights by placing limits on what government can do and how it can exercise power.**

**What is a constitution?** As it is understood today, a constitution is a plan that sets forth the structure and powers of government. Constitutions specify the main institutions of government. In so doing constitutions state the powers of each of these institutions and the procedures that the institutions must use to make, enforce, and interpret law. Usually constitutions also specify how they can be changed, or amended. In the American conception of constitutional government the constitution is a form of higher, or fundamental, law that everyone, including those in power, must obey.

Many controversies surround written constitutions, including what the words mean, whether the understanding of the document should evolve or remain unchanged, and who should have the final say about what the document means. Nearly all constitutions are written. Only three of the world's major democracies have unwritten constitutions—that is, constitutions that are not single written documents. These are Britain, Israel, and New Zealand. In each of these nations, the constitution consists of a combination of written laws and precedents.

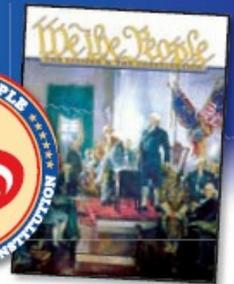
Constitutional government means limited government—government limited by the provisions of the constitution. Limited government is characterized by restraints on power as specified by the constitution. In democracies, for example, one restraint is the inclusion of free, fair, and regular elections. The opposite is unlimited government, in which those who govern are free to use their power as they choose, unrestrained by laws or elections. Aristotle described the unlimited government of a single ruler as tyranny. Today the terms autocracy, dictatorship, or totalitarianism often are used to describe such governments. Believing that they had been subjected to tyranny by the British king, the Founders also believed that government in the newly independent United States of

America should be limited by the higher law of a written constitution.

**How did the Founders characterize higher law?** According to the founding generation, a constitution should function as a type of higher law. A higher law differs from a statute enacted by a legislature in these four ways:

- It sets forth the basic rights of citizens.
- It establishes the responsibility of the government to protect those rights.
- It establishes limitations on how those in government may use their power with regard to citizens' rights and responsibilities, the distribution of resources, and control or management of conflict.
- It can be changed only with the consent of the citizens and according to established and well-known procedures.

Center for Civic Education



**Why did the Founders fear government abuse of power?** Given their knowledge of history and their experiences under British rule, it is not surprising that the Founders feared possible abuses of governmental powers.

**“ Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many.”**

—Alexander Hamilton, 1787

**“ There are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power and the love of money.”**

—Benjamin Franklin, 1787

**“ From the nature of man, we may be sure that those who have power in their hands... will always, when they can... increase it.”**

—George Mason, 1787

**What kinds of governments may be constitutional governments?** The Founders knew that constitutional government might take many forms. It is possible to have a constitutional government with one ruler, a group of rulers, or rule by the people as a whole so long as those in power must obey the limitations placed on them by the “higher law” of the constitution. Historically, constitutional governments have included monarchies, republics, democracies, and various combinations of these forms of government.

The problem for any constitutional government is to make sure that those in power obey constitutional limits. History provides many examples of rulers who ignored constitutions or tried illegally to increase their personal power. The Founders believed that direct democracy was more likely to ignore constitutional limits than representative government. Direct democracy makes it easy for momentary passions to inflame people and leads to passionate rather than reasoned judgments. The interests of the community as well as the rights of individuals in the minority may suffer as a result.



**The Constitutional Convention that met in Philadelphia in 1787 wrote a plan of government for the United States that, after more than 200 years, remains strong.**

### **Reviewing Ideas**

- 1. Recall** Why is a constitution considered a higher law, and what are the major characteristics of higher law?
- 2. Explain** What is the difference between limited and unlimited government? Do you think the difference is important?

### **Critical Thinking**

- 3. Evaluate** Is it important that a constitution be written? What are the advantages and disadvantages of a written constitution? Of an unwritten constitution?

## Connecting Online

### [hmhsocialstudies.com](http://hmhsocialstudies.com)

Go online for review and enrichment activities related to this chapter.



## Quiz and Review

### GOV 101

Examine key concepts in this chapter.

### ONLINE QUIZZES

Take a practice quiz for each section in this chapter.

## Activities

### eActivities

Complete Webquests and Internet research activities.

### INTERACTIVE FEATURES

Explore interactive versions of maps and charts.

### KEEP IT CURRENT

Link to current events in U.S. government.

## Partners

### American Bar Association Division for Public Education

Learn more about the law, your rights and responsibilities.

### Center for Civic Education

Promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy.

### [Online Textbook](#)

#### ONLINE SIMULATIONS

Learn about U.S. government through simulations you can complete online.

# Comprehension and Critical Thinking

## SECTION 1

- 1. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: government, state, sovereignty, politics, legitimacy, divine right of kings, social contract theory.
- b. Summarize** According to philosophers such as Hobbes, Locke, and Rousseau, why are people willing to enter into a social contract?
- c. Rate** What type of government do you think is best suited to accomplish the purposes of government outlined in this section?

## SECTION 2

- 2. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: monarchy, dictatorship, oligarchy, direct democracy, republic.
- b. Contrast** What are the main differences between federal, unitary, and confederal systems?
- c. Evaluate** Which advantages and disadvantages might explain why there are more parliamentary than presidential systems?

## SECTION 3

- 3. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: ideal, liberty, equality, self-government, free enterprise.
- b. Analyze** Why do you think that the ideal of liberty is important to the free enterprise system?
- c. Elaborate** Under what circumstances do you think the government should regulate business in a free enterprise system?

## Critical Reading

*Read the passage in Section 2 that begins with the heading “The Classic Forms.” Then answer the questions that follow.*

- 4.** Which of the following is an example of limited government?
- A** dictatorship
  - B** authoritarian regime
  - C** constitutional monarchy
  - D** oligarchy
- 5.** Which of the following forms of governments has elected representatives that make decisions on behalf of the people?
- A** monarchy
  - B** authoritarian regime
  - C** direct democracy
  - D** representative democracy

*Read the passage in Section 3 that begins with the heading “Principles of American Democracy.” Then answer the questions that follow.*

- 6.** Which principle of American democracy holds government officials accountable to the law?
- A** worth of the individual
  - B** rule of law
  - C** majority rule
  - D** minority rights
- 7.** Why did the Framers of the U.S. Constitution fear majority rule?
- A** Majority rule would ensure minority rights.
  - B** Majority rule could pose a threat to the rights of individuals.
  - C** Majority rule could lead to a theocracy.
  - D** Majority rule could not coexist with minority rights and democracy.

**8. Create a four-column chart or spreadsheet contrasting classic forms of government.** In the first column list forms of government: monarchy, dictatorship, totalitarian regime, theocracy, oligarchy, aristocracy, constitutional monarchy, republic/representative democracy, and direct democracy. In the second column include a definition and one historical or present-day example for each form. In the third column record details about how leaders are selected and identify the government as limited or unlimited. Use the fourth column to tell how each form affects people's private lives and describe the rights and responsibilities of citizens living under that government. Conduct library or Internet research as necessary to complete the chart or spreadsheet.

### CONNECTING TO THE CONSTITUTION

**9.** Read the Preamble to the U.S. Constitution in the Reference Section at the end of your textbook. According to the Preamble, what is the main purpose of the Constitution? Explain the meaning of each of its stated purposes.

### ANALYZING PRIMARY SOURCES



**Excerpt** *In Leviathan (1651), Thomas Hobbes argued that to create an effective government capable of imposing order, people had to agree to surrender power to a central authority.*

“The only way to erect such a common power, as may be able to defend them from the invasion of foreigners, and the injuries of one another, and thereby to secure them in such sort as that by their own industry and by the fruits of the

earth they may nourish themselves and live contentedly, is to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will.”

**10. Analyze** According to Hobbes, how do people benefit from giving their power to the state?

**11. Draw Conclusions** What is the source of the state’s power?

## FOCUS ON WRITING



**Persuasive Writing** *Persuasive writing takes a position for or against an issue, using facts and examples as supporting evidence. To practice persuasive writing, complete the assignment below.*

### **Writing Topic: Voting and Constitutional Democracy**

**12. Assignment** The United States is the world’s oldest constitutional democracy. However, research shows that American citizens vote less often than citizens of other nations. Based on what you have read in this chapter, write a paragraph persuading people to vote. Explain why voting is necessary to maintain constitutional democracy and American democratic ideals. Support your position with reasoning and examples from the chapter.

## CHAPTER

# 2

# Origins of AMERICAN GOVERNMENT

**Essential Question** What events led to the development of American democracy?



**About the Photo** When visitors to the Rotunda of the U.S. Capitol gaze upward, they view a fresco titled *The Apotheosis of Washington*. This masterpiece, which covers over 4,000 square feet, was painted in 1865 by Constantino Brumidi. It shows George Washington rising to heaven, surrounded by two women representing Liberty and Victory/Fame. Around these three figures are thirteen maidens who symbolize the thirteen original states. The word "apotheosis" refers to the elevation of a person to divine status or the idealization of an individual.



America Gets a Constitution

hmhsocialstudies.com VIDEO

## CHAPTER AT A GLANCE

## **SECTION 1 The Roots of American Democracy**

- The English political heritage of representative government, limited government, and individual rights influenced the development of government in the United States.
- From the start, the English colonies in North America experimented with forms of self-government.
- The English colonists were influenced by ideas from various intellectual traditions, ranging from republicanism to natural rights theory, Judeo-Christian ideals and the work of Enlightenment thinkers.

## **SECTION 2 American Independence**

- After the French and Indian War, the colonists rebelled against British attempts to assert control over the colonies and against new British taxes.
- In 1775 the Second Continental Congress called for the writing of a formal Declaration of Independence.

## **SECTION 3 Articles of Confederation**

- In 1777 the Second Continental Congress passed the first official plan for national government, the Articles of Confederation.
- After the Revolutionary War, weaknesses in the Articles led to conflicts among the states, sparking calls for a stronger national government.

## **SECTION 4 The Constitutional Convention**

- At the Constitutional Convention in Philadelphia, delegates debated competing plans—the Virginia Plan and the New Jersey Plan—for how the new government should be organized.

- To finalize the Constitution, delegates compromised on key issues.

## SECTION 5 Ratification and the Bill of Rights

- Ratification of the Constitution involved a heated debate between those who supported the Constitution and those who opposed it.
- Antifederalists opposed the Constitution because it lacked a bill of rights.
- The Federalist Papers outlined the key ideas of the Federalists, who supported the Constitution.
- The struggle for ratification took place in every state.

CONNECTING TO THE CONSTITUTION



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of why our nation's Founders chose constitutional government.



# The Roots of American Democracy

BEFORE YOU READ

**Main Idea**  
American

**Reading Focus**  
1. Which

**Key Terms**  
bicameral

democracy was shaped by our English political heritage, colonial experiments in self-government, and a range of intellectual influences.

- American political ideas derived from an English political heritage?
2. How did colonial governments give English colonists experience in self-rule?
  3. What intellectual influences shaped the development of American political philosophy?

Magna Carta  
Petition of Right  
English Bill of Rights  
Fundamental Orders of Connecticut  
proprietary colony  
royal colonies  
charter colonies



Use the graphic organizer online to take notes on the political ideas and events that shaped government in the English colonies.



**Cradle of American Democracy** Cradle of American Democracy, In April 1607, more than 10 years before the Pilgrims landed at Plymouth Rock, three small wooden ships—the *Susan Constant*, the *Godspeed*, and the *Discovery*—landed on the marshy shores of coastal Virginia. The ships carried just over 100 English men and boys. In little over a month's time, they built a fort and founded Jamestown, the first permanent English settlement in North America.

Within six months, however, more than half of the colonists were dead, mostly from famine. These troubled early days are what most Americans know of Jamestown. But Jamestown should also be remembered for something more significant.

Jamestown was the birthplace of American democracy. In 1619 a series of reforms were made to attract more settlers to Jamestown. One of the reforms permitted the colonists to elect a representative body modeled after the English Parliament. On July 30, 1619, the first representative assembly in North America met at a church in Jamestown. The 22 burgesses, or representatives, in attendance passed laws concerning tobacco and taxes and took measures against drunkenness and gambling to preserve the common good of the colony. In time, the assembly gave rise to Virginia's colonial House of Burgesses, ultimately influencing the shape of the U.S. government ■

## Old Ideas, New World



**The Virginia General Assembly (above), the legisla-tive branch of the**

**Commonwealth of Virginia, traces its origins to the House of Burgesses (left). In honor of Jamestown's 400th anniversary, Vice President Dick Cheney joined the Virginia General Assembly for a special session held in Jamestown on January 7, 2007.**

## **English Political Heritage**

The first English settlers did not arrive in North America with a master plan for democratic government, but they did not arrive empty-handed. Settlers brought with them a rich political heritage built on ideas of limited government, representative government, and individual rights. These seeds of democracy took root in the rough-and-ready wilderness of Jamestown and, in time, spread to the other English colonies.

Colonial government would never be an exact copy of the British system. Instead, it grew into a uniquely American form of democracy. What caused this development? According to historian Frederick Jackson Turner, it was the circumstances in which the colonists found themselves. Faced with landscapes and situations unknown in England, colonial leaders had to adapt old ideas to a new environment. The result was democracy that Turner said “came out of the American forest.” To understand this new democracy, one must first explore the English traditions on which it is based.

**Representative Government** England's tradition of representative government dates to the eleventh century, when a council of religious leaders and nobles formed to advise the king. Gradually, the council's importance grew, and towns and villages began to send their own representatives to participate in the council's proceedings.

Over time, the king's advisory council evolved into a **bicameral**, or two-chamber, legislature called Parliament. Nobles composed the upper house, or House of Lords. Lesser officials and local representatives participated in the House of Commons, the lower house. As a representative assembly, Parliament worked to limit the power of the

English monarchs.

**Limited Government** One of the earliest English efforts toward limited government dates to the year 1215, when English nobles forced King John to sign **Magna Carta**, or the “Great Charter.” Weakened by military losses in France and in desperate need of funds, John demanded that nobles pay more taxes. The nobles rebelled and began to move a large army toward London. At Runnymede, near London, they forced John to sign Magna Carta, the document they had drawn up.

Magna Carta was a significant move from the “rule of man” to the “rule of law.” By signing the document, King John conceded that even kings and queens had to obey English laws. The document also outlined a number of individual rights that the king could not violate. For example, the king was no longer able to levy taxes without approval from the nobles. The document also guaranteed people accused of crimes the right to a trial by a jury of their peers.

The original intent of Magna Carta was to protect the rights of nobles. In time, the rights protected by Magna Carta would be extended to most of the English people.



**Individual Rights** Alongside representative and limited government, a tradition of individual rights developed in England. When in 1628 a new confrontation between the king and Parliament put these rights at risk, England’s legislature made King Charles I sign the **Petition of Right**. The document required monarchs to obtain Parliament’s approval before

levying new taxes. It also said that monarchs could not unlawfully imprison people, force citizens to house soldiers in their homes, or establish military rule during times of peace.

The Petition of Right was part of an extended conflict between Charles and Parliament. In 1642 the conflict erupted into the English Civil War, in which an army raised by Parliament defeated Charles and his supporters. In 1649 Charles was beheaded. England would not have another king until 1660, when Charles II assumed the throne.

Although the English monarchy appeared to have returned to normalcy, it was forever changed. Parliament had dramatically increased its power at the Crown's expense. This was unusual for the time. The rest of Europe was entering the Age of Absolutism, a time when monarchs claimed the "divine right of kings" and wielded absolute power.

The extent of Parliament's new power would soon be made clear when James II, Charles's brother, took the throne in 1685. James II's enthusiastic promotion of his faith, Roman Catholicism, led to renewed conflicts between Crown and Parliament. Most of the English were Protestants and, fearing the king would impose the Catholic religion on the country, Parliament launched a rebellion.

## **ACADEMIC VOCABULARY**

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**impose**, to force on another or others

The rebels rallied behind James's daughter, Mary, and her husband, William of Orange, who were Protestants. On November 5, 1688, William landed his army in England. With a force twice the size of William's army, James should have easily turned back the invaders. Many of his officers and soldiers, however, deserted to the other side, leaving James without a strong fighting force. The country had clearly abandoned its king.

On February 13, 1689, Parliament offered the English crown to William and Mary. Before taking the throne, the couple had to swear "to govern the people of this kingdom according to the statutes in

Parliament.” Moreover, Parliament passed the **English Bill of Rights** for the monarchs to sign. No longer would monarchs be able to enact laws, raise taxes, or keep an army without Parliament’s consent. The document also guaranteed Parliament the privilege of free speech and gave all people protection from cruel and unusual punishment. Without a shot having ever been fired, what came to be called the Glorious Revolution was over.

The ultimate result of the Glorious Revolution was the establishment of a constitutional monarchy in England. As Magna Carta and the English Civil War had done before, the Glorious Revolution set clear limits on royal authority and shifted power to Parliament. At the same time, the English Bill of Rights set expectations about the “rights of Englishmen.” English ideas about limited and representative government, as well as individual rights, were far-reaching. They spread beyond England itself.

**READING CHECK** **Summarizing** How did limited government develop in England?

## **The English Colonies**

Beginning in the early 1600s—before the Petition of Right and the English Bill of Rights were signed—English colonists had begun to settle parts of North America. They brought with them English political theories and methods of governance.

**Experiments in Early Governance** From the start, the English settlers drew on their English heritage and tested new political forms. For example, the first meeting of Jamestown’s House of Burgesses in 1619 was an early experiment with representative government. So too was the 1620 signing of the Mayflower Compact by all adult men on board the *Mayflower*, prior to their landing at Plymouth Rock. By signing, they agreed to form a society governed by majority rule and based on the consent of the people.

Other milestones quickly followed. In 1639 Connecticut colonists approved the **Fundamental Orders of Connecticut**, a set of laws that

limited the power of government and gave all free men the right to choose people to serve as judges. The Massachusetts Body of Liberties of 1641, the first code of law in New England, protected the individual rights of citizens in the Bay Colony. For example, it protected personal property from seizure by colonial authorities.

Such experiments took place within a broader context of English rule. Each of the thirteen colonies was established by charter, an agreement whereby the English king gave settlers the right to establish a colony. Each charter guaranteed colonists the “rights of Englishmen,” a promise that would trouble the monarchy during the Revolutionary era.

**Types of English Colonies** England established three types of colonies in North America: proprietary, royal, and charter. A **proprietary colony** was based on a grant of land by the English monarch to a proprietor, an individual or a group who financed the the start of the colony. The proprietor represented the Crown and could appoint all officials and make laws for the colony.

Nine colonies started as proprietary colonies. Maryland was originally granted to Lord Baltimore as a refuge for Catholics in 1632, and Pennsylvania was established by a charter granted to Sir William Penn in 1681. In 1701, Penn replaced his charter with the Charter of Privileges, which established a unicameral legislature, an elected assembly, and freedom of worship. In time, all proprietary colonies, except Pennsylvania and Maryland, became royal colonies.

**Royal colonies** were directly controlled by the king through an appointed governor. In time each royal colony had a two-house legislature. Members of the lower house were elected, but the king appointed members to the upper house. By the mid-1770s, Delaware, Georgia, Massachusetts, New Hampshire, New Jersey, New York, North and South Carolina, and Virginia were under the direct control of the Crown.

**Charter colonies** operated under charters agreed to by the colony and the king. Charter colonies enjoyed the most independence from the

Crown. By the American Revolution, there were only two charter colonies left, Rhode Island and Connecticut. Each had an elected legislature that made laws for the colony and appointed the colony's governor. The charters for the Connecticut and Rhode Island colonies were so effective that they were later used as state constitutions.

**READING CHECK** **Contrasting** How were charter colonies and royal colonies different?

## Intellectual Influences

English traditions and colonial experiments in self-rule shaped American democracy, but there were other influences as well. Ideas would be key to transforming loyal English colonists first into revolutionaries and then into founders of a new nation.

**Republicanism,** The term *republicanism* refers to a broad set of ideas about representative government that can be traced back to ancient Greece and Rome. Republican thinking highly values citizen participation, the public good, and civic virtue—the idea that people should place the common good over their private interests.

Such ideas were popular among the Framers of the U.S. Constitution. The Framers rejected the idea of monarchy and looked to the Roman Republic for a model of representative democracy. They were also well versed in classical Greek and Roman ideas about government, such as the Greek philosopher Aristotle's argument that unrestricted power vested in a king could easily lead to tyranny.



The Framers also came to republican ideas through the work of Renaissance scholars such as Niccolò Machiavelli. In his book *Discourses on Livy* (1513–17), Machiavelli put forth a theory of a republic based on civic virtue. He argued that a republic could survive only so long as its citizens actively participated in government and put the good of the republic before their own needs. For a republic to thrive, Machiavelli argued, it had to represent the interests of three levels of society: the monarch (the one), the aristocracy (the few), and the people (the many). At the time, asserting that government should be of and for the people was a radical suggestion. Machiavelli’s views helped undermine the idea that a monarch’s power was God-given, one of the basic beliefs underlying feudalism, the reigning political order of his time.

For ideas about how to design a republican government, the Framers turned to the work of French philosopher Charles de Montesquieu. In *Spirit of the Laws* (1748), Montesquieu argued that government power had to be divided between the legislative, executive, and judicial branches of government. Montesquieu called this the separation of powers.

**Judeo-Christian Influences,** The Framers’ political thinking was

influenced by a Judeo-Christian religious heritage, which includes traditions common to both Judaism and Christianity. These religions see the law and individual rights as being of divine origin. Moreover, the Framers benefited from the Protestant Reformation, a sixteenth-century Christian reform movement whose leaders developed ideas about individual responsibility, the freedom to worship as one chooses, and self-government.

**Enlightenment Thinkers,** The Framers were deeply concerned with liberty and individual rights. These ideas had strong ties to the Enlightenment, an intellectual movement that took place in Europe during the eighteenth century, and are sometimes referred to as classical liberal concerns.

The Framers were particularly taken with Enlightenment ideas about people possessing natural rights to life, liberty, and property. They were equally influenced by the idea of a social contract—the belief that people agreed to form government to protect their rights. Such ideas were put forth by the British political thinker John Locke in *The Second Treatise on Government* (1690) and by the French philosopher Jean-Jacques Rousseau in *The Social Contract* (1762), both of whom you read about in Chapter 1.

Enlightenment thinkers also wrote about economic and civil liberties. In thinking about how best to protect economic freedom and rights to property, the Framers drew from the Scottish economist Adam Smith's work, *The Wealth of Nations* (1776). In defense of civil liberties, such as freedom of speech and religion, many of the Framers turned to an outspoken French philosopher named Francois Marie Arouet, better known by his pen name, Voltaire.

For ideas about how to use the law to protect people's natural rights to life, liberty, and property, the Framers looked to the English legal scholar William Blackstone. Blackstone's *Commentaries on the Laws of England* (1765-69) was a comprehensive overview of English law that became the basis for law in the colonies and influenced the writing of the

**READING CHECK Summarizing** What intellectual influences shaped the Framers' views on republicanism?

## Reviewing Ideas and Terms

- Identify** Which landmark English documents challenged the absolute authority of the monarchy?
  - Predict** What ideas expressed in **Magna Carta** do you think would most influence the authors of the U. S. Constitution?
- Define** Which political philosopher is associated with the idea of the separation of powers?
  - Elaborate** Why might colonists in a **proprietary colony** be unhappy if their colony were converted to a **royal colony**?
- Recall** How is civic virtue important to republicanism?
  - Rank** Which of the natural rights—life, liberty, or property— do you think is most important? Explain.

## Critical Thinking

- Analyze** Copy the chart below and list the major political ideas from each document that influenced the colonies.

Document	Major Political Ideas
Magna Carta	
Petition of Right	
English Bill of Rights	

**5. Expository** Write a paragraph explaining why the concept of civic virtue is still important today. Give at least one example of a private interest that people give up for the common good.



## American Independence

BEFORE YOU READ

**Main Idea** The British imposed new policies on their American colonies, sparking rebellion and, in time, the American Revolution.

### Reading Focus

1. How did British colonial policies lead to American independence?
2. What were the aims of the Continental Congresses?
3. Which ideas and events inspired the Declaration of Independence?
4. How did the first state governments reflect the conflict that led to the American

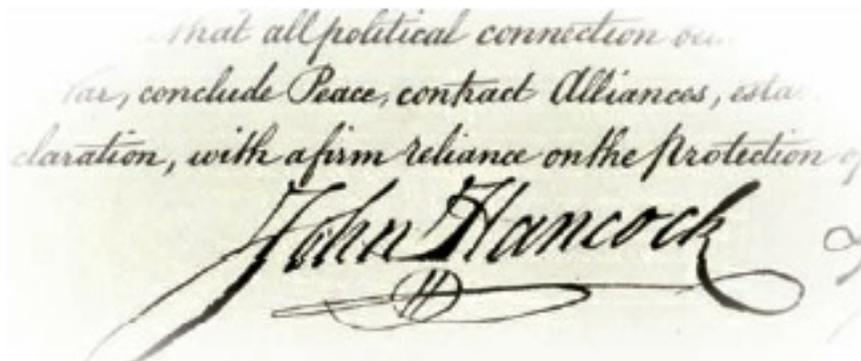
### Key Terms

New England Confederation  
 Iroquois Confederation  
 Albany Plan of Union  
 Stamp Act  
 First Continental Congress  
 Second Continental Congress  
 Virginia Declaration of Rights

# Revolution?



Use the graphic organizer online to take notes on events that lead to independence.



*That all political connection with Great Britain, be dissolved, and that all political connection with her, conclude Peace, contract Alliances, establish Commerce, and all other Acts and Intercourses, which may have a Tendency to promote their Union and Amity, with a firm reliance on the Protection of Heaven, do, in the Name of the good People of these Colonies, solemnly declare, and they the said Delegates, in and for the said Colonies, do hereby ratify and confirm the said Declaration, in and for the said Colonies, and in and for the United States in Congress assembled.*

*John Hancock*

**John Hancock, the president of the Second Continental Congress, was the first to sign the Declaration of Independence on July 4, 1776.**

## A Bold Declaration for Independence



**The Colonies Become States** In hindsight, the American Revolution seems inevitable—the only course of action for the English colonies to take. In the summer of 1776, however, the way was not so clear. The course for revolution would not be set until a small group of delegates sent from each colony met at the Second Continental Congress in Pennsylvania. Together, they passed a bold resolution to sever ties with Great Britain, the world’s most powerful empire.

The resolution was the Declaration of Independence. Written in flowing script on a large sheet of paper, the document outlined the delegates’ reasons for seeking independence. Then, in the final paragraph, the authors made their radical declaration: “We ... solemnly publish and declare, That these United Colonies are, and by Right ought to be Free and Independent States.” These were fighting words that the delegates pledged to back with “our Lives, our Fortunes, and our sacred Honor.” The seven bloody years of revolution that followed would put their resolve to the test. ■

# The Road to Independence

The road that led the American colonies to unite with one another and break with Great Britain was long and fraught with conflict. In part, the break was the result of the British government's failure to respect the English traditions of representative government, limited government, and individual rights—all of which had been transplanted to the colonies.

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## Events Leading to the American Revolution

Until the 1750s, Great Britain ruled its North American colonies with a light hand. As a result, the colonies grew used to a measure of political independence. Between 1754 and 1774 a series of events unfolded that led Great Britain to attempt to strengthen its control over the colonies. These events pushed the colonies in two directions at the same time: toward unity with one another and toward independence from Great Britain.



French and Indian War



The Stamp Act

### British Actions

In 1754, the British and French forces battle for control of the Ohio River valley. The British win, gain control over North America, and tax the colonies to repay massive war debts.

In 1765 Parliament passes the Stamp Act, a tax on paper goods. The act requires all goods to bear a stamp to show that the tax had been paid.

### Colonists' Actions

The war unites the colonies against a common enemy. Some colonists voluntarily join the war effort. Others resent having to shelter and supply British troops.

Outraged colonists boycott British goods, claiming Parliament had no right to tax them without their consent. Nine colonies send delegates to a Stamp Act Congress.

**Early Attempts at Unity**, One of the earliest steps toward colonial unity came in 1643 when the Plymouth, Connecticut, Massachusetts Bay, and New Haven colonies formed the **New England Confederation**. Their common purpose was to defend against threats from Native Americans and from nearby Dutch colonies. Despite frequent disagreements, the confederation held together until 1684.

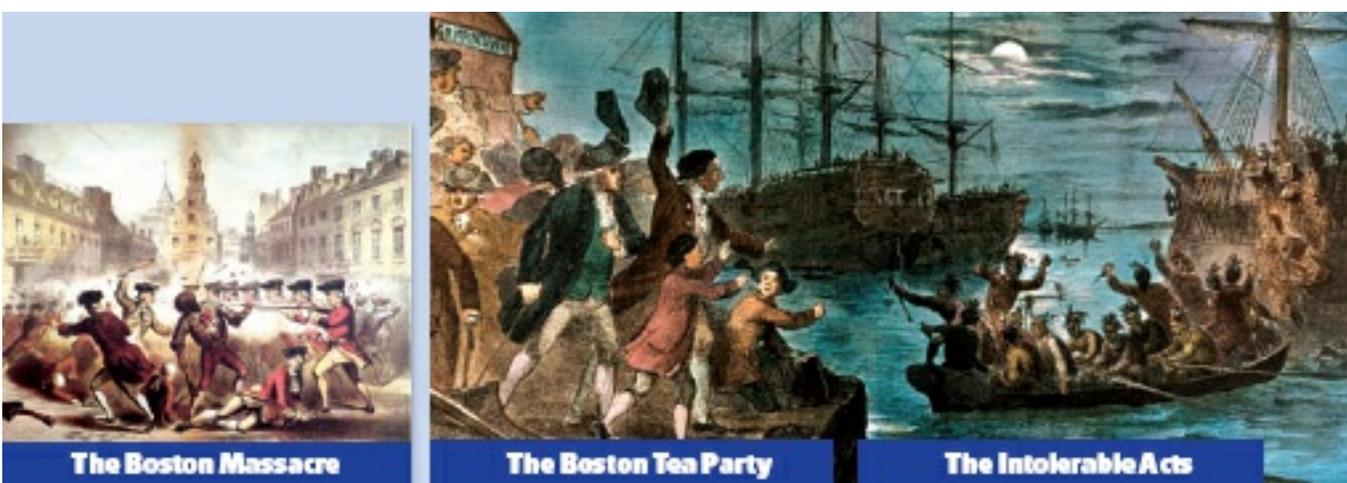
Nearly 70 years later, the outbreak of the French and Indian War (1754-1763) spurred a new drive toward unity in the colonies. The war pitted the British against the French in a struggle for control over the North American continent. In 1754, as fighting raged on the colonies' western frontier, Great Britain urged its colonies to sign a treaty with the **Iroquois Confederation**, a powerful alliance of six Native American nations—the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora. Guided by a constitution and a council of leaders, the alliance had held

strong for close to 200 years, keeping peace among its members.

To gain the support of the Iroquois in the fight against the French, the northern colonies invited Iroquois leaders to a meeting in Albany, New York. At the meeting, Benjamin Franklin, inspired by the Iroquois, proposed a plan that became known as the **Albany Plan of Union**. The plan called for a council of representatives appointed by the colonial assemblies and a president general appointed by the king. The proposed council would have the power to control trade, raise armies, build settlements, and equip fleets.

Although the delegates in Albany unanimously approved the Albany Plan, the colonial assemblies were quick to reject it. They feared that the plan gave too much power to the Crown. Likewise, the British, uneasy at the prospect of united colonies, rejected the plan. Franklin's plan, however, would not be forgotten. Less than a quarter of a century later, it became the basis for an early draft of the first official constitution for the newly born United States.

**Growing Tensions**, By the mid-1700s the colonists had grown quite used to handling their own affairs with little interference from the British. The king and Parliament intervened mainly in colonial business having to do with trade and foreign relations. Soon after George III became king in 1760, however, the British government began to tighten its control over the colonies.



Even though most colonists viewed themselves as loyal subjects of the British Crown, there was a growing attitude among members of

Parliament that the colonies had become too independent. The real rise in tensions would follow the French and Indian War, when Parliament placed new financial burdens on the colonists.

**Changes in British Policies,** Through a series of spectacular and costly military engagements, the British emerged victorious in the French and Indian War. But the war left Great Britain with massive debts.

To offset the cost of the war and the ongoing defense of the colonies, Parliament looked to the colonists as a source of revenue. With George III's blessing, Parliament enforced trade restrictions that benefited Britain. Beginning in 1764 with the Sugar Act, Parliament imposed a series of taxes designed to alleviate Britain's debt.

The colonists, however, had no representation in Parliament, and they resented being taxed without their consent. "No taxation without representation" became a rallying cry throughout the colonies. The right to tax, the colonists argued, rightfully belonged to their elected colonial assemblies.

**The Stamp Act Congress,** The colonists' reaction to the **Stamp Act** of 1765, Parliament's first attempt to tax the colonists directly, should have been a warning sign of the rough times to come. The Stamp Act required a government tax stamp on paper goods and all legal documents, including contracts and licenses. Newspapers, almanacs, and even printed sermons and playing cards had to bear the official stamp.

The Stamp Act infuriated colonists, who responded with organized protest. Secret colonial societies called the Sons of Liberty sprang up across the colonies. Their goal was to intimidate the stamp agents charged with collecting Parliament's taxes. In many places, mobs forced stamp agents out of office. In Philadelphia, colonists even conducted a mock hanging of a stamp agent.

In October 1765 nine colonies sent delegates to the Stamp Act Congress in New York to craft a united response to the new tax measure. The congress was the colonies' first attempt at forging a plan to work together since the 1754 Albany meeting. It sent a petition to the king that

declared their loyalty but voiced a strong protest, asserting that the power to tax colonies should belong solely to the colonial assemblies.

**Colonial Protests** Although Parliament repealed the Stamp Act in 1766, it continued to impose new taxes. The new measures stoked the flames of colonial resistance, and in some communities protests erupted into violence. On March 5, 1770, British soldiers fired into a crowd of colonial protestors in Boston, killing five people in an event known as the Boston Massacre.

#### RESPONSIBILITIES OF LEADERSHIP

**To ensure that government serves the common good, responsible citizens must, at times, be willing to take on political challenges that put their own private interests at risk.**

A number of resistance groups began to organize, often in secret. They staged rallies, published pamphlets, and recruited community leaders to protest British policies they deemed unfair to the colonies. In 1772 colonial activist Samuel Adams formed the Committees of Correspondence to inform the other colonies of events in Boston. Through organized letter-writing campaigns with similar groups, a network of communication formed among the colonies.

When Parliament gave all rights to the American tea trade to one British company, the East India Company, Adams and other Boston colonists reacted by staging the Boston Tea Party. On December 16, 1773, a group of colonists disguised themselves as Native Americans, boarded three British ships and dumped the ships' tea cargo over-board into Boston Harbor.

## ACADEMIC VOCABULARY

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**quartering**, housing

For Parliament and George III, the Boston Tea Party was a brazen act of disrespect that had to be punished. "The Colonies must either submit or triumph," the king wrote. Parliament passed a new set of harsh

laws in 1774. Called the Intolerable Acts in the colonies, the laws closed Boston Harbor, ended all forms of self-rule in Massachusetts, and called for the quartering of British troops in private homes. Thousands of British troops were dispatched to the colonies to enforce the new measures.

**READING CHECK** **Summarizing** What forms of protest did the colonists use to oppose British policies?

## The Continental Congresses

Most American colonists held out hope for a compromise that would roll back the harshest tax measures. Toward this end, the Virginia and Massachusetts assemblies called for a general meeting of the colonies to be held in Philadelphia, Pennsylvania.

**The First Continental Congress,** Every colony except Georgia sent delegates to the in Philadelphia in fall of 1774. The delegates sent George III a document known as the Declaration and Resolves, demanding a repeal of the Intolerable Acts, an end to British military occupation, and the power of the colonies to impose their own tax laws. Congress also called for a boycott of British goods until its demands were met. The delegates agreed to meet again the following May should the king refuse to address their grievances.

The British rejected the colonists' demands. In April 1775, British troops clashed with colonial militia at Lexington and Concord in Massachusetts. The clashes became known as "the shot heard 'round the world," the first time the colonists met the British with armed resistance.

**The Second Continental Congress,** Three weeks after Lexington and Concord, the **Second Continental Congress** met in Philadelphia. Again representatives from 12 of the 13 colonies attended. Many delegates no longer expected better treatment by the Crown. This time, they were resolved to take strong measures. One of the Congress's first actions was

to organize the ragtag militia around Boston into an official Continental Army. By a unanimous vote, delegates then made George Washington its commander.

Still, some delegates clung to hopes of reconciliation. In July 1775, the Congress sent George III a final appeal. In the Olive Branch Petition, the delegates pledged continuing loyalty and begged the king to ask Parliament to repeal the new measures. George III refused to read the petition. On August 23, he proclaimed the American colonists to be in a full state of rebellion. Every effort would be made, he said, “to suppress such rebellion, and to bring the traitors to justice.”

With the Revolutionary War now under way, the Congress assumed the role of a government. It had no legal grounds to do so, but it did so out of desperate necessity. During the Revolution, the Congress would raise troops, borrow money, send diplomats to Europe, and create a monetary system. Most importantly, it would declare the colonies independent from Britain.

**The Common Sense of Democracy,** On January 10, 1776, a 47-page political pamphlet that would inspire widespread support for independence appeared in Philadelphia. The pamphlet was *Common Sense* by Thomas Paine, an Englishman who had arrived in America only a year earlier.

In plain language, Paine persuasively made the case for a break with England. He laid blame for colonial hostilities at Parliament’s feet. Then he took the king in particular and monarchy in general to task, arguing that “a thirst for absolute power is the natural disease of monarchy.” For Paine, independence was the only “common sense” course of action for the colonists to take.

Paine saw the history of the world hanging on the outcome of the colonies’ rebellion. “We have it in our power,” he wrote, “to begin the world over again.” That new world would take the form of a republican government, in which people governed themselves through democratically elected representatives. Paine’s message struck a chord.

Within three months of its first printing, 150,000 copies of *Common Sense* had flown off colonial presses.

**READING CHECK** **Making Inferences** According to Paine, why was independence “common sense”?

## The Declaration of Independence

The armed conflict continued for months before independence was officially declared. On June 7, 1776, Virginia delegate Richard Henry Lee stood before the Congress and proposed a resolution to officially declare independence from Great Britain. No longer concerned with restoring their “rights as Englishmen,” the delegates passed Lee’s resolution on July 2.

Congress appointed a committee of five to write a formal statement justifying the move for independence. The committee included John Adams, Benjamin Franklin, Robert Livingston, Roger Sherman, and a Virginian named Thomas Jefferson. Widely esteemed for his writing ability, Jefferson wrote most of the document in little more than two weeks.

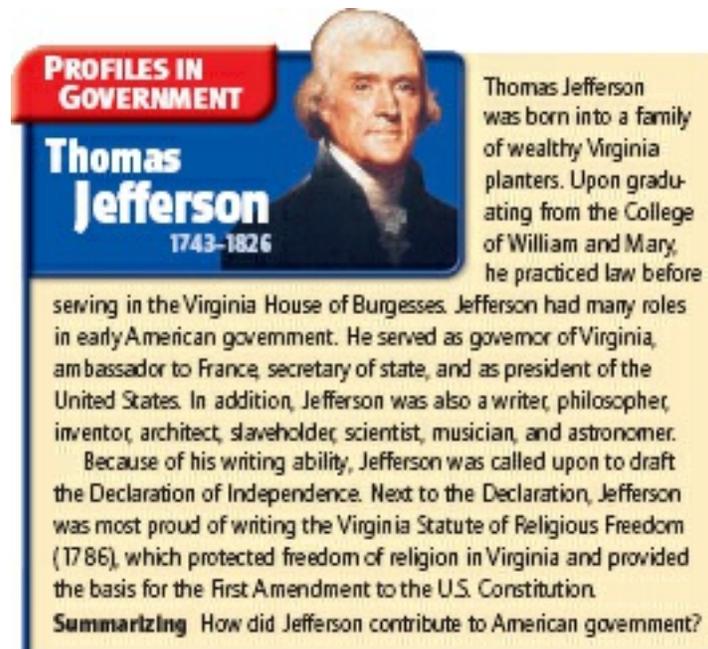
Jefferson later claimed that he consulted “neither book nor pamphlet” to write the Declaration. However, Jefferson likely drew on the **Virginia Declaration of Rights**, which was inspired by John Locke’s view of the social contract theory that you read about in Chapter 1. Written mostly by George Mason, the Virginia Declaration proclaimed “all men are by nature equally free and independent and have certain inherent rights” that cannot be denied.

Likewise, echoing Locke’s view on natural rights, Jefferson’s Declaration states that people have “unalienable” rights to “Life, Liberty, and the pursuit of Happiness” that no government can take away because they are granted by “their Creator,” or God. Jefferson also drew on Locke’s idea that government is the result of a social contract based on the consent of the people. As Jefferson argued, governments derive “their just powers from the consent of the governed.” If a government

disregards the rights of its people, then the people have a legitimate right to change their government.

On the evening of July 4, 1776, the Congress adopted the Declaration of Independence. Britain's thirteen colonies ceased to exist. A new nation of united sovereign states

**READING CHECK** Summarizing How did John Locke's ideas inspire the Declaration of Independence?



**PROFILES IN GOVERNMENT**

**Thomas Jefferson**  
1743–1826

Thomas Jefferson was born into a family of wealthy Virginia planters. Upon graduating from the College of William and Mary, he practiced law before serving in the Virginia House of Burgesses. Jefferson had many roles in early American government. He served as governor of Virginia, ambassador to France, secretary of state, and as president of the United States. In addition, Jefferson was also a writer, philosopher, inventor, architect, slaveholder, scientist, musician, and astronomer.

Because of his writing ability, Jefferson was called upon to draft the Declaration of Independence. Next to the Declaration, Jefferson was most proud of writing the Virginia Statute of Religious Freedom (1786), which protected freedom of religion in Virginia and provided the basis for the First Amendment to the U.S. Constitution.

**Summarizing** How did Jefferson contribute to American government?

## The State Constitutions

In May 1776 the Continental Congress passed a resolution encouraging each colony to draft its plan for government. By 1780, each of the 13 newly independent states had adopted its own written constitution. This was a remarkable feat. At that time, no nation in Europe had a written constitution. Moreover, the early state constitutions tested ideas about how to design a republican government that protected individual rights. These ideas would later influence the writing of the U.S. Constitution.

**Self-Government,** All of the new state constitutions established republican governments with strong legislatures composed of elected representatives. Voting rights, however, differed from state to state. Seven states granted the right to vote to any adult male taxpayer, while other states set property qualifications for voting. Although slaves were

denied the right to vote, free African American men could vote in some states if they met the requirements for voters. New Jersey was the only state to allow women who met property qualifications to vote.

**Separation of Powers,** Each state established three branches of government: legislative, executive, and judicial. The new constitutions gave state legislatures the real power to govern, including the power to conduct foreign affairs and declare war. With the exception of Pennsylvania, all legislatures had two houses. In some states, the legislature elected the governor and state judges.

**Limited Government,** The strong legislative bodies that the colonists created reflected their general distrust of monarchy. The colonists, however, were careful not to grant unlimited power to their legislative bodies. Annual elections, term limits, and separation of powers were established as checks on legislative power. Because colonists feared that a strong executive might undermine a republic, their state constitutions kept the power of the governors deliberately weak, and nine constitutions limited the governor's term to one year.

**Individual Rights,** One way to protect people from the excesses of government power was to legally protect their rights. The Massachusetts constitution of 1780 was the first of seven state constitutions to include a bill of rights that protected individual liberties. These liberties included trial by jury, freedom of assembly, and freedom of speech. Almost all of the rights later included in U.S. Constitution's Bill of Rights were protected in some form in the early state constitutions.

**READING CHECK Summarizing** What ideas about government did state constitutions experiment with?

SECTION

2

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- 1. a. Explain** What ideas about government could early American leaders have learned from the **Iroquois Confederation**?

**b. Predict** What might have happened if Parliament had allowed the colonists to rule and tax themselves?

**2. a. Recall** Why was the **First Continental Congress** called?

**b. Make Inferences** Why was it necessary for Congress to assume the role of a national government during the war?

**3. a. Describe** What was the Congress's purpose in drafting the Declaration of Independence?

**b. Summarize** What sources likely influenced Thomas Jefferson's draft of the Declaration of Independence?

**4. a. Identify** What principles expressed in state constitutions later influenced the writing of the U.S. Constitution?

**b. Explain** How did state constitutions protect rights?

## Critical Thinking

**5. Develop** Copy the graphic organizer below and use it to list in order and describe the events leading up to the writing of the Declaration of Independence.



### FOCUS ON WRITING



**6. Descriptive** Imagine that you are a journalist working for a colonial American newspaper in 1776. Write an editorial comparing and contrasting the Declaration of Independence to the social contract theory.

## The Declaration of Independence

*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 shown, 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.



EXPLORING  
THE DOCUMENT

John Locke's thoughts about natural rights strongly influenced Thomas Jefferson and the founders. **How does the Declaration's mention of "the Laws of Nature" and "Life, Liberty, and the pursuit of Happiness" relate to Locke's views on the natural rights that people possess?**

EXPLORING  
THE DOCUMENT

Thomas Jefferson wrote the first draft of the Declaration in a little more than two weeks. **How is the Declaration's idea about why governments are formed still important to our country today?**

## Vocabulary

**impel**, force

**usurpations**, wrongful seizures of power

**evinces**, clearly displays

**despotism**, unlimited power

**tyranny**, oppressive power

exerted by a government or ruler

**candid, fair**

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

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

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

He has erected a multitude of New Offices, and sent hither swarms

of Officers to harass our people, and eat out their substance.

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

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

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

For **quartering** large bodies of armed troops among us:

## Vocabulary

**inestimable**, priceless

**formidable**, causing dread

**annihilation**, destruction

**convulsions**, violent

**convulsions**, violent disturbances

**appropriations of lands**, setting aside land for settlement

**quartering** lodging

made against King George III. **How does the language in the list appeal to people's emotions?**

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

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

For imposing taxes on us without our Consent:

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

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

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



How do the king's actions and the idea of arbitrary power go against the notion of limited government and the rule of law?

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

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

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

He has plundered our seas, ravaged our Coasts, burnt our towns, and

destroyed the lives of our people.

He is at this time transporting large armies of **foreign mercenaries** to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & **perfidy** scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

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

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

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

## Vocabulary

**arbitrary**, not based on law

**render**, make

**foreign mercenaries**, soldiers hired to fight for a country not their own

**perfidy**, violation of trust

**insurrections**, rebellions

**petitioned for redress**, asked formally for a correction of wrongs

**unwarrantable jurisdiction**  
unjustified authority

**magnanimity**, generous spirit

**conjured**, gently called upon

**consanguinity**, common ancestry

**acquiesce**, gently called upon

**rectitude**, rightness

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an **unwarrantable jurisdiction** over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and **magnanimity**, and we have **conjured** them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of **consanguinity**. We must, therefore, **acquiesce** in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the **rectitude** of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and

Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

EXPLORING  
THE DOCUMENT

Here the Declaration describes how the colonies attempted to resolve issues with Great Britain. **Why do you think the authors included this information when announcing their separation?**

EXPLORING  
THE DOCUMENT

Here the document declares the colonies independent. **Whose authority does the Congress use to declare independence?**

EXPLORING  
THE DOCUMENT

The Congress adopted the final draft of the Declaration of Independence on July 4, 1776. A formal copy, written on parchment, was signed on August 2, 1776.

EXPLORING  
THE DOCUMENT

The following is part of a passage the Congress removed from Jefferson's original draft: "He has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither." **Why do you think the Congress deleted this passage?**

John Hancock

Benjamin Harrison

Lewis Morris

Button Gwinnett

Thomas Nelson, Jr.

Richard Stockton

Lyman Hall

Francis Lightfoot Lee

John Witherspoon

George Walton

Carter Braxton

Francis Hopkinson

William Hooper  
Joseph Hewes  
John Penn  
Edward Rutledge  
Thomas Heyward, Jr.  
Thomas Lynch, Jr.  
Arthur Middleton  
Samuel Chase  
William Paca  
Thomas Stone  
Charles Carroll of Carrollton  
George Wythe  
Richard Henry Lee  
Thomas Jefferson

Robert Morris  
Benjamin Rush  
Benjamin Franklin  
John Morton  
George Clymer  
James Smith  
George Taylor  
James Wilson  
George Ross  
Caesar Rodney  
George Read  
Thomas McKean  
William Floyd  
Philip Livingston  
Francis Lewis

John Hart  
Abraham Clark  
Josiah Bartlett  
William Whipple  
Samuel Adams  
John Adams  
Robert Treat Paine  
Elbridge Gerry  
Stephen Hopkins  
William Ellery  
Roger Sherman  
Samuel Huntington  
William Williams  
Oliver Wolcott  
Matthew Thornton



# Articles of Confederation

**BEFORE YOU READ**

## Main Idea

The states' first attempt to build a national government, the Articles of Confederation, proved too weak to last.

## Reading Focus

1. How was the first national government organized under the Articles of Confederation?
2. What were the weaknesses of the Articles of Confederation?
3. What events

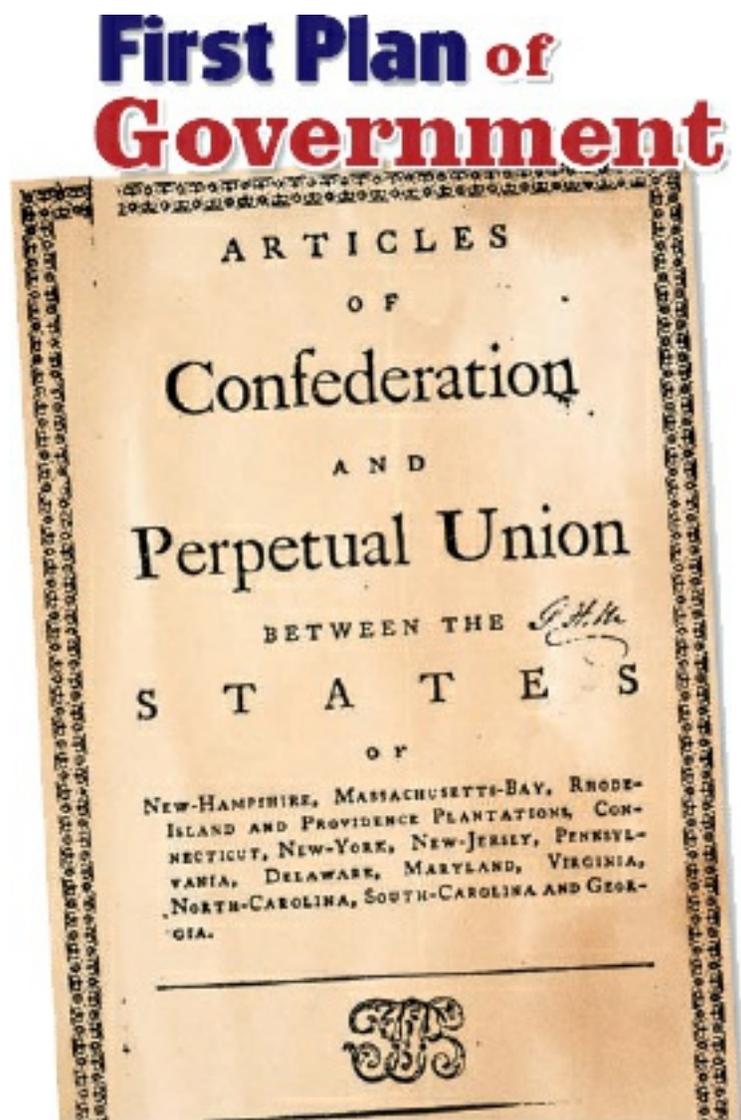
## Key Terms

Articles of Confederation  
ratified  
Northwest Ordinance  
Shays's Rebellion

convinced  
some  
American  
leaders that a  
stronger  
national  
government  
was needed?



Use the graphic organizer online to take notes on the creation of a national government.



The Articles of Confederation declared the 13 former colonies to be sovereign states in a “perpetual union” called the United States of America.

**States Become Nation** On June 7, 1776, Richard Henry Lee rose to the floor of the Second Continental Congress to make a dramatic proposal: “Resolved: These United Colonies are, and of right ought to be free and independent States, that they are absolved from all allegiance to the British Crown.” Soon after, the Congress voted to do two things: to declare independence and to establish a confederation to govern the states.

As one committee of congressional delegates began work on the Declaration of Independence, a second committee acted quickly to organize a new government. They now had a revolution to win. The committee’s delegates drew on a number of sources for their confederation. The product of their labors took its name, the *Articles of Confederation and Perpetual Union*, from Benjamin Franklin’s plan. It was the first plan of government for the United States.

The new government would be strong enough to see the colonies through the American Revolution, but it would not last long. As the founders soon learned, their confederation was deeply flawed. By 1785 George Washington and other important leaders were discussing the need to reform the plan—or replace it. ■

## First National Government

In June 1776, on the eve of independence, the Second Continental Congress turned its attention to creating a national government. The committee appointed to the task consisted of one delegate from each former colony. With John Dickinson, the delegate from Pennsylvania, serving as chief author, the committee drew up a new model of government. In their eyes, the United States was to be a confederation. The delegates aimed to build a “firm league of friendship” among 13 states that retained their “sovereignty, freedom, and independence.”

On June 12, 1777, after six drafts and several months of debate, Congress adopted the nation’s first constitution, the **Articles of Confederation**. Before it could go into force, it had to be **ratified**, or

formally approved, by all of the states.

**A Delay in Ratification** Disputes over who would control the vast western lands that stretched between the Appalachian Mountains and the Mississippi River delayed the ratification process. Small states feared that large states with claims to western lands would become enormously powerful and overpower smaller states. For this reason, small states without land claims refused to approve the Articles. To win states' approval, the authors of the Articles changed their plan, granting the Confederation control over western lands. Maryland, the last state to pass the Articles, held out until 1781.



The Powers of Congress	The Limits on Congress
<ul style="list-style-type: none"><li>• Coin and borrow money</li><li>• Admit new states and divide western lands</li><li>• Request money from states</li><li>• Raise an army</li><li>• Appoint military officers</li><li>• Establish a postal system</li><li>• Declare war and make peace</li><li>• Conduct foreign affairs</li></ul>	<ul style="list-style-type: none"><li>• No president or executive branch</li><li>• No national court system</li><li>• No power to tax or raise national funds</li><li>• No power to regulate trade or currency</li><li>• No power to prohibit states from conducting foreign affairs</li><li>• Major laws required the approval of nine states to pass</li></ul>

**Powers of the National Government** The Articles of Confederation guarded state powers by creating a weak national government. Fearing the power wielded by a king, the authors of the Articles made no provision for an executive office. Nor did they provide for a national court system.

The Articles did call for a one-house Congress, in which each state had one vote. Delegates to the Congress were appointed and paid by their state legislatures. To pass any major legislation, nine states had to agree. Moreover, any change to the Articles required approval from all of the 13 states.

The Articles gave Congress the power to act on matters of common interest to the states. Congress could admit new states and organize the division of western lands. Congress could also settle disputes between

states, organize a postal service, coin and borrow money, appoint military officers, and raise an army. The powers to declare war, make peace, and conduct foreign policy were also given to Congress by the Articles.

**State Powers** The states retained all powers not specifically given to Congress. According to Article II of the document, each state would retain “every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.” The states’ powers included the ability to collect taxes and enforce national laws. It was also up to the states to contribute funds to the national government as they saw fit.

**READING CHECK Summarizing** How did national and state powers differ under the Articles?

## **Weaknesses of the Articles**

On paper, the Confederation Congress looked powerful enough. The Articles had given Congress a number of key responsibilities. In reality, the Articles placed limits on Congress that kept it from effectively enforcing its laws and policies. For example, without a separate executive branch, the national government lacked the means to carry out Congress’s laws. Without a national court system, Congress had to rely on the state courts to apply national laws.

More important, the Articles denied Congress the power to tax. Congress could ask the states for money, but the states often refused. This situation made it difficult to raise money for a national army. It also meant that Congress could not raise the funds necessary to repay money that the nation had borrowed during the Revolution. Nor could it pay many of the soldiers who had fought for independence.

Congress also lacked the authority to regulate commerce, or trade, between the states. For example, Congress was not able to intervene when one state passed laws taxing goods from other states in an effort to give an advantage to its local businesses.

Although Congress had the power to coin money, it did not have the *sole* power to do so. By the mid-1780s several different state currencies were in circulation. Some states refused to accept the currencies of other states. Such barriers to trade created major obstacles to the economic development of the young country.

Congress was further hindered by the degree of consensus required to pass laws. Rarely did 9 of the 13 states agree on any policy. Moreover, only one state had to raise an objection to block changes to the Articles. Such disagreement weakened Congress's ability to act swiftly and decisively.

**READING CHECK** **Summarizing** What were the weaknesses of the Articles of Confederation?

## Pressures for Stronger Government

With independence from Britain secured by the Treaty of Paris in 1783, the United States faced a range of challenges that, for the most part, the national government was ill-equipped to meet. The shortcomings of the government created by the Articles of Confederation would lead to calls for a new plan of government to replace the Articles.

**Northwest Ordinance** One of Congress's greatest successes was the passage of the **Northwest Ordinance** of 1787. The ordinance established a plan for settling the Northwest Territory, which included areas that are now in Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin. This territory included the disputed western lands that had delayed ratification of the Articles.

The Northwest Ordinance created a system for admitting new states to the Union. It banned slavery in the territory. It also included a bill of rights that guaranteed representative government, religious freedom, trial by jury, and other freedoms to settlers. For more than 125 years, the ordinance guided the nation's westward expansion.



What were the positive and negative consequences of a limited national government?

**Dangers and Unrest** When Congress turned to other challenges—war debts, a sluggish economy, uncooperative states, and civil unrest—it largely floundered. Perhaps the most pressing problem was the war debts. Congress had borrowed heavily from foreign creditors and wealthy Americans to pay for the war. In addition, it owed back wages to soldiers. To meet its obligations, in 1783 Congress called on the states to approve a tax on imports. Unanimous consent was needed. With war debts of their own, the states balked. By 1787 only nine states had consented. Without a steady stream of income, the government was broke.

To make matters worse, the economy was slow to recover from a postwar depression. Farmers were particularly hard hit. Many fell into debt and faced losing their farms. Creditors in all states feared that borrowers would not make good on their loans.

Meanwhile, the states pursued their own interests. Some flouted laws passed by Congress and the terms of foreign treaties. Others negotiated directly with foreign powers and raised their own armed forces. In a 1786 letter to James Madison, George Washington likened the United States to “thirteen sovereignties pulling against each other and tugging at the federal head.”

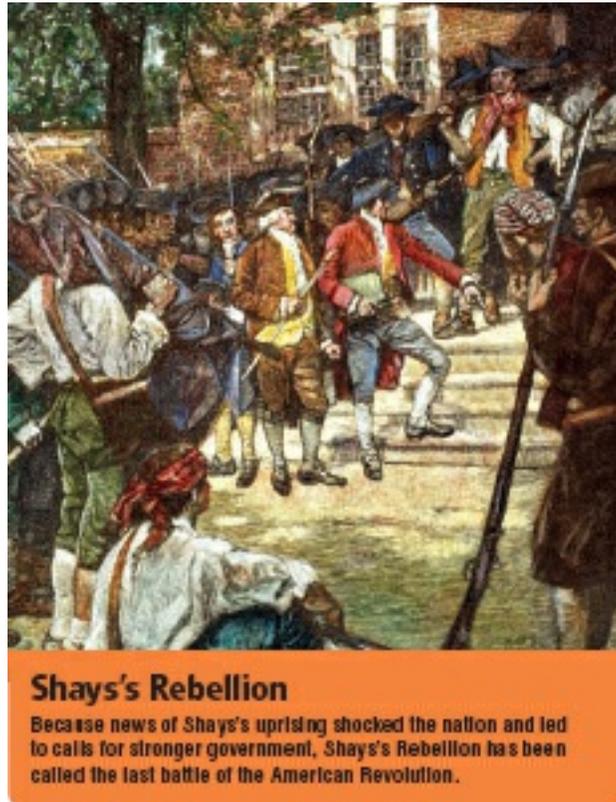
## ACADEMIC VOCABULARY

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**flout** ignore

**Shays's Rebellion** In September 1786 a small band of Massachusetts farmers rebelled at the prospect of losing their land. Led by former Revolutionary War captain Daniel Shays, the farmers attacked courthouses to prevent judges from foreclosing on farms. By 1787, the ranks of **Shays's Rebellion** had swelled to nearly 2,500. Shays even

stormed the Springfield military arsenal, where hundreds of guns were stored. The Massachusetts legislature asked Congress for help, but Congress had neither money nor forces to offer. Finally, a hastily assembled state militia scattered Shays and his angry mob.



Shays's Rebellion came at a sensitive time. It showed just how feeble the Confederation Congress was, and it hastened moves to revise the Articles of Confederation.

**Calls to Revise the Articles** ,In March 1785 George Washington invited representatives from Virginia and Maryland to his home at Mount Vernon. The purpose of the meeting was to discuss resolving a trade dispute between the two states.

The success of the Mount Vernon meeting convinced James Madison to organize a second, larger meeting at Annapolis, Maryland, to discuss regulating commerce between all of the states. At his urging, the Virginia General Assembly issued meeting invitations to the states. Nine states accepted, but delegates from only five states showed up. The poor attendance led to a call for yet another meeting—this time to discuss strengthening the Articles of Confederation.

The next meeting was to be held in May 1787 in Philadelphia. In an

address to the states, Alexander Hamilton called on states to send delegates to discuss commerce and all matters necessary to make the national government “adequate to the exigencies [emergencies] of the union.”

In February 1787 Madison persuaded the Confederation Congress to endorse the Philadelphia meeting “for the sole and express purpose of revising the Articles of Confederation.” No mention was made of writing a new constitution.

**READING CHECK** **Identifying Cause and Effect** What events caused leaders to want to revise the Articles of Confederation?

SECTION

3

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- Recall** What issue led to the delay of the ratification of the Articles of Confederation?
  - Explain** How did the Articles of Confederation reflect the colonists’ fear of monarchy?
- Identify** What weakness in the Articles prevented Congress from financing its activities?
  - Explain** How did the distribution of powers under the Articles make the national government dependent on the states?
- Identify** What was **Shays’s Rebellion**?
  - Summarize** Describe the events leading from Shays’s Rebellion to the call for the Constitutional Convention.

## Critical Thinking

- Compare and Contrast** Copy the chart below and take notes on the powers and limits of Congress under the Articles of Confederation.

Powers	Limits

**5. Expository** Write a paragraph explaining the impact of the Northwest Ordinance of 1787 on the United States, the Midwest, and your state.



# The Constitutional Convention

**BEFORE YOU READ**

**Main Idea**

Delegates at the Constitutional Convention compromised on key issues to create a plan for a strong national government.

**Reading Focus**

1. Why did the Constitutional Convention draft a new plan for government?
2. How did the rival plans for the new government differ?
3. What other conflicts required the Framers to compromise?

**Key Terms**

Framers  
 Virginia Plan  
 New Jersey Plan  
 Great Compromise  
 Three-Fifths Compromise

**Crafting a More Perfect Union,** There is a story often told of the closing day of the Constitutional Convention held in Philadelphia, Pennsylvania. As delegate Benjamin Franklin exited the convention, he was approached by a woman who asked him whether the delegates had created a republic or a monarchy. Franklin responded, “A republic, if you can keep it.”

As one of the 55 delegates who toiled for four months to create a new framework for the government of the United States, Franklin understood the significance of a republican government. Because the U.S. Constitution granted unprecedented power to the people to choose their leaders, the new government’s success or failure now rested in the hands of the American people. It was a brave, new experiment in self-rule.

For more than 220 years, the American people have kept the republic going strong. Today the United States is the world’s oldest constitutional democracy. ■

## A New Plan for Government



## Drafting a New Constitution

By May 1787 the United States was on the verge of a crisis. The weak

central government created by the Articles of Confederation had proved inadequate to the social, diplomatic, and economic problems the new nation faced. Delegates from the states gathered at a convention in Philadelphia to revise the Articles of Confederation, which they unanimously agreed was too weak to meet the nation's needs. The result, however, was an entirely new plan for government.



## Framers of the Constitution

**The Convention Meets** On May 25, 1787, after a quorum, or majority, of state delegations had arrived, the convention got under way. Representatives from 12 of the 13 states would eventually attend. Leaders in Rhode Island, fearful that the convention would strip power from the states, refused to send a delegation. Over the course of the next four months, the delegates to the convention worked together to draft the framework for a new government.

FRAMERS OF THE CONSTITUTION	
DELEGATE	KEY ROLE AND CONTRIBUTIONS
<b>Benjamin Franklin</b> Pennsylvania	At age 81, the oldest and most admired delegate in attendance
<b>Alexander Hamilton</b> New York	Strongly advocated for passing the Constitution by co-authoring a series of essays known as the <i>Federalist Papers</i>
<b>James Madison</b> Virginia	Major author of the Virginia Plan and a supporter of a strong national government
<b>William Paterson</b> New Jersey	Proposed the New Jersey Plan, which called for a unicameral legislature with equal representation from each state
<b>Edmund Randolph</b> Virginia	Proposed the Virginia Plan, which called for a government with three separate branches based on each state's population or wealth
<b>Roger Sherman</b> Connecticut	Proposed the Great Compromise, which called for equal representation in the Senate and representation based on state population in the House

The delegates set some general guidelines for their proceedings. Each state would have one vote, and decisions would be made by a simple

majority. To ensure their ability to speak their minds freely, delegates voted to meet in strict secrecy. The press and the public were not allowed to attend, and official records were limited.

**Framers of the Constitution** The 55 delegates who attended the Convention were a remarkable group. One-third of the delegates had served in the Continental Army. Eight had signed the Declaration of Independence. Almost all had experience in colonial, state, or local government. They ranged in age from 26-year-old Jonathan Dayton of New Jersey to 81-year-old Benjamin Franklin of Pennsylvania. Together, the delegates to the Constitutional Convention are known as the **Framers** of the Constitution for their efforts in drafting the framework of the new government.

Several of the Framers played key roles in guiding the convention. George Washington, for example, gave the meetings an air of dignity and authority in his role as president of the convention. Virginia's James Madison also played a pivotal role. Madison took the lead in planning the convention and in calling for a new government. Today Madison is hailed as the Father of the Constitution because of his influence on the outcome of the convention.

**READING CHECK** **Drawing Conclusions** Why did the delegates want to keep the proceedings secret?

## **Rival Plans**

The delegates had been sent to Philadelphia to revise the Articles of Confederation, but many of them believed the Articles were irredeemably flawed. When the convention opened, delegates soon raised the idea of creating a new form of government. In the days that followed, two rival plans emerged—the Virginia Plan and the New Jersey Plan.

**The Virginia Plan** In the weeks before the Philadelphia convention, delegates from Virginia had gathered to discuss the problems of the

existing government. It quickly became apparent to them that what was needed was not a revision of the Articles of Confederation, but an entirely different government. They formulated a proposal to that effect. On the fourth day of the Convention, Virginia delegate Edmund Randolph presented the group's proposal, known as the **Virginia Plan**, to the Philadelphia Convention.

Based largely on the ideas of James Madison, the Virginia Plan called for a central government divided into three branches—legislative, executive, and judicial—each with the power to check the other branches. Unlike the Articles of Confederation, Virginia's proposal called for a strong national government with the power to make laws, levy its own taxes, and control commerce between the states. The new government would also have the power to override state laws.

In addition, the Virginia Plan called for a bicameral legislature. Membership in both houses of Congress would be based on a state's population, with more populous states having a greater number of representatives. Members of the lower house would be directly elected by the people, while members of the upper house would be selected by state legislatures.

**The New Jersey Plan** Delegates from small states were concerned that the Virginia Plan gave too much power to the large states. After two weeks of discussion, the small states countered with a plan of their own, presented by William Paterson of New Jersey. Paterson's **New Jersey Plan** called for a strong central government made up of three branches. However, the plan was designed to stick closer to the Articles of Confederation.

It proposed a unicameral legislature. Each state would have one vote, giving equal representation to every state regardless of its population. As a result, each state—large or small—would have equal say in determining public policy.

After three days of vigorous debate, the Convention voted on the New Jersey Plan. Despite support from small states, the plan was

ultimately rejected.

**READING CHECK** **Contrasting** How did the Virginia Plan and the New Jersey Plan differ?



**PROFILES IN GOVERNMENT**

**James Madison**  
(1751-1836)

Often called the Father of the Constitution, James Madison played a central role in guiding discussion at the Convention and writing the final document. He carefully transcribed his notes from each day's proceedings into his diary at night; the results remain the best primary account of the Convention. In addition, Madison worked to help secure ratification of the Constitution and to help draft the Bill of Rights. Later, as president, Madison continued to pursue a balance between a strong national government and individual liberty.

**Drawing Conclusions** Why is James Madison considered the Father of the Constitution?

## Conflict and Compromise

For weeks after the rejection of the New Jersey Plan, the Convention was deadlocked. Tempers flared, and at times it seemed the Convention would fall apart. In the end, a series of compromises saved the Convention.

**The Great Compromise** On June 30, 1787, Roger Sherman of Connecticut rose to present a plan he and a group of fellow delegates had devised. The Connecticut Compromise, now known as the **Great Compromise**, combined elements from both the Virginia and the New Jersey plans.

Like the Virginia Plan, the Great Compromise called for the creation of a bicameral legislature. Membership in the lower house, known as the House of Representatives, would be based on a state's population, thus pleasing the states with larger populations. Members of the lower house would be elected by popular vote.

In the upper house, known as the Senate, each state would have two members regard-less of its population. Similar to the New Jersey Plan, this proposal would protect the smaller states by granting them equal

representation. Members of the Senate would be selected by state legislatures.

Sherman's plan solved the dilemma over representation to the satisfaction of large and small states alike. On July 16, delegates to the convention approved the compromise. Their work, however, was not yet finished.

THE GREAT COMPROMISE			
KEY ISSUE	VIRGINIA PLAN (Large-State Plan)	NEW JERSEY PLAN (Small-State Plan)	THE GREAT COMPROMISE (The Constitution)
What is the source of the national government's power?	The people	The states	The people
What is the structure of the legislature?	Bicameral Congress	Unicameral Congress	Bicameral Congress
What is the basis of representation in Congress?	Representation based on population	One vote for every state	Equal votes in the Senate; representation based on population in the House
How will Congress pass laws?	Simple majority	Extraordinary majority	Simple majority vote, with provision for a presidential veto
What powers will Congress have?	Power to regulate commerce and tax	Power to regulate commerce and tax	Power to regulate commerce and tax
What kind of executive is there?	Number of executives undetermined; elected and removed by Congress	More than one executive; removable by a state majority	One executive; elected by the people and removable by Congress
What kind of judicial branch?	National court system with power to overturn state laws	National court system with no power over states	National court system with power to overturn state laws
Who will approve the new plan for government?	The people	State legislatures	State ratification conventions

**QUICK FACTS**

**Skills Focus** INTERPRETING CHARTS

What features of the New Jersey Plan would have appealed to smaller states?

**Compromises over Slavery** The issue of slavery lay just below the surface of debates throughout the Philadelphia Convention. At issue was not whether slavery would be allowed to continue. Rather, delegates argued over two key points. The first point concerned whether or not enslaved people should be counted as part of a state's population. The second was whether the importation of enslaved people should be allowed to continue.

Counting enslaved people would greatly increase the population and thus the power of the southern states in the House of Representatives. Northern delegates argued that enslaved people should not be counted as

part of a state's population since enslaved people were not allowed to vote. Southern delegates, however, insisted that enslaved people should be counted, even though they had no intention of extending the vote to slaves.

This dispute was settled by what came to be called the **Three-Fifths Compromise**. It provided that three-fifths of the enslaved people in a state would be counted when determining a state's population. Thus, for every five enslaved people, three would be added to the state's population total to determine the number of representatives a state would have in the House.

The Framers also took up the issue of the slave trade. By 1787 there was widespread agreement in the North that the slave trade was inhumane and many northern delegates wanted to ban the slave trade, but not the institution of slavery itself. Southern delegates warned that such a proposal would endanger the entire work of the Convention.

Once again, the Convention was saved by a last-minute compromise. The Atlantic slave trade would be protected for the next 20 years. A clause in Article I, Section 9, of the Constitution prohibited Congress from interfering with the importation of enslaved people until 1808. In exchange, the delegates agreed that a simple majority in both houses of Congress would be all that was needed to regulate commerce.

**Presidential Election** The delegates negotiated another compromise to settle how to select the president. Some delegates believed that the president should be elected directly by the people. Others wanted the president to be chosen by the state legislatures or by the national legislature.

The Framers created a system in which the president would be chosen by state electors. The number of a state's electors would match the number of representatives the state had in both houses of Congress. Many delegates assumed that state legislatures would choose the electors by popular vote. If no presidential candidate received a majority of electoral votes from the states, the House of Representatives would

choose the president.

**Finalizing the Constitution** Throughout the hot summer of 1787, weary delegates debated a number of difficult issues. They settled disputes and made key decisions. In the middle of July, they set about writing a draft. By September, the delegates had only one thing left to do—show their approval by signing the final document.

Benjamin Franklin urged the delegates to overlook the parts of the document that they did not like because it was as close to a perfect Constitution as he thought possible.

### Primary Source

**“ I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall ever approve them ... It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does ... Thus I consent, Sir, to this constitution because I expect not better, and because I am not sure that it is not the best.”**

—Benjamin Franklin, September 17, 1787

Franklin urged the meeting to “act heartily and unanimously” in signing the Constitution. Many who signed the document wholeheartedly supported the new plan, and others signed in spite of their misgivings. A handful of respected delegates, however, refused to sign the document because it lacked a bill of rights. They were George Mason and Edmund Randolph of Virginia and Elbridge Gerry of Massachusetts.

In all, 39 delegates from 12 states signed the Constitution. The Constitutional Convention adjourned on Monday, September 17, 1787. It was now time for the American people to approve the document.

**READING CHECK** Summarizing What compromises made the

## Reviewing Ideas and Terms

- Recall** What was the original purpose of the 1787 Constitutional Convention?
  - Summarize** What qualifications did the Convention's delegates possess?
- Explain** How did the **Virginia Plan** aim to improve the structure of the national government?
  - Contrast** How did supporters of the Virginia Plan and New Jersey Plan differ?
- Summarize** What were the key issues involved in the compromises made over slavery?
  - Predict** What might have happened if the delegates were not able to agree to the terms of the Great Compromise?

## Critical Thinking

- Compare and Contrast** Copy the diagram below and take notes comparing and contrasting the Virginia Plan and the New Jersey Plan.



### FOCUS ON WRITING



- Descriptive** James Madison kept a journal recording the proceedings of the Constitutional Convention. Write a diary entry describing a pivotal event that happened at the convention from Madison's point of view.

# Mandatory National: Public Service

*Should the national government institute new programs for mandatory national public service?*

## THE ISSUE

The Framers of the U.S. Constitution believed strongly that a representative democracy could not last without active citizen participation and a spirit of civic virtue, or people's ability to place the common good over their own self-interest. In their view, all citizens must be prepared to do their part to maintain democracy and the public good. In addition to voting and paying taxes at the local, state, and national levels, civic participation can also mean volunteering one's service and abilities at any one of these levels, either independently or as part of a group.

At present, the United States sponsors voluntary military service as well as voluntary public service opportunities. To ensure the future of our republic, however, some people have proposed that our national government should institute a mandatory public service plan.



**Opponents of mandatory public service claim that it could rob volunteers for groups such as Teach for America (top, right) and individuals such as Geoffrey Canada (above, left), the founder of Harlem Children's Zone, of their initiative to volunteer.**

## VIEWPOINTS

**Public service should be mandatory.** Proponents of mandatory public service see it as the best way to cultivate civic virtue in our nation's youth. Young people could choose service in either the nation's military or a nationally funded public service program, such as AmeriCorps, which sponsors community service programs ranging from public education to building public housing. In exchange, the government would offer money for college or other payment. Such a system would promote patriotism and tolerance of one's fellow citizens and would help our nation's future leaders develop the compassion and courage they need to maintain democracy.

**Public service should remain voluntary.** Many people argue that the needs of the people are better served by private volunteerism and civic organizations, not the government. Mandatory service runs contrary to personal liberty and takes away freedom of choice, a freedom most Americans are reluctant to give up. Moreover, mandatory service would diminish the spirit and quality of service, since people might perform it grudgingly. Lastly, paying for a mandatory public service program would be enormously expensive. Society would not be able to reap the benefits until years later, and the government would be footing the bill.

**What Is Your Opinion?**

1. Do you think that the government should institute mandatory public service? Explain.
2. Should Americans continue to care about civic virtue? Why or why not?



## Ratification and the Bill of Rights

### BEFORE YOU READ

#### Main Idea

Before the Constitution could take effect, a heated debate between those in favor of the Constitution and those who opposed it took place in all the states.

#### Reading Focus

1. What were the main points of disagreement between the Antifederalists and the Federalists?
2. What were the main arguments made by the authors of the *Federalist Papers*?
3. Why was the Bill of Rights important to

#### Key Terms

Federalists  
Antifederalists  
Publius  
Federalist  
Papers  
Bill of Rights

the ratification  
of the  
Constitution?



Use the graphic organizer online to take notes on the ratification debate.

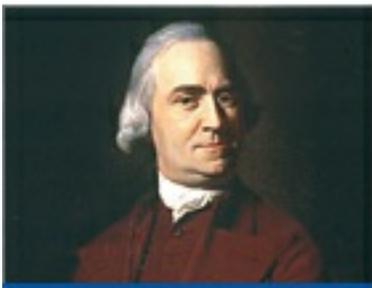
## A Government by Choice



**The Fight for Ratification,** In the wake of the Constitutional Convention, a heated debate—between those who supported the new plan for government and those who opposed it—gripped the newly born American republic. For 10 months, the debate raged across the nation, spilling out of the state-level conventions specially called to consider the terms of the Constitution and into newspapers, pamphlets, sermons, speeches, and everyday conversations.

On October 27, 1787, the *New York Independent Journal* invited its readers to join the debate. Upon opening their newspapers, readers found *Federalist Paper* No.1, the first in a new series of essays written to defend the Constitution and to persuade New Yorkers to ratify it. The essays outlined the philosophy behind the Constitution and argued for a strong national government. Later, the essays were collected in a volume called *The Federalist* and circulated widely in other states.

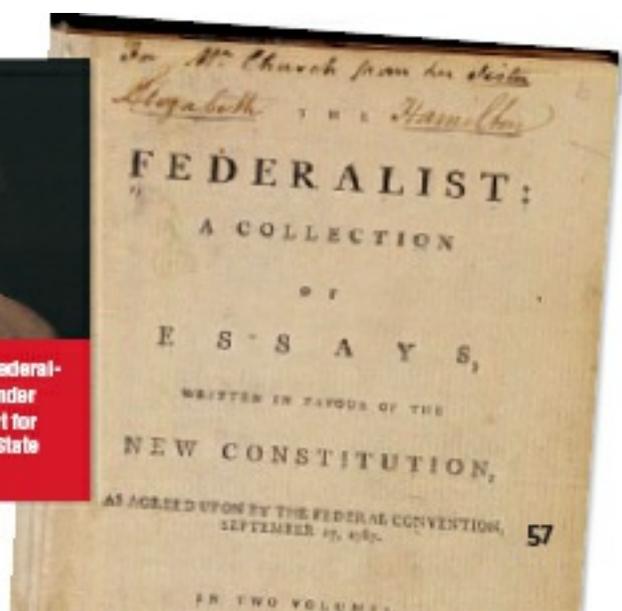
The authors of *The Federalist* were not the only ones writing essays and pamphlets. Opponents of the Constitution weighed in on the debate with their own vigorous writings. After all, the stakes were high. For the first time in history, a people had a chance to prove, in the words of *Federalist Paper* No.1, that they could create a government “by reflection and choice” instead of having rule imposed on them by “accident and force.” ■



Many Revolutionary leaders, like Virginian Patrick Henry, opposed the Constitution on the grounds that it gave the national government too much power.



As one of the authors of the Federalist Papers, New Yorker Alexander Hamilton helped build support for the Constitution in New York State and in the rest of the nation.



## Antifederalists versus Federalists

On September 17, 1787, the Constitutional Convention adjourned. The result of the Convention—the Constitution, an entirely new plan of government—went far beyond the delegates’ original intention, to revise the Articles of Confederation. When the Constitution was finally published, the drastic changes surprised some and angered others. With the memory of British rule still fresh in the minds of Americans, many feared a too-powerful national government.

The Framers had anticipated resistance from Congress and the state legislatures. The new national government would not only greatly reduce the powers of state legislatures, but also would completely restructure Congress as established by the Articles of Confederation. Therefore, before concluding the Convention, the Framers outlined a process for ratifying the Constitution that bypassed these bodies. The process called for voters in each state to elect representatives to a state ratifying convention. To become the law of the land, the Constitution had to be ratified by 9 of the 13 states. In the fall of 1787, the battle for ratification began.



Were the delegates justified in creating new rules for the ratification of

## the proposed Constitution? Why or why not?

The battle would drag on for 10 months, pitting former allies against each other. On one side, there were the supporters of the Constitution, once called nationalists, now called **Federalists**. On the other side of the debate stood those who opposed the Constitution. They were called **Antifederalists**.

<b>Antifederalists</b>	<b>Federalists</b>
<ul style="list-style-type: none"><li>• Opposed the Constitution</li><li>• Feared a too-strong national government</li><li>• Believed only a small republic could protect rights</li><li>• Drew support from small farmers in rural areas</li><li>• Believed a bill of rights was necessary to protect individual liberties</li></ul>	<ul style="list-style-type: none"><li>• Supported the Constitution</li><li>• Wanted a strong national government</li><li>• Believed a large republic could best protect individual liberty</li><li>• Drew support from large farmers, merchants, and artisans</li><li>• Believed a bill of rights was unnecessary</li></ul>

**The Antifederalists** Although they recognized the need for a stronger national government, the Antifederalists charged that the Constitution betrayed the democratic ideals of the American Revolution. In their view, representative government could only exist in a small territory. They saw the document as an assault upon state sovereignty, republicanism, and the liberty of the people. They believed that the national government called for by the Constitution would become too powerful and that the strong executive it described would be too similar to a king.

The Antifederalists' strongest criticism, however, was that the Constitution lacked something that every state constitution possessed—a bill of rights guaranteeing the people's civil liberties. In 1776, for example, Virginia had passed a bill of rights that protected free speech, the right to a trial by jury, the right of property owners to vote, and other individual liberties. Antifederalists believed that without explicit protections of those rights written into the Constitution, a national government could easily violate those rights.

**The Federalists** By contrast, the Federalists were enthusiastic supporters

of a powerful and vigorous national government. Like the Antifederalists, the Federalists feared a central government that was too strong and too far away. Only one thing worried the Federalists more: a weak national government. The Federalists believed a sufficiently powerful national government would strengthen the fragile union and be able to promote the public good.

Such a government would have to be empowered to defend the nation against foreign enemies, regulate trade, and put down internal disturbances, like the mob violence witnessed during Shays's Rebellion. The Federalists believed that the Constitution would give the country the strong, orderly national government that the Articles of Confederation had failed to deliver. At the same time, they pointed out that the separation of powers in the Constitution put limits on government power.

**READING CHECK** **Contrasting** Over what issues did Antifederalists and Federalists disagree?

## **The Federalist Papers**

Three of the most intellectually gifted Federalists—Alexander Hamilton, James Madison, and John Jay—teamed up to write a series of articles defending the Constitution for New York newspapers. They wrote under the pen name of **Publius** to honor one of the founders of the Roman Republic. Between fall 1787 and spring 1788, Publius authored a total of 85 essays.

The essays were collected into a single volume and circulated throughout the states. They proved hugely influential in the ratification debate. According to Thomas Jefferson, they were “the best commentary on the principles of government which was ever written.” Today, the essays are collectively called the **Federalist Papers** and considered a classic statement of American political theory.

In the essays, Madison, Hamilton, and Jay defended the principles underlying the Constitution. In *Federalist Papers* No. 10 and 51, Madison

argued that the Constitution would balance the influence of factions, or groups who attempt to bend the government to serve their own will at the expense of the common good. Other *Federalist Papers*, including No. 47, 48, 49, 50, and 51, explained how the Constitution used principles of government—namely checks and balances and separation of powers—to limit national authority and preserve liberty.

In response, the Antifederalists published essays of their own, under names such as Brutus and the Federal Farmer. Protecting liberty was one of their chief concerns. The Federal Farmer wrote: “There are certain unalienable and fundamental rights, which in forming the social compact ... ought to be explicitly ascertained and fixed.”

**READING CHECK** Making Inferences Why were the Federalist Papers written?

## The Fight for Ratification

Because they did not trust government, the Antifederalists wanted the basic rights of the people spelled out in the Constitution. The struggle over a bill of rights became a key focus in the fight over ratification.

**PRIMARY SOURCES**

**Federalist Paper No. 10**

In this essay, James Madison argues that the Constitution would create a national government large and diverse enough to balance the will of a popular majority with minority rights.

“The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, . . . the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens.”

—James Madison, *Federalist Paper No. 10*

**Skills Focus** INTERPRETING PRIMARY SOURCES

**Analyzing Primary Sources** According to Madison, what threatens the rights of citizens in small societies?

See **Skills Handbook**, p. H6.

**Winning over the States** When the fight for ratification began, the

Federalists, fresh from the Constitutional Convention, were better prepared than their opponents. They first targeted the small states. Attracted by equal representation in the Senate, the small states were quick to ratify. Delaware led the way, approving the Constitution on December 7, 1787.

In the largest and most powerful states—Massachusetts, Virginia, and New York—the ratification struggle was much harder. Strong leaders weighed in on both sides. The Federalists counted James Madison, George Washington, Alexander Hamilton, and Benjamin Franklin among their ranks. The Antifederalists countered with Samuel Adams, Patrick Henry, and Richard Henry Lee.

Patrick Henry was particularly passionate in his opposition. In a speech before the Virginia ratifying convention, Henry asked this question:

### **Primary Source**

**“ My political curiosity ... leads me to ask, who authorized them to speak the language of, ‘We, the People,’ instead of ‘We, the States?’”**

—Patrick Henry, June 4, 1788



Despite objections from noted patriots such as Patrick Henry, the Federalists continued to make progress toward ratification. After agreeing to add a bill of rights, the Federalists secured a victory in Massachusetts in February 1788. The vote was close, 89 to 79, but the win marked a shift in public opinion and helped convince both Maryland and South Carolina to ratify. On June 21, 1788, New Hampshire became the ninth state to ratify, and the Constitution officially went into effect.

Ultimately, the promise of a bill of rights was key to winning over other states—New York and Virginia included—where the Constitution was hotly debated. In the end, all 13 states ratified. North Carolina and Rhode Island were the final holdouts. Both withheld their approval until after the new government was already at work.

**Bill of Rights**, During the First Congress, James Madison encouraged his fellow legislators to make a bill of rights one of the new government’s first priorities. To this effect, he suggested a number of rights be protected in amendments, or official changes, to the Constitution. The ideas for these rights had been voiced before—in the English Bill of Rights, the Virginia Declaration of Rights, the Declaration of Independence, and in various state constitutions.

In September 1789 Congress proposed 12 amendments and sent them to the states for ratification. By December 1791 the states had ratified 10 of the amendments. Traditionally called the **Bill of Rights**, these amendments protect such rights as freedom of speech, press, and religion as well as due process protections, such as the right to a fair trial and trial by jury.

**READING CHECK Summarizing** How did the promise to add a bill of rights to the Constitution influence the ratification debate?

SECTION

5

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- Summarize** Why did the Framers establish a ratification process that bypassed Congress and the state legislatures?
  - Compare and Contrast** How did the **Antifederalists** and **Federalists** differ in their views on national government?
- Identify** Who were the authors of the **Federalist Papers**?
  - Explain** How did the *Federalist Papers* contribute to the ratification debate?
- Recall** Why did the Antifederalists insist on a bill of rights?
  - Predict** What might have happened if the Federalists had failed to make good on their promise of a bill of rights?

## Critical Thinking

- Sequence** Copy the flowchart below and list the order of the events that led to ratification of the Constitution.



FOCUS ON WRITING



- Persuasive** Write a letter from James Madison to Patrick Henry

to convince him to support the Constitution.



## Schenck v. United States (1919)

**WHY IT MATTERS**

Are the rights outlined in the Bill of Rights guaranteed absolutely? The Supreme Court's decision in *Schenck v. United States* considered what limits, if any, could be set on free speech without violating the individual freedoms outlined in the First Amendment.

### Background

Shortly after the United States entered World War I, Congress passed the Espionage Act of 1917. The law aimed to silence opposition to the war and stop any activity that might undermine the nation's chances at victory. It made illegal any activity that might obstruct the recruiting or enlistment of soldiers. Congress amended the act with the Sedition Act of 1918, which made it a crime to "willfully utter, print, write or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States or the Constitution of the United States." Still, many people opposed the war, including Charles Schenck, the general secretary of the Socialist Party of America. Among his other antiwar activities, he distributed thousands of leaflets urging men to resist the draft. Schenck was arrested and charged with violating the Espionage Act, which made interfering with the draft illegal. He was found guilty and appealed his case to the Supreme Court.

### Arguments for Schenck

Since political speech was protected under the First Amendment, Schenck argued that the Espionage Act was unconstitutional. He claimed his opposition to what he considered an immoral war was a protected right. If Congress could choose under what circumstances a citizen's rights could be diminished, Schenck warned, other First Amendment rights would also be in danger of being taken away

## Arguments for the United States

The United States argued that the case did not involve the First Amendment, but the draft policy. During a time of war, the nation must be able to take steps to defend itself, including against speech that threatens to jeopardize national security or the personal safety of American citizens. The Espionage Act was warranted and just, because criticisms of the government should not be allowed during a military crisis.

**THE IMPACT TODAY** In 1919 the Supreme Court issued a unanimous decision, upholding the Espionage Act and Schenck's conviction. Writing for the majority, Justice Oliver Wendell Holmes argued that the government could restrict freedom of speech in wartime if such speech posed "a clear and present danger" to national security. The court determined that Schenck's leaflets posed just such a danger. Today the question of how and if free speech should be limited in wartime continues to challenge American society. The right to disagree with government policy is considered an essential right by many Americans. Others feel that it is unpatriotic to oppose an ongoing war.

**CRITICAL THINKING**

**What Do You Think?** What is the policy on war protest and the draft today? Compare the Espionage Act of 1917 to current laws, such as the Patriot Act, that deal with treason, sedition, and subversive activities. What effect do you think the limitation of free speech has on American democracy today?



## Individual Rights and the U.S. Constitution

**The Framers of the Constitution believed that individual rights had to be protected from government interference. To ensure the adoption of the Constitution, they promised to add a bill of rights that would safeguard individual rights.**

**Who may hold rights?** Rights may be held by individuals, classes (categories) of individuals, or institutions.

- **Individuals** The idea that individuals can hold rights reflects the belief that humans should be considered autonomous and self-governing. This includes the belief that each individual should possess certain fundamental rights, such as those to freedom of thought and conscience, privacy, and movement. This emphasis on the rights of individuals is reflected in natural rights philosophy, exemplified in the Declaration of Independence by the statement 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.”
- **Classes (categories) of individuals** Under most legal systems members of certain classes or categories of individuals within a society are recognized in the law as holding certain rights. For example, laws may grant such rights to children, the mentally ill or disabled, veterans, and those who hold professional qualifications, such as teachers, doctors, attorneys, building contractors, and

airplane pilots.

- **Institutions** Institutions such as schools; governmental institutions at local, state, and national levels; unions; universities; business partnerships; and corporations also hold certain rights.

**What are common categories of rights?** Three common categories are personal rights, economic rights, and political rights.

- **Personal rights** These rights provide for individual autonomy, including, among others rights, freedom of thought and conscience, privacy, and movement. The idea that humans are autonomous, self-governing individuals with fundamental rights is central to natural rights philosophy. The rights to life, liberty, property, and the pursuit of happiness often are said to be “God-given” or based on nature. Every person is believed to possess such rights at birth. The purpose of government is to protect those rights.
- **Economic rights** These rights include choosing the work one wants to do, acquiring and disposing of property, entering into contracts, creating and protecting intellectual property such as copyrights or patents, and joining labor unions or professional associations. Like political rights, such rights can be created and protected by statutes, national or state constitutions, or both. Many people consider economic rights to be associated with ownership.
- **Political rights** These are rights of individuals that address political participation and can be created and protected by statutes, national or state constitutions, or both. Examples are the rights to vote and to engage in political activities, such as supporting particular candidates for office or running for office.

**What kinds of rights does the Bill of Rights protect?** The Bill of Rights is commonly understood to contain specific guarantees of individual rights. In fact, the situation is more complicated because the Bill of

Rights involves a number of different types of rights.



For example, the Second Amendment provides that 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. Some people argue that this amendment refers to the institutional rights of states to maintain militia units. Others contend that it refers to the individual right to keep and bear arms. The Supreme Court seemed to side with the institutional view in *United States v. Miller* (1939), but lower federal courts have continued to debate the issue. In 2007 the Court agreed to revisit the question by agreeing to rule on a case challenging the constitutionality of a District of Columbia ban on the possession of handguns by individuals.

**What is the meaning and importance of the Ninth and Tenth Amendments?** The first eight amendments to the U.S. Constitution contain specific guarantees of rights. By contrast, the Ninth and Tenth Amendments do not. There is ongoing debate about the meaning of these amendments.

The Ninth Amendment provides that “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” Theories about the Ninth Amendment include the following:

- It is simply an admission that it would be impossible to list all the rights and liberties that should be protected from government interference.
- It confirms that the Bill of Rights does not increase the powers of

the national government in areas not mentioned in the first eight amendments. It does not guarantee any rights or impose any limitations on the national government.

- It commands judges and Congress to affirm rights not mentioned in the Constitution.

The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Of all the amendments the Anti-Federalists demanded in state ratifying conventions, one designed to reserve powers to the states was the most common. Two views of the Tenth Amendment are

- It states the nature of American federalism but adds nothing to the Constitution as originally ratified.
- It protects the powers of the states against the national government.

THE BILL OF RIGHTS	
Amendment I	Safeguards freedom of religion, speech, press, and the right to assembly and to petition
Amendment II	Asserts the need for a militia and protects the right to keep and bear arms
Amendment III	Prevents soldiers from taking over private homes during peacetime or war unless authorized to do so by law
Amendment IV	Prohibits unreasonable searches and seizures
Amendment V	Protects the rights of accused persons
Amendment VI	Provides the right to a speedy, fair trial
Amendment VII	Guarantees the right to a trial by a jury of one's peers
Amendment VIII	Prohibits excessive bail and fines, prohibits cruel and unusual punishment
Amendment IX	Ensures that people's rights that are not specifically listed in the Constitution are retained by the people
Amendment X	Grants to the states and to the people powers that are not specifically listed in the Constitution

## Reviewing Ideas and Terms

- 1. Identify** Select three rights from the Bill of Rights. Are the rights you selected personal, economic, or political rights?
- 2. Explain** What do you think is the meaning of the Ninth Amendment? the Tenth?

## Critical Thinking

- 3. Evaluate** What is the importance of the Bill of Rights to the preservation of individual rights in the American political system? How does the Bill of Rights serve the public good?

CHAPTER

2

Chapter Review

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## Comprehension and Critical Thinking

### SECTION 1

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: Magna Carta, Petition of Right, English Bil of Rights.
- b. Analyze** How did the struggle between Parliament and the English monarch affect American ideas about government?
- c. Contrast** How did royal, proprietary, and charter colonies differ

from one another?

## SECTION 2

- 2. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: Iroquois Confederation, Albany Plan of Union, Stamp Act, delegates, First Continental Congress, Second Continental Congress.
- b. Analyze** Why did the colonists object to Britain's Parliament placing taxes on the colonies?
- c. Contrast** How did the goals of the delegates attending the First and Second Continental Congresses differ?

## SECTION 3

- 3. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: Articles of Confederation, ratify, Northwest Ordinance, Shays's Rebellion.
- b. Summarize** What powers did states have under the Articles of Confederation?
- c. Explain** What do you think was the most significant weakness of the Articles of Confederation?

## SECTION 4

- 4. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: Virginia Plan, New Jersey Plan, Great Compromise, Three-Fifths Compromise.
- b. Explain** Who were the Framers?
- c. Contrast** How did the New Jersey and Virginia plans differ?

## SECTION 5

- 5. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: Federalists, Antifederalists, Bill of Rights.
- b. Summarize** What were the key points of the Antifederalists?
- c. Elaborate** How did the *Federalist Papers* contribute to the

ratification process?

**d. Identify** What is the Bill of Rights and why was it important to the ratification process?

## Critical Reading

*Read the passages in Section 2 entitled “The Road to Independence.” Then answer the questions that follow.*

6. Which of the following meetings was the earliest example of an attempt at colonial unity?

- A New England Confederation
- B Albany Plan of Union
- C Annapolis Convention
- D Articles of Confederation

7. Which of the following events led colonial leaders to call for the First Continental Congress?

- A French and Indian War
- B Stamp Act
- C Boston Tea Party
- D Intolerable Acts

RESPONSIBILITIES OF LEADERSHIP



8. Conduct Internet or library research to find a current event that illustrates one of the following concepts: **rule of law**, **social contract**, **natural rights**, or **representative government**. Then write a paragraph describing the event or situation and how it illustrates the concept you selected. Be sure to explain the concept and, where possible, compare and contrast it to a similar event from English or U.S. history.

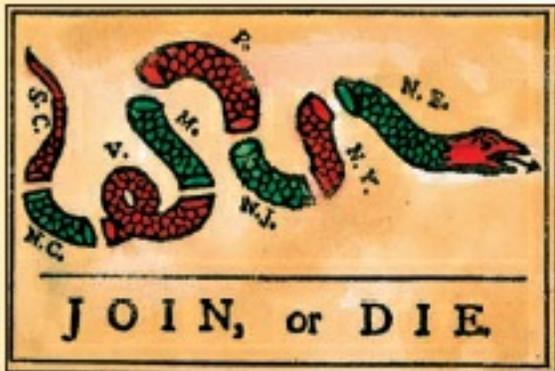
9. Choose one foundational document of American democracy, such as the **Declaration of Independence**, the **Constitution**, or the **Bill of Rights**. Explain how the document expresses basic political principles, such as popular sovereignty, the rule of law, the separation of powers, limited government, and representative government.

## CONNECTING TO THE CONSTITUTION

10. Read the Bill of Rights to the Constitution, the English Bill of Rights, and the Virginia Declaration of Rights at the end of your textbook. Analyze each document and compare it to a copy of your state bill of rights. In what ways are the documents similar? How are the documents different? What factors might help explain these differences?

### ANALYZING PRIMARY SOURCES

**Political Cartoon** First published in May 1754, the cartoon below appeared in Benjamin Franklin's newspaper, the *Pennsylvania Gazette*, with an editorial Franklin wrote concerning the "disunited state" of the colonies.



11. **Analyze** What is happening in this cartoon?
12. **Draw Conclusions** How does the imagery in the cartoon illustrate the cartoonist's opinion of the relationship between the colonies?

### FOCUS ON WRITING



*Think about the following issue:*

**During ratification of the Constitution, the Antifederalists withheld approval of the Constitution until they secured a promise of a bill of rights. Consider what might have happened if the Antifederalists had**

**lost this debate.**

**13. Assignment** How might your life be different if you were not protected by the Bill of Rights? Write a three-paragraph narrative in the form of a story about someone who is not protected by the Bill of Rights. First, write an opening sentence that will catch the attention of your readers. Follow it up with interesting and believable details that will convey your story.

# The Constitution

**Essential Question** How has the resiliency of the United States Constitution contributed to the strength of the government it created?



**About the Photo** The National Constitution Center uses a variety of interactive experiences to introduce people to the Constitution. In Signers' Hall are life-sized bronze statues of the Framers of the Constitution. There are 42 statues, representing 39 men who signed the original Constitution, as well as the three who refused. By walking among them, visitors can more easily consider them as human beings who made choices that still influence our lives today. Visitors can participate in that process, either signing the Constitution or stating their reasons for not signing it.

## CHAPTER AT A GLANCE

### SECTION 1 A Blueprint for Government

- The Constitution establishes six goals for the U.S. government to meet.
- The Constitution outlines six basic principles of U.S. government and a system that safely and fairly distributes and balances power.
- Under the Constitution, the powers of government are limited in order

to protect individual rights.

- The Constitution divides the powers of government among three separate branches: legislative, executive, and judicial.
- The Constitution includes checks on and balances of government power to prevent any one branch of government from overpowering the others.

## **SECTION 2 An Enduring Document**

- The Constitution is an enduring document that has the ability to grow and change over time.
- The Constitution includes a formal process for adding amendments to the Constitution.
- The Constitution has been amended 27 times. The first 10 amendments are known as the Bill of Rights.

## **SECTION 3 Applying the Constitution**

- Over time, the three branches of government—legislative, executive, and judicial—have expanded the scope and application of the Constitution.
- Political parties, customs, and traditions have affected how the Constitution is applied and carried out.
- Political scholars have debated what some see as disadvantages of the framework of government established by the Constitution.

**CONNECTING TO THE CONSTITUTION**



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the

People: The Citizen and the Constitution” pages in this chapter for an in-depth exploration of how the Constitution organized the new government.



# A Blueprint for Government

## BEFORE YOU READ

### Main Idea

Drawing lessons from history, the Framers wrote a constitution that divided, limited, and balanced power among three branches of government.

### Reading Focus

1. What are the six goals of the Constitution?
2. What are the six principles of government in the Constitution?
3. What is popular sovereignty?
4. What is limited government?
5. How does the Constitution create a separation of the powers of government?
6. How does the system of checks and balances limit the powers of government?
7. Why is the principle of

### Key Terms

- popular sovereignty
- limited government
- rule of law
- separation of powers
- checks and balances
- veto
- judicial review
- unconstitutional
- federalism
- supremacy clause

judicial review so powerful?

8. Why is the principle of federalism still a topic of debate?



Use the graphic organizer online to take notes on the principles of government set out in the Constitution.



**Checks and Balances** The Constitution gives each branch of government certain powers. While citizens—the “We the People” in the Constitution’s Preamble—are the ultimate source of all government power, it is the Constitution that divides, limits, and balances these powers among the three branches of government.

For example, the Constitution gives Congress the power to declare war and to raise, support, regulate, and fund the military. Congress has formally declared war only five times—the War of 1812, the Mexican-American War, the Spanish-American War, World War I, and World War II. At the same time, the president also has military powers—the Constitution names the president commander in chief of the U.S. military. Presidents have used this singular power to send U.S. armed forces to places such as Korea, Vietnam, Grenada, Panama, Saudi Arabia and the Persian Gulf, Afghanistan, and Iraq.

Congress and a president may disagree on one issue or another. When they do, the Constitution’s system of checks and balances keeps either branch from taking control or imposing its will on the other one. Sometimes, the judicial branch, including the Supreme Court, must decide the issue. Ultimately, however, we the people may settle the issue by exercising our political power by voting. ■

# The Need to Balance Power



**President George W. Bush, left, and Speaker of the House of Representatives Nancy Pelosi, right, at the president's 2007 State of the Union speech.**

## Goals of the Constitution

In the Preamble to the Constitution, the Framers stated the six goals they wanted the national government to accomplish: form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and the generations that followed. Such a government would have to raise an army, pay its bills, and conduct relations with foreign countries to reach these goals. Many of the Framers, though, had strong reservations about—or were completely opposed to—a strong national government.

**Governing after a Revolution** To the Framers, the idea of government

suppressing the liberty of citizens was not a fantasy. They had recently fought the American Revolution to stop the powerful British government from infringing on what they viewed as their natural rights. Many of the Framers were students of political philosophy and history. They knew of the achievements and failures of past governments—from Greek city-states to the Roman Empire to the European monarchies. Some of the Framers were also familiar with the constitution of the Iroquois League. As they gathered in Philadelphia in 1787, the Framers faced difficult choices about governing the new nation. They knew their decisions would have long-lasting consequences, and they were determined not to repeat the mistakes of the past. But how?

**Addressing the Problem of Governing** A dilemma of democratic government is how to allow people substantial freedom while controlling the worst aspects of human behavior. In *Federalist Paper* No. 51, the author described the dilemma as follows:

### **PRIMARY SOURCE**

**“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable government to control the governed; and in the next instance oblige it to control itself.”**

—James Madison (probable author), 1788

## GOALS OF THE CONSTITUTION

QUICK  
FACTS

GOAL	PURPOSE OF THE GOAL
1. Form a more perfect union	Strengthen the relationship among the states as part of a union and between the states and the national government as part of a new federal system
2. Establish justice	Provide laws that are reasonable, fair, and impartial and make sure that the administration of those laws is also reasonable, fair, and impartial
3. Ensure domestic tranquility	Keep peace and maintain order within the country
4. Provide for the common defense	Defend the nation against foreign enemies
5. Promote the general welfare	Allow all states and citizens to benefit militarily and economically from the protection of a strong national government
6. Secure the blessings of liberty	Protect the liberties recently won in the American Revolution and preserve them for the generations to come

Establishing a system of law was essential. The Framers agreed on this. They drew from the ideas of English philosopher John Locke, who wrote that “where there is no Law, there is no Freedom.” Laws help maintain order in society. At all levels of government, they protect rights, property, and lives. Laws set standards of behavior for all citizens and for the society as a whole. Each citizen can know exactly what is expected of him or her.

But laws must also be enforceable. They can be enforced only if there is an explicit threat of punishment, such as imprisonment or fines. The problem is that when a government has the power to make laws and punish lawbreakers, what is to stop it from turning that power against law-abiding citizens? How, in Madison’s words, could government be obliged “to control itself”?

**READING CHECK** **Identifying the Main Idea** What problem of governing did the Framers face?

# Principles of Government in the Constitution

The Framers' solution was to create a governing document, the Constitution, that divided, distributed, and balanced governmental power. In addition, the Constitution made almost all uses of government power subject to the will of the people through their power as voters. Finally, with the inclusion of the Bill of Rights in 1791, the Constitution placed specific restraints on the power of government to take actions that violate the basic rights of citizens.

**The Constitution Is the Blueprint** The original, unamended U.S. Constitution runs just over 4,500 words. In this brief document, the Framers offered a blueprint for governing that incorporated both ideas that had worked in the past and new, uniquely American principles of governing.

The Constitution we read and apply today consists of three main parts: the Preamble, the articles, and the amendments. The Preamble, or introduction to the Constitution, states the broad goals for the new government established by the Constitution. The seven articles following the Preamble create, with little detail or elaboration, the structure of the U.S. government. These articles are remarkable in that only 27 changes, or amendments, have been added to the original Constitution during the nation's history.

## ACADEMIC VOCABULARY

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**concept** an abstract or generic idea generalized from specific instances

**Basic Principles of Governing** In its structure and its language, the Constitution expressed six basic principles of governing. These principles are popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism. The Framers believed that if the federal government reflected and remained true to these principles, the goals of the U.S. Constitution could be accomplished.

# READING CHECK Identifying the Main Idea Describe how the Constitution provides a blueprint for governing the nation.

## PRINCIPLES OF THE CONSTITUTION

QUICK  
FACTS

### POPULAR SOVEREIGNTY

The people establish government and are the source of its power.

### LIMITED GOVERNMENT

Government powers are restricted to protect individual rights.

### SEPARATION OF POWERS

The power to govern is divided among executive, legislative, and judicial branches to prevent the concentration and abuse of power by any one branch.

### CHECKS AND BALANCES

Each branch of government has the authority to check, or restrain, some powers of the other two branches.

### JUDICIAL REVIEW

The judiciary has the power to strike down laws and other government actions as invalid under the Constitution.

### FEDERALISM

The rights of the states are protected by dividing powers between the national government and the state governments.

## Popular Sovereignty

The concept that government gets its authority from the people and that ultimate political power remains with the people is known as **popular sovereignty**. The Framers made popular sovereignty the foundation upon which the Constitution rests.

## PRIMARY SOURCE

**“We the People of the United States ... do ordain**

## and establish this Constitution for the United States of America.”

—Preamble to the Constitution, 1787

By creating a republic—a national government in which people exercise their sovereignty by electing others to represent them—the Framers firmly established the people’s authority. Still, much as the Framers despised the idea of an all-powerful king or central government, they had no intention of putting unlimited power in the hands of citizens, either. They established a republic, not a direct democracy. Moreover, they placed some constitutional limits on popular sovereignty, such as restricting how the Constitution can be amended.

A republic, according to James Madison, was also the best way to guard against the danger of factions, which Madison and other Framers saw as a serious outgrowth of unchecked popular sovereignty. Madison defined a faction as a number of citizens—whether a minority or a majority—united by a common interest who might act in a way that hurt the rights of other citizens or the interests of the nation. Madison argued that factions were certain to exist, so the way to deal with them was to limit their effects. A republican form of government in which elected leaders represent a broad and diverse group of citizens with competing interests would tend to create factions with broad, rather than narrowly partisan, interests.

Popular sovereignty still lies at the heart of our government. Each election, whether it is a local school board election that may affect taxes or a presidential campaign in full swing, is a chance for citizens to exercise their sovereignty. Every elected leader, from the president on down, works for you, and when you step into the voting booth, you can vote to “fire” them. That is an important power and an even more important responsibility. It places with citizens an obligation to exercise their sovereignty wisely, choosing leaders after thoughtful deliberation.

**READING CHECK** Identifying the Main Idea How is popular

sovereignty expressed in the Constitution?

## Limited Government

No matter what their political beliefs, most Americans oppose the government exercising too much control over their businesses or private activities. Likewise, the Framers believed that limited government would promote their goals and protect individual rights. **Limited government** is the principle that the powers and functions of government are restricted by the U.S. Constitution and other laws. This principle is also known as the **rule of law**, the concept that every member of society, including the ruler or government, must obey the law and is never above it.

The principle of limited government is spread throughout the Constitution. Article I, Section 8, for example, defines the powers of Congress, including the power to declare war, raise armies, and impose taxes. The list of powers is extensive, but the very act of listing permitted powers implies that any powers not listed are powers excluded. Moreover, Article I, Section 9, specifically denies Congress certain powers, such as the power to grant titles of nobility or pass laws that make criminal an act that was legal when it was committed. The Bill of Rights prohibits government from violating an individual's rights, such as free speech and to a jury trial. By spelling out the limits on government power, the Framers hoped to protect citizens from future abuses of power.

A vigorous civil society—voluntary civic and social groups that form around shared values, purposes, and interests—also works to constrain government power. Civil society groups often participate in the political process, helping educate and inform the citizenry. Informed citizens make better choices when they vote, and they may be more likely to hold government accountable when it exceeds its powers or fails to respond to and address society's needs.



### Using Your Power

Voting, as this man is doing, is the most powerful and direct expression of popular sovereignty. Your vote is your voice to express your opinion on issues and to choose your representatives in our political system.  
*How can voting reinforce limited government and the rule of law?*

**READING CHECK** Drawing Conclusions How might civil society support the principle of limited government?



**Read Article II of the Constitution. Article II, Section 1, gives the president “executive power” but does not define what that power is. What other provisions of Article II give an indication of what the Framers meant by “executive power”?**

## Separation of Powers

Another way to ensure that the powers of government are not concentrated in the hands of a few officials or agencies is to create three distinct branches of government. Under the principle of **separation of powers**, the duties of governing are divided among three branches: legislative, executive, and judicial. The first three articles of the Constitution list the responsibilities and powers of each branch.

Article I creates and empowers Congress, the nation’s lawmaking body, which is made up of the House of Representatives and the Senate. Although the two houses of Congress share responsibility for passing laws, each has its own special powers. For example, laws that fund government must begin in the House of Representatives. This gives the House, where members face voters every two years, significant “power of the purse.”

Article II establishes the duties of the executive branch, which comprises the president, vice president, and many executive departments. The executive branch implements, or carries out, laws passed by the legislative branch. The president is also commander in chief of the nation’s military.

Article III establishes the judicial branch, including the Supreme Court, to exercise the judicial power of the United States. It is the function of the judicial branch to interpret and apply the law—to say what the law is.

**READING CHECK** **Summarizing** How does the structure of the Constitution reflect the separation of powers of government?

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## **Separation of Powers**

**The powers of government are divided among the legislative, executive, and judicial branches.**



Executive

Judicial

Legislative

Judicial

Executive

Legislative

### Checks and Balances

Each of the three branches of government has ways to check, or limit, the powers of the other branches.

- Can veto acts of Congress
- Can call special sessions of Congress
- Can suggest laws and send messages to Congress

- Can declare acts of Congress unconstitutional through the power of judicial review

- Can impeach and remove the president
- Can override veto
- Controls spending of money
- The Senate approves or rejects certain presidential nominations.
- The Senate must ratify all formal U.S. treaties.

- Can declare executive acts unconstitutional
- Judges are appointed for life and are free from executive control.

- Appoints federal judges
- Can grant reprieves and pardons for federal crimes

- Can impeach and remove federal judges
- Establishes lower federal courts

**Skills Focus**

#### INTERPRETING CHARTS

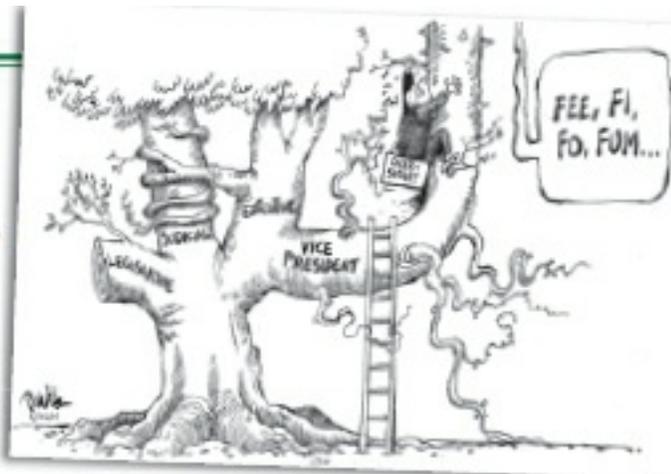
**Analyzing** How do checks and balances reinforce the separation of powers?

#### PRIMARY SOURCES

### Checks and Balances

Under the principles of separation of powers and checks and balances, one responsibility of the legislative branch is to oversee the actions of the federal government. Congress's oversight authority is implied in the Constitution as part of its power to raise and spend federal funds. Does this authority extend to the executive branch? If so, does it extend to the president, or does the separation of powers exempt parts of the executive branch from any checks? In this cartoon, the systems of checks and balances seems to have broken down. A frightened Jack-and-the-Beanstalk character representing Congress tries to exercise oversight on an empowered giant.

21st Century



**Skills Focus**

#### INTERPRETING PRIMARY SOURCES

**Making Inferences** How does the artist represent the structure of the U.S. government? What does the cartoon say about the relationship among the branches of government at the time the cartoon was drawn?

See *Skills Handbook*, p. H9.

## Checks and Balances

Under the Constitution, each branch of government has its own area of governmental responsibility. The three branches are not completely separate from each other, however. The Framers wanted to be sure that

none of the branches, especially the executive, would become so powerful it dominated the other two. They feared that if one branch controlled the government, that branch could interfere with individual political rights and harm the “common good.” The common good are those policies and actions that benefit all of society, such as health, safety, and defense programs.

The Framers constructed a system of checks and balances among the three branches of government. **Checks and balances** refers to the system that gives each branch of government the power to change or cancel acts of another branch. The system prevents any branch from exerting too much power.

For example, Congress can check the executive branch by controlling taxes and spending. First the House of Representatives, then the Senate, must pass all bills that spend money. As a result, Congress can limit or even cut the spending by the executive branch on hundreds of federal programs. In addition, the Senate can reject presidential nominations to top government jobs and must approve international treaties negotiated by the president by a two-thirds vote in order for the agreements to become law. Finally, Congress is given the power to declare war, which places limits on the president’s power as commander in chief.

The executive branch has a check on the legislative branch by way of the president’s power to **veto**, or reject, legislation. Sometimes the threat of a presidential veto is sufficient to push congressional leaders to revise legislation so that it has a better chance of being signed by the president and thus becoming law. Other times, the president must actually exercise the veto power and challenge the legislature’s action.

The president’s veto power is limited, however, because of a further constitutional check: Congress has the power to override a presidential veto if at least two-thirds of the members in both houses of Congress vote to do so. If Congress can muster the votes to override the president’s veto, the bill passes.

The judicial branch can check the powers of the legislative and executive branches by declaring their acts unconstitutional. This is the power of judicial review. The Constitution also insulates federal judges from undue political influence by granting them lifetime terms. The Constitution balances the power of judicial review by giving the president the power to nominate, and the Senate the power to approve, all federal judicial nominations.

Congress and presidents have, at times, been frustrated by courts exercising judicial review. Perhaps the most famous example of presidential annoyance at the Supreme Court occurred in the 1930s. President Franklin Delano Roosevelt had convinced Congress to pass several measures to combat the Great Depression, only to have the Court declare some of his recovery measures unconstitutional. Roosevelt responded by introducing legislation to reorganize the federal judiciary. One part of the plan was to increase the size of the Court—which would have been constitutional—by adding up to six new justices. The result would have been a larger Supreme Court with a majority of the justices friendly to his programs.

Critics claimed that Roosevelt was trying to change the constitutional balance of power among the branches of government. Roosevelt's "court-packing" plan was bitterly opposed in Congress. The Senate removed the controversial language and passed a watered-down reorganization plan.

#### RESPONSIBILITIES OF LEADERSHIP

**Leaders know that there may be several ways to reach a goal. Sometimes a compromise will help all parties reach an agreement. Other times, a leader may try to find another legal way to reach the goal.**

**PROFILES IN GOVERNMENT**



**John Marshall**  
(1751-1836)

John Marshall was a prominent Federalist. In 1801, President John Adams named Marshall chief justice of the United States. Marshall served on the Supreme Court as chief justice for more than 34 years. No other justice has had a greater effect on U.S. constitutional law. Marshall wrote more than 500 opinions, including *Marbury v. Madison* (1803), which used the power of judicial review to make the Court an equal branch of government, and *McCulloch v. Maryland* (1819), which firmly established the principles of the implied powers of Congress and the supremacy of the federal government.

**Summarize** How did Marshall use the judicial power of the Supreme Court to make the Court an equal branch of government?

Roosevelt's controversial plan was never implemented. However, in his second term, President Roosevelt was able to replace five of the Supreme Court justices, which gave him a sympathetic majority. The Court then ruled favorably on a number of the New Deal programs, such as Social Security.

**READING CHECK** **Identifying Supporting Details** Name at least one check or balance that each branch of government has on the others.

## Judicial Review

Who decides if a government action or a new law agrees with the Constitution? In the United States, courts exercise **judicial review**, which is power to determine whether the actions of the legislative and executive branches of government are constitutional.

Any law or government action that is found to violate a part of the Constitution is said to be **unconstitutional**. Because the Constitution is the nation's highest law, an unconstitutional law or act is deemed illegal and cannot be enforced or carried out by the government. The U.S. Supreme Court is most often asked to decide the constitutionality of a federal statute or action, but under certain circumstances the Court may be asked to decide the validity of a state law or action.

Although judicial review plays a pivotal role in American democracy, it is not specifically mentioned in the Constitution. So how did courts get this power? The writers of the Federalist Papers made it

clear that the courts were to have such power. For example, the author of The Federalist No. 51 (probably James Madison) wrote that the power of an independent judiciary would serve as a precaution against one branch of government becoming predominant over the others. In addition, Article III, Section 2, of the Constitution implies the power when it states that “the judicial power shall extend to all cases ... arising under” the Constitution. But it was not until 1803, in the landmark case *Marbury v. Madison*, that the principle of judicial review became firmly established by the Supreme Court.

**READING CHECK** **Making Inferences** How might the power of judicial review affect ordinary citizens?



## *Marbury v. Madison* (1803)

### **WHY IT MATTERS**

*Marbury v. Madison established the Supreme Court's power to decide whether laws are constitutional. This power, called judicial review, is a basic principle of American government.*

### **Background**

The presidential election of 1800, pitting Democratic-Republican Thomas Jefferson against Federalist John Adams, was bitterly contested. Jefferson won the popular vote, but confusion over the

electoral college vote threw the election into the House of Representatives. Eventually, Jefferson prevailed—by one vote—and took office in March 1801.

Before Jefferson's inauguration, outgoing President Adams quickly appointed 58 members of his own party, including William Marbury, to fill government posts created by the Federalist-majority Congress. Adams also nominated John Marshall, his secretary of state, to be chief justice of the Supreme Court.

As secretary of state, Marshall was responsible for delivering the commissions to the newly appointed officials. He signed and sealed the commissions, but did not deliver 17 of them before Adams left office. The appointees could not take office without their commissions in hand. Marshall thought that James Madison, the new secretary of state, would finish the job. However, when Jefferson took office, he instructed Madison not to deliver some of the commissions, including Marbury's. Marbury sued Madison to get his commission.

### **Arguments for Marbury**

Marbury argued that he had a vested property right to receive his commission because once it had been signed and sealed, his appointment was complete. Delivering the commission, Marbury argued, was not part of the appointment process. Under Section 13 of the Judiciary Act of 1789, Marbury went directly to the Supreme Court to ask for a writ of mandamus—an order from a court requiring a government officer to take a particular action—ordering Madison to deliver his commission.

### **Arguments for Madison**

Madison argued that President Jefferson had ordered him not to deliver Marbury's commission. President Jefferson believed that because the commission had not been delivered under President Adams, Marbury's appointment had not been completed and Marbury had no right to his commission. Jefferson also argued that under the

Judiciary Act of 1789, the Supreme Court did not have the authority to order him to deliver the commission.



In *Marbury v. Madison*, the Supreme Court ruled that Marbury did have a right to receive his commission.

However, the Court ruled that Section 13 of the Judiciary Act extending the Court's jurisdiction to cases involving writs of mandamus was unconstitutional. With that ruling, the Supreme Court asserted its power of judicial review—and established the judiciary as a co-equal branch of the government.

Since the 1980s, presidents have sometimes issued written statements declaring that part of a bill they are about to sign is unconstitutional. Opponents say that signing statements violate the Constitution's separation of powers. The use of signing statements has raised an issue of who has the power—courts or the president—to declare laws unconstitutional. The Supreme Court has never addressed the issue of the constitutionality of presidential signing statements.

#### CRITICAL THINKING

**What Do You Think?** Judicial review is not expressly set out in the Constitution, but since 1803 it has been a powerful judicial check and balance on the executive and legislative branches. Should the president have a power similar to judicial review to declare laws unconstitutional? Why or why not?

## Federalism

The final principle in the Constitution's blueprint is **federalism**, under which the powers of government are distributed between the national government and state governments. The Framers struggled to find an acceptable distribution of powers. They had to ensure that the national government had sufficient power to be effective without infringing on the rights of states.

Two clauses of the U.S. Constitution have been at the heart of the

debate over how to strike the proper balance of state and national power. Article I, Section 8, concludes by giving Congress the power to “make all Laws ... necessary and proper for carrying into Execution the foregoing Powers.” In addition, Article VI of the Constitution contains the **supremacy clause**, which declares that the Constitution—together with U.S. laws passed under the Constitution and treaties made by the national government—is “the supreme law of the land.” Advocates for state sovereignty found these clauses troubling. Where was the limit on federal power?

The Tenth Amendment to the Constitution addresses this issue. It states “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” This language allows the federal government the flexibility it needs to meet national problems at the same time it guarantees that states retain the powers and rights necessary to meet their needs.

Today most Americans accept strong federal authority on matters such as national defense, disaster response, and highway construction. Yet people disagree over which level of government has authority over many contemporary issues, from natural resources to health care to education.

**READING CHECK** **Drawing Conclusions** Why do supporters of states’ rights refer to the Tenth Amendment to strengthen their arguments?

## Reviewing Ideas and Terms

- Describe** What are the main goals of the U.S. Constitution?
  - Explain** Why might the problems of governing keep the six goals from being achieved?

- 2. a. Identify** Name the six basic principles of governing set out in the Constitution.

**b. Summarize** How is the Constitution a plan for government?
- 3. a. Define** What is popular sovereignty?

**b. Evaluate** Is popular sovereignty important to a republic? Why or why not?
- 4. a. Recall** What is limited government?

**b. Elaborate** How is the rule of law related to the principle of limited government?
- 5. a. Describe** What problem of governing does the separation of powers address?

**b. Make Inferences** Which branch of government do you think received the most power under the Constitution? Explain your answer, including why the Framers may have done it this way.
- 6. a. Describe** How do checks and balances in the Constitution control the powers of government and lead to the development of democratic government?

**b. Explain** How are the “common good” and individual political rights secured by checks and balances?
- 7. a. Identify** What is the power of a court to declare a law unconstitutional called?

**b. Evaluate** Do you think the judiciary, which has the power of judicial review, is, as Alexander Hamilton called it, the “least dangerous” branch of government? Explain your answer.
- 8. a. Explain** What is the necessary and proper clause?

**b. Elaborate** How is the necessary and proper clause related to federalism and states’ rights? How might the clause lead to disputes between the federal government and individual state

governments?

## Critical Thinking

**9. Analyze** Copy the chart below and give one example of a check that each branch of government has on the other branches.

	Legislative	Executive	Judicial
Legislative	X		
Executive		X	
Judicial			X

## FOCUS ON WRITING



**10. Descriptive** As a reporter in 1787, write an article describing the goals and structure of the newly created U.S. Constitution.

## DEBATING THE ISSUE

### The Constitution and Privacy

*As a matter of constitutional interpretation, does the right of privacy exist?*

#### THE ISSUE

Does the Constitution protect your right of privacy? The Constitution does not explicitly mention such a right, but many people argue that the Constitution and Bill of Rights, when read as a whole, protect an implied right of privacy. This approach to constitutional interpretation is sometimes called “loose construction.” Other people, calling for “strict construction,” argue that the Constitution should be read literally: The words on the page mean exactly—and only—what they say. When the Constitution is read strictly, people argue, it is improper to protect a broad right to privacy.



**Many cities now use surveillance cameras to help deter crime, monitor public places, and catch drivers running red lights.**

## VIEWPOINTS

**Loose Construction** The Fourth Amendment to the U.S. Constitution states that the right of the people to be “secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated ... but upon probable cause.” Justice Louis Brandeis wrote in his dissent in *Olmstead v. United States* (1928), a case considering the government’s right to use evidence obtained by illegal wiretaps, that “the right to be let alone [is] the most comprehensive of rights and the

right most valued by men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.” Brandeis argued that by looking at the Constitution and the Bill of Rights as a whole, an individual’s privacy is protected. His position was affirmed in *Griswold v. Connecticut* (1965), in which the Court ruled that the various guarantees within the Constitution together create a general right to privacy.

**Strict Construction** Strict constructionists, beginning with Thomas Jefferson, argue that Congress should be able to exercise only the powers expressly given to it and only those implied powers that are absolutely necessary to carry out the expressed powers. Allowing the Court to interpret the Constitution broadly takes away the power of Congress to make laws. Since the word *privacy*

does not appear in the Constitution or Bill of Rights, is it reasonable to infer that people have such a right? Justice Hugo Black, who believed that strict construction was necessary in order to rein in judicial power, argued in his dissent in *Griswold* that because an explicit right of privacy is not found in the Constitution, such an inference is improper. In his dissent, Black stated that he found nothing in the Constitution that gives the Court the power to set aside laws when it believes that the laws are “unreasonable, unwise, arbitrary, capricious or irrational.” Black voted to uphold the Connecticut statute and found no protected general right of privacy.

## What Is Your Opinion?



1. Do you agree with Justice Brandeis’s statement from his *Olmstead* dissent, above? Why or why not?
2. Should the Constitution be interpreted more literally or more broadly? Write a short paragraph to support your opinion.



## An Enduring Document

**Main Idea**

The Constitution is both a product of its time and a document for all time. It can be changed as society's needs change.

**Reading Focus**

1. How did Jefferson and Madison differ in their views on amending the Constitution?
2. Why might the Constitution be called a document for all time?
3. By what processes can the Constitution be amended?
4. What types of amendments have been added to the Constitution over the last 220 years?

**Key Terms**

supermajority  
repeal



Use the graphic organizer online to take notes on the amendment process.

## A Blueprint that **Would Last**

**WHY IT MATTERS** **A Constitution for All Generations** When the Constitution was written, there was a question whether the plan for the new government it laid out would succeed. And if so, for how long? For a generation or two? Longer? What if future generations discovered flaws in it? What if the central government that it created turned out to be too strong or too

weak? What if states decided that they wanted more powers? Thomas Jefferson argued that it was inevitable that any imperfections in the new constitution would become apparent. After all, the document contained several compromises and was bound to have some weaknesses. Therefore, Jefferson argued, it was “imperative” to provide a means for amending, or changing, the Constitution.

Jefferson’s instincts were correct, at least to a certain extent: A few imperfections in the Constitution have been discovered. Since 1789, Americans have changed the Constitution—but only 27 times. However, some of those changes do protect our most precious freedoms, as the examples below show.■



**1870**  
**15th Amendment**  
The right of citizens to vote shall not be denied on account of race, color, or previous condition of servitude.



**1920**  
**19th Amendment**  
The right of citizens to vote shall not be denied on account of gender.



**1971**  
**26th Amendment**  
The right to vote of citizens who are 18 years of age or older shall not be denied on account of age.

## Jefferson and Madison on Amending the Constitution

In letters to friends, Thomas Jefferson expressed his belief that the Constitution should not be changed on a whim, but it should be able to be changed as society and circumstances changed. In fact, Jefferson saw change as inevitable and positive. He believed that each generation of Americans should be regarded as “a distinct nation,” with the right to govern itself but not to bind succeeding generations. “The Earth belongs to the living, not to the dead,” he declared. Therefore, Jefferson argued, the Constitution should be revised every generation or so.

### PRIMARY SOURCE

**“ Each generation is as independent as the one preceding ... It has then, like them, a right to**

**choose for itself the form of government it believes most promotive of its own happiness.”**

—Thomas Jefferson, letter to Samuel Kercheval,  
1816

Jefferson made many of his arguments in an exchange of letters with fellow Virginian James Madison. For his part, Madison had concerns about Jefferson’s point of view and wrote to his friend to express his concerns.

## **PRIMARY SOURCE**

**“ Would not a Government so often revised become too mutable [changeable] to retain those prejudices in its favor which antiquity inspires ... ? Would not such a periodical revision engender [cause] pernicious [harmful] factions [groups of people] that might not otherwise come into existence?”**

—James Madison, letter to Jefferson, 1790

Madison is making two points: First, laws and constitutions grow in authority and acceptance the longer they go unchanged. Second, changing the Constitution too often could split the country into bitter factions. Some Framers feared that factions might reinforce sectional rivalries and leave the nation prey to foreign powers and influence. Madison also feared that if the government had to be rebuilt every so often, periods of chaos might occur between revisions.

**READING CHECK** **Summarizing** Why was Madison opposed to frequent changes to the Constitution?

## **Jefferson and Madison on Amending the Constitution**

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Constitution should not be changed on a whim, but it should be able to be changed as society and circumstances changed. In fact, Jefferson saw change as inevitable and positive. He believed that each generation of Americans should be regarded as “a distinct nation,” with the right to govern itself but not to bind succeeding generations. “The Earth belongs to the living, not to the dead,” he declared. Therefore, Jefferson argued, the Constitution should be revised every generation or so.

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**READING CHECK Summarizing** Why was Madison opposed to frequent changes to the Constitution?

## **A Document for All Time**

The original Constitution was a product of its time. It reflects both the wisdom and the biases of the Framers. The relatively few changes the document has undergone over more than 220 years testify to its enduring wisdom. The Constitution has survived the Civil War, presidential assassinations, and economic crises to become the world's oldest written constitution.

Yet, as Jefferson suggested, the document that was ratified in 1789 was not perfect. By our standards, it perpetuated injustices. For example, the Framers forged compromises, which you read about in Chapter 2, permitting slavery and the slave trade. States were given the power to set the qualifications for voting, which meant that women, nonwhites, and poor people were denied the right to vote. These decisions reflected the attitudes of many in society at the time. Most people today, however, would find both the attitudes and the decisions unacceptable.

It would be up to future generations to amend the Constitution to address these problems. Many of the amendments, in fact, deal with voting rights and personal liberties. It is the Constitution's ability to incorporate changing ideas of freedom and liberty that has helped make the document relevant to each new generation since 1789.

**READING CHECK Drawing Conclusions** What makes the U.S. Constitution an enduring document?

# The Amendment Process

The amendment process gives Americans the power to change the Constitution. But the Framers intentionally made the process difficult. If the process were too easy, they reasoned, the momentary passions and prejudices of the majority—or even an active minority—of the citizens might produce violations of the rights of the rest of the citizens and even threaten the democratic structure of government.

The process for amending the Constitution is described in Article V. Amendments must be proposed and then ratified, or approved. Article V provides two ways of proposing an amendment and two ways of ratifying it.



Read Article V of the Constitution. What are the advantages and disadvantages of each amendment process described in Article V?

That means there are four different methods of amending the Constitution, which the Quick Facts chart below illustrates. The different paths to amendments reflected several desires on the Framers' part. By creating a two-step process that required ratification by the states, they restricted the power of Congress to change the Constitution and ensured that any change would reflect the national will. This was in line with the principle of popular sovereignty.

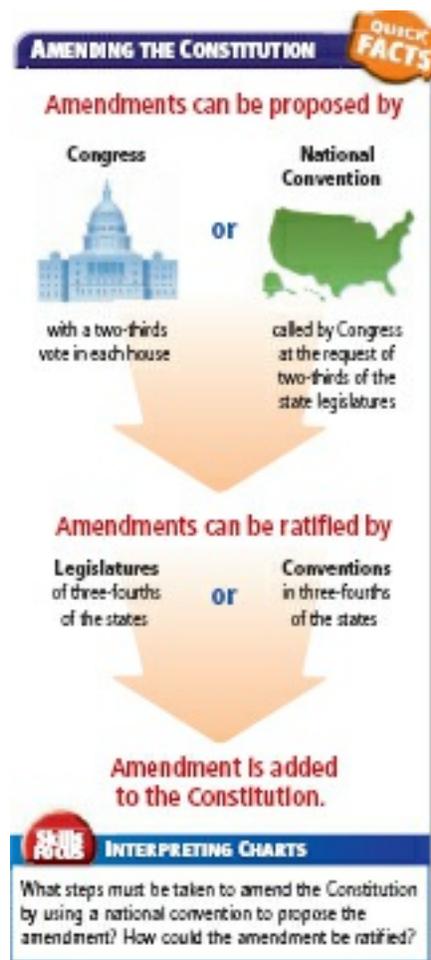
## ACADEMIC VOCABULARY

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**frivolous** of little weight or importance; lacking in seriousness

The Framers also required that each step in the process—proposal and ratification—required a supermajority. A **supermajority** is a majority—such as three-fifths, two-thirds, or three-fourths—that is larger than a simple majority. Congress, by contrast, passes ordinary laws by a simple majority vote. The Framers wanted to ensure that the difficult process of changing the Constitution would weed out frivolous

amendments.



**Proposing an Amendment** Constitutional amendments may be proposed in two ways:

1. by Congress, with the approval of at least two-thirds of the House and two-thirds of the Senate
2. by delegates at a national convention that is called by Congress at the request of at least two-thirds of the state legislatures

So far, however, all the amendments to the Constitution have been proposed the first way, by Congress. The required number of states for a national convention has been nearly reached twice, but convention supporters have never managed to persuade the last few needed states. Why not?

Many people point to the wording of Article V itself. Article V does not specify whether a convention can be limited to proposing only the

amendment it was called to consider. So, for example, if a convention were called to consider an amendment on immigrants' rights, what would prevent the convention from opening the rest of the Constitution for reconsideration and change? Could the convention propose an amendment to repeal the First or Fourteenth amendments, two amendments that provide the foundation for many of the rights we enjoy today? Or what if the convention proposed an amendment that required every citizen to donate one year after high school to government service? Whatever the reason—whether because it is complicated or because of the uncertainty surrounding it—this method in Article V has remained unused.

**Ratifying an Amendment** Once an amendment has been formally proposed by either method, Congress sends the proposed amendment to the 50 states for ratification. States can ratify an amendment in one of two ways—but it is Congress that determines which method of ratification is to be used for any particular amendment.

The two methods for ratifying an amendment are as follows:

1. The proposed amendment is voted on by state legislatures. Legislatures in at least three-fourths of the states must approve an amendment before it is added to the Constitution. In 1978 the Supreme Court ruled that a state legislature may call for an advisory vote by citizens before it votes on the amendment.
2. Citizens elect delegates to conventions called in each state specifically to consider the amendment. Passage by this method requires approval by conventions in at least three-fourths of the states.

The rise and fall of prohibition—a ban on the production, transportation, and sale of alcoholic beverages—illustrates the different ways amendments may be ratified. In the late 1800s and early 1900s, groups of reformers, such as the Woman's Christian Temperance Union (WCTU) and the Prohibition Party, campaigned to outlaw alcoholic beverages.

These reformers argued that drinking alcohol led to idleness, violence against women and children, and an increase in crime.

By 1917, more than half the states had passed laws restricting alcohol use. Those laws, plus the need for grain (from which alcohol is made) during World War I strengthened calls for a national ban on alcohol. Responding to this public demand, Congress proposed a prohibition amendment in 1917. By 1919 enough state legislatures had ratified the proposal to make it the Eighteenth Amendment to the Constitution.

Despite the law, however, a widespread illegal trade in alcohol sprang up. After all, the law made it illegal to make, transport, and sell alcohol, but drinking alcohol was not banned. The lucrative trade in illegal alcohol spurred the growth of organized crime, political corruption, and violence. Prohibition became very unpopular. Once again, groups of citizens led the movement for reform. In fact, opponents of prohibition used many of the same arguments earlier reformers had used in support of it.

In 1933 Congress responded by proposing the Twenty-first Amendment to repeal prohibition and to give states the power to regulate the transportation and distribution of alcoholic beverages. To **repeal** a law is to cancel or revoke it by a legislative act—in this case, the Twenty-first Amendment.



#### 18th and 21st Amendments

Before 1919, prohibition supporters used posters, such as the one on the left above, to argue that prohibition would protect families and children from violence. In 1933, groups supporting repeal of national prohibition used similar posters, such as the one on the right, to make the same argument.

Every amendment before and since the Twenty-first Amendment has been approved by state legislatures, but not the Twenty-first Amendment. Supporters of the amendment in Congress thought it had a better chance of being ratified by state conventions of delegates elected specifically to vote on the issue. The strategy worked. Conventions in 36 states ratified the Twenty-first Amendment within the year. The Eighteenth Amendment was repealed.

## ACADEMIC VOCABULARY

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**lucrative** profitable; producing wealth

**The Fate of Amendments** Undoing prohibition may seem to have been relatively easy, but in general, changing the Constitution is difficult—as the Framers intended it to be. In fact, more than 10,000 attempts to change the Constitution have been suggested or proposed in Congress. Imagine how long and confusing the Constitution would be today if those changes had succeeded.

## AMENDMENTS TO THE CONSTITUTION

QUICK  
FACTS

AMENDMENT	SUBJECT	YEAR RATIFIED
1st-10th	Protected certain rights from government infringement; Bill of Rights	1791
11th	Made states immune from certain lawsuits	1795
12th	Changed electoral college	1804
13th	Abolished slavery	1865
14th	Defined citizenship, expanded due process, established equal protection	1868
15th	Prohibited denying right to vote because of race, color, or previous servitude	1870
16th	Permitted passage of income tax	1913
17th	Provided for direct election of U.S. senators	1913
18th	Prohibited production, transportation, and sale of alcohol	1919
19th	Gave women the right to vote	1920
20th	Changed dates for start of presidential and congressional terms	1933
21st	Repealed national Prohibition	1933
22nd	Created presidential term limits	1951
23rd	Gave District of Columbia vote in presidential elections	1961
24th	Banned poll tax (tax paid as voter qualification)	1964
25th	Established rules for presidential succession, filling presidential vacancy, vice presidential succession	1967
26th	Lowered voting age to 18	1971
27th	Provided rules for congressional pay	1992

In fact, only 33 amendments have been passed by Congress and sent to the states for ratification. Of those, 27 amendments have been adopted, while 6 others have been rejected.

**READING CHECK** Summarizing What are the four ways of amending the Constitution?

### More than 200 Years of Amendments

The process of adding to the Constitution began almost immediately with the passage of the first 10 amendments, known as the Bill of Rights.

Another 17 amendments have been added since then. Together, the amendments identify, support, and protect some of the most important rights that reflect the fundamental goals and principles in our democratic society.

**The Bill of Rights** In Chapter 2, you read that many Americans had concerns about the original Constitution because it lacked a bill of rights to protect specific individual freedoms. Following ratification of the Constitution, various states offered up a total of 210 suggestions for amendments. James Madison, who had opposed a bill of rights, drafted 12 amendments. Congress passed them and sent them to the states. Ten of the 12 amendments were ratified. The Bill of Rights was adopted in 1791.

The First Amendment set the tone for the other amendments in the Bill of Rights. It begins by forcefully declaring what the federal government may not do:

### **PRIMARY SOURCE**

**“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.”**

—First Amendment to the U.S. Constitution, 1791

The First Amendment is intended to be a restriction on the power of the national government to interfere with an individual’s exercise of certain basic freedoms, such as a person’s right to practice religion freely.

The First Amendment also protects freedom of expression and the right to ask the government to correct injustices. You will read more about the protections of the First Amendment in Chapter 13.

The Bill of Rights contains other specific guarantees. For example,

the Second Amendment gives citizens a right to bear arms. The Third Amendment prohibits government from forcing citizens to quarter, or shelter, military troops in their homes. The Fourth Amendment protects individuals against unreasonable searches and seizures of private property. The Fifth and Sixth Amendments guarantee that individuals cannot lose their life, liberty, and property without due process of law; are protected against self-incrimination; and have the right to a speedy trial and, in some cases, the right to an attorney. The Bill of Rights concludes with amendments prohibiting the national government from usurping rights or powers that belong to the states and to the people.

**The Other Amendments** Many of the amendments ratified since the Bill of Rights were proposed during periods of crisis or of social and political progress. For example, in the aftermath of the Civil War, Congress passed the Thirteenth, Fourteenth, and Fifteenth amendments, which banned slavery, recognized all African Americans as U.S. citizens, and gave African American men various rights, including the right to vote. In the South, however, these three amendments were not often enforced from 1877 to 1965. Most southern states passed Jim Crow laws—state laws that separated people on the basis of race—that minimized the effect of the post-Civil War amendments.

The amendments passed in the first two decades of the 1900s marked a time of vigorous social reform. The Eighteenth and Twenty-first amendments were passed during these years. In the same era, the Seventeenth and Nineteenth amendments extended democracy by providing for the popular election of senators—originally state legislatures chose senators—and by granting women the right to vote.

The Framers, however, could never have imagined the changes in the United States in the last 220 years, from the diversity of our population to our rail and highway systems, our ability to manipulate human genes, and our airport X-ray screening devices. Yet throughout the growth from young nation to global superpower, the Constitution has provided a stable, flexible government.

# Amendments and Reform

## RESPONSIBILITIES OF LEADERSHIP

The Framers made some hard choices when they wrote the Constitution. Most of what they wrote has survived without changes. One exception is which citizens have the right to vote. Since the Bill of Rights was ratified in 1791, three amendments that expand the right to vote have been ratified. As society changes, citizens may be called upon to make new hard choices about privacy, security, and other issues.

**READING CHECK** **Summarizing** What are five issues that constitutional amendments have addressed?

SECTION

2

ASSESSMENT

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ONLINE QUIZ

## Reviewing Ideas and Terms

- Describe** Why did Thomas Jefferson believe that the Constitution should be amended every generation or so?
  - Compare** How did James Madison's opinion about amending the Constitution differ from Jefferson's opinion?
- Recall** What is a constitutional amendment?
  - Evaluate** Do you think it should be easier to amend the Constitution today? Explain your answer.
- Identify** How can an amendment be repealed?
  - Draw Conclusions** How does the amendment process reflect the principle of popular sovereignty?
  - Evaluate** Do you think the Prohibition experience indicates that the Constitution is too flexible? Explain your answer.
- Explain** What is the purpose of the Bill of Rights?

**b. Make Inferences** How do the 27 amendments reflect Americans' changing values and ideals? Give examples to support your answer.

**c. Evaluate** Why does the First Amendment declare what the U.S. Congress is not allowed to do?

## Critical Thinking

**5. Rank** Copy the chart below and list the four amendments you think are most important. Explain your choice.

Amendment	Importance

## FOCUS ON WRITING



**6. Expository** Do you think the methods the Framers created for amending the Constitution are still effective to provide for change today? Write two paragraphs stating your opinion



# Applying the Constitution

## BEFORE YOU READ

### Main Idea

The scope and impact of the Constitution have expanded as it has been put into practice, interpreted, and applied to new or changing social and political

### Reading Focus

1. How have the three branches of government applied the Constitution?
2. How have political parties, customs,

### Key Terms

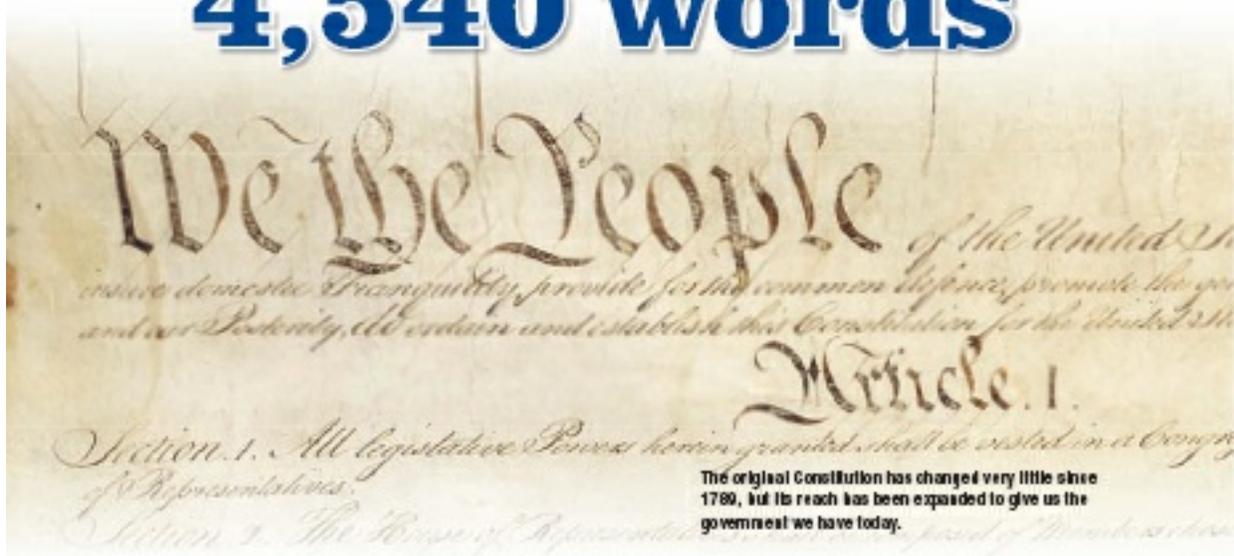
executive agreements  
political party  
cabinet  
gridlock  
electoral college

challenges.

and traditions  
changed how the  
Constitution is  
applied?

3. What criticisms  
have some people  
made of the  
Constitution?

# 4,540 words



**WHY IT MATTERS**

**A Few Words, a Long Reach** Including signatures, the original U.S. Constitution—the foundation and blueprint for the world’s most powerful government—runs only about 4,540 words, or about the length of a 20-page term paper. In that short space, there is no mention of whether a teacher can, or cannot, search your backpack. Nor does the Constitution say anything about school prayer, sharing music over the Internet, or prohibiting the purchase of inexpensive medicines from Canada.

In fact, the Constitution is silent about most of the specific issues that you deal with in your life every day. However, in addition to protecting your basic rights, the Constitution also underlies the tens of thousands of laws and the hundreds of government agencies that can, and do, affect your life. How has so much government been derived from so

few words? What processes have worked to shape or extend the meaning of the Constitution and change its application over time? How did we arrive at the government and laws we have today? ■

## **The Federal Government Applies the Constitution**

The Framers did not set out to define the nation's government in exhaustive detail, nor did they intend to regulate people's everyday activities. The Framers created a framework to be followed and filled in by citizens then and in later generations. Over time, the United States has grown in size, population, and complexity, and as it has grown, so has its government. In the process, the legislative, executive, and judicial branches have put the Constitution into action, extending its reach and meaning.

**Legislative Action** The Framers gave Congress the job of putting meat on the bones of the Constitution. For example, Section 1 of Article III, which created the Supreme Court, also authorized Congress to create “such inferior courts as the Congress may from time to time ordain and establish.” This authority is quite general. So Congress passed the Judiciary Act of 1789, which created the system of lower-level federal courts. Article I, Section 8, gives Congress power to “constitute tribunals inferior to the Supreme Court.” Over the years, Congress has used both Articles I and III to expand the judicial branch as needed.

Without congressional legislation, none of the departments and agencies that make up today's executive branch would exist. Yet Article II—which creates and defines the executive branch, describes the offices and powers of president and vice president as well as their election, impeachment, and compensation—makes only two passing references to executive departments.

When passing laws to meet new situations, Congress inevitably pushes into areas on which the Constitution is silent. Powerful new technologies, such as today's personal computers and cell phones, and threatening international circumstances, such as possible attacks by

terrorists, are two factors that sometimes push Congress onto uncertain constitutional ground. If the Supreme Court strikes down a new law, the reach of the Constitution remains unchanged. If, however, the Court upholds the law, the application of the Constitution has been changed slightly.

**THE ENDURING CONSTITUTION** **QUICK FACTS**

The application of the Constitution has been expanded as the three branches of government have interpreted the document through:

- Legislative action**  
Congress passes minimum wage laws under its power to regulate commerce and immigration laws under its power to regulate naturalization.
- Executive action**  
Presidents negotiate agreements with foreign leaders and foreign governments that create or change U.S. relationships with those governments.
- Judicial review**  
Courts have upheld laws, such as laws that outlaw types of discrimination, as being constitutional.

**Executive Implementation** Presidents may sometimes exercise their authority in ways that the Constitution does not expressly state. For example, presidents often make **executive agreements**—arrangements or compacts with foreign leaders or foreign governments—even though this power is found nowhere in the Constitution’s text. Presidents derive the power to fashion these executive agreements from the acknowledged constitutional powers: their inherent executive power; their power as commander in chief; their power to receive ambassadors and officials from other nations; and their duty to faithfully execute the laws.

Executive agreements are important in conducting foreign policy. In recent years, presidents have increasingly used their executive agreement power, especially when they are seeking to bypass the long, formal—and often contentious—treaty process. For example, in 1990 an executive agreement was used to create the international coalition that defeated the Iraqi invasion of Kuwait.

**compact** an agreement between two or more parties

An executive agreement has the force of a treaty but does not require ratification by the Senate, as treaties do. In practice, however, Congress has authorized a majority of executive agreements in advance or has approved them after they have been signed. Most executive agreements require subsequent congressional action—legislation giving an agency the necessary power or money—to be implemented.

Actions of the executive department and agencies also change the way the Constitution is applied or interpreted. Congress passes laws to create these bodies and sets broad goals for them to achieve. It is up to the agencies themselves, however, to define their operations and carry out the programs Congress has assigned to them. In doing so, they are applying the Constitution.

Executive branch agencies also usually have rule-making power, which they use to implement Congress's laws. These rules have the force of law. They affect everything from the medicine we take to the water that comes from our faucets. The Code of Federal Regulations, a collection of all the rules made by executive agencies, is about 135,000 pages long and fills more than 200 volumes. It is another extension of the Constitution.

**Judicial Interpretation** Can you imagine what it would be like to be a Supreme Court justice trying to apply the Constitution—a brief set of rules for the structure and operation of a new government written before the Industrial Revolution—to a mind-boggling range of modern-day cases? It is an extraordinary responsibility.

**PROFILES IN GOVERNMENT**

**John Roberts**  
(1955-)



John Roberts did not plan to be a lawyer. However, after he graduated with a degree in history from Harvard University, Roberts decided to pursue a career in law and attended Harvard Law School. As a lawyer, he argued cases before the U.S. Supreme Court, where he earned the reputation of having an outstanding legal mind. In July 2005, President George W. Bush nominated Roberts to replace retiring justice Sandra Day O'Connor.

In September 2005, Bush named Roberts to fill the position of chief justice following the death of former chief justice William H. Rehnquist. On September 29, 2005, John Roberts was sworn in as the seventeenth chief justice of the United States. Roberts is described by most experts as a conservative justice who will be a "strict constructionist" in terms of Constitutional interpretation.

**Make Inferences** Why might a president appoint a strict constructionist like John Roberts to the Supreme Court?

As noted in Section 1, the 1803 Supreme Court case of *Marbury v. Madison* established the principle of judicial review, the Court's power to determine if a law or other government action is constitutional. Court rulings, therefore, may affect the meaning of the Constitution—what the rights of citizens are and what the government is allowed to do or is prevented from doing.

For example, the Fourth Amendment prohibits "unreasonable searches and seizures." What does this phrase mean in an era of airport screening devices, cell phones, and wireless Internet access? The Framers could not have imagined how technology might change the concepts of "unreasonable," "searching," and "seizing." It is up to courts to interpret the Fourth Amendment in light of changing conditions, and judges are beginning to apply the Constitution's prohibitions to new technologies. Courts try to set legal standards that law-enforcement officers must follow when intercepting private conversations, monitoring e-mail, and using other "searching" methods.

The debate today is not about whether to interpret the words of the Constitution but how to interpret them. You may have heard discussions of "strict" versus "loose" construction of the Constitution. In general, a strict construction, or interpretation, of the Constitution means giving the words in the document only their literal meaning. A loose construction of

the Constitution means following the words plus any reasonable inferences that can be drawn from them. For example, the Constitution gives Congress the power to lay and collect taxes. One way for the central government to lay and collect taxes is to establish a national bank.

A strict constructionist would argue, as Thomas Jefferson did, that because there is no provision for a national bank in the Constitution, the government has no power to create such a bank. The government would have to find another way to exercise its power to collect taxes and pay its bills.

A loose constructionist would respond, as Alexander Hamilton did, that because Congress has the important power to lay and collect taxes, it is therefore reasonable to think that the Framers intended Congress also to have the implied power to carry out these responsibilities. As a result, creating a national bank is both necessary and proper.

Two other methods of interpreting the Constitution—judicial activism versus judicial restraint and original intent versus evolutionary meaning—are frequently debated. They are similar to strict versus loose construction. Read more about interpreting the Constitution in Chapter 13.

**READING CHECK** **Identifying the Main Idea** How has each branch of government put the Constitution into action? Give one example for each branch.

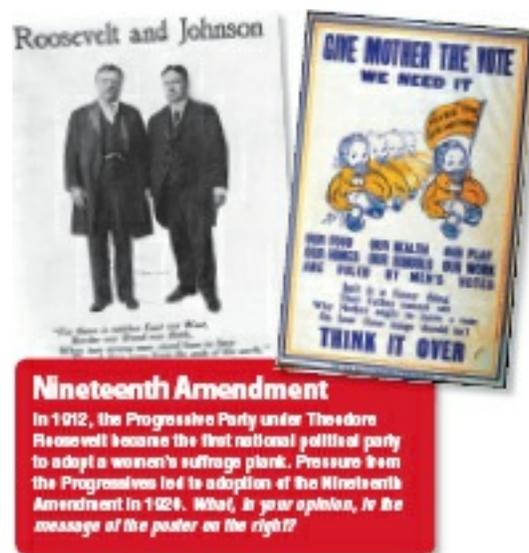
## **Political Parties, Customs, and Traditions**

You have read about how the Constitution has been expanded through amendments and how its language has been interpreted and applied by the actions of the three branches of government. Other factors—informal, yet quite important ones—also affect how the Constitution is interpreted, applied, and carried out. These factors include political parties and entrenched customs and traditions.

**Political Parties** Political parties have an impact on how the Constitution

is interpreted and applied for one primary reason: They help determine the choice of candidates, policies, and programs presented to the voters. A **political party** is an organized group that seeks to win elections in order to influence the activities of government. Parties also help shape the judicial branch, whose job is to decide what the law is by supporting or opposing nominees to federal judicial positions, such as U.S. Supreme Court justices. Although they are not mentioned in the Constitution, political parties deeply affect how government operates.

Political parties have also at times led the drive to change the Constitution through the amendment process. The post–Civil War amendments mentioned in last section were largely the work of the Republican Party. The legacy of two political movements popular in the late 1800s and early 1900s but around no longer, the Populists and Progressives, rests in the Constitutional amendments they helped get passed.



The Populists were a coalition of farmers, labor leaders, and reformers. Populists supported bank regulation; government ownership, or at least government regulation, of railroads; and the unlimited coinage of silver. They also called for the direct election of senators. Populism faded after the presidential elections of 1892 and 1896.

Progressives took up many of the same causes as Populists but also wanted to improve living conditions for the urban poor. As a result of

Progressive influence in the early 1900s, Congress passed laws giving the federal government powers to regulate banks, food and drug safety, railroads, and business monopolies—powers upheld by the Supreme Court. Progressives were also instrumental in the passage of the Sixteenth, Seventeenth, and Nineteenth amendments to the Constitution (allowing the income tax, providing for popular election of senators, and giving women the right to vote).

Recently, groups and people—sometimes allied with political parties and sometimes not—also not mentioned in the Constitution have affected government policies. These groups and individuals range from interest group political action committees (PACs) to online political commentators and bloggers.

**PRIMARY SOURCES**

### Gridlock in Government

Most presidents have a legislative agenda, a list of laws and programs they would like to see enacted. However, Congress—not the president—makes laws. The president, therefore, must work with Congress to get his or her agenda enacted. If for any reason, Congress and the president cannot agree on legislation, the government may grind to a halt. When one political party controls Congress and the other party controls the presidency, the chances of a standoff are that much greater. This cartoon illustrates how party politics sometimes affect the Constitution's systems of separation of powers and checks and balances.



**SKILL FOCUS** INTERPRETING PRIMARY SOURCES

**Making Inferences** According to this cartoon, who is responsible for government gridlock? Explain why you agree or disagree.

**Customs and Traditions** The Framers might have expected that customs and traditions would help guide the practices of the government. After all, Great Britain had no written constitution—and still does not—but its government was anchored in practices handed down for nearly 1,000 years.

Customs and traditions are not mentioned in the Constitution, but they strongly influence how American government behaves. For example, the Constitution authorizes the president to “require the opinion, in writing, of the principal officer in each of the executive departments.” President George Washington relied on this language in Article II to

create a **cabinet**, a group of advisers consisting of the heads of the executive departments. Subsequent presidents followed Washington's custom, and the tradition of cabinet and cabinet meetings was born. Today, the cabinet is a firmly entrenched part of our government.

Some traditions have become law. For example, for more than 150 years, starting with Washington himself, no president served more than two terms in office. Franklin Roosevelt broke with tradition to run for and win third and fourth terms as president in the 1940s. The example of Roosevelt worried many Americans, who felt that such lengthy stays in office could lead to an unsafe concentration of power in the hands of one party. As a result, Congress passed the Twenty-second Amendment. It limits presidents to two terms, thus formalizing the custom that began with Washington.

**READING CHECK** **Identifying the Main Idea** How do political parties and traditions affect the functioning of government?

## **Criticisms of the Constitution**

The U.S. Constitution commands respect around the world for its brevity, insight, and flexibility. Yet with the passage of time, some people have come to agree with Jefferson's prediction that "the imperfections of a written Constitution will become apparent." What are some criticisms that have been raised about the Constitution?

**A System That Creates Gridlock** In our system of checks and balances, power and decision making are distributed among the branches of government. Critics say that this diffusion of power makes it too easy for the president and congressional leaders to avoid responsibility for their actions.

Frequently, Congress and the president blame one another when they are unable to get things done. This inability to govern effectively due to separation of powers is called **gridlock**. Occasionally, gridlock has been so severe that it has brought government to a standstill. For example, in 1995 a budget dispute between the Republican-controlled Congress and

Democratic president Bill Clinton shut down the entire federal government for 27 days.

**Questions about Representation** Some political observers argue that the Constitution falls short of truly representative democracy when judged by contemporary democratic standards. They are especially critical of the Senate, in which residents of states with small populations have far more relative influence than residents of states with large populations.

Wyoming, a state with just over half a million people, elects the same number of senators as California, a state with about 37 million people. Thus, the influence of each voter in Wyoming is far greater than the influence of each voter in California.

**The Electoral College** You may already know that the president of the United States is not elected directly by voters. Instead, the president and vice president are elected by members of the **electoral college**, the body of 538 people elected from the 50 states and the District of Columbia. Critics of the electoral college point to the fact that the winner of the popular vote may not win the presidency, as happened most recently in the election of 2000. Supporters of the electoral college argue that this system requires candidates to generate support from a variety of states, large and small.

**Winner-take-all Elections** In elections for U.S. Congress, the candidate who receives the most votes is elected to the House or Senate. A candidate who comes in second or third goes home—even if he or she receives a large number of votes. This type of election is known as the winner-take-all system.

By contrast, many European parliaments use proportional representation. Voters choose from party lists of candidates. Seats are given to each party according to the percentage of the total votes they win. More-popular parties will have a larger number of seats, but less-popular parties will not be entirely shut out of the parliament.

Supporters of proportional representation say it allows a larger variety of viewpoints to gain representation in the legislature. Defenders of the U.S. system respond that proportional representation leads to fractured legislatures with many small parties, while the American process allows the party with the most support to govern.

**READING CHECK** **Contrasting** How does the winner-take-all election system differ from a system of proportional representation?

SECTION

3

ASSESSMENT

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ONLINE QUIZ

### Reviewing Ideas and Terms

- Recall** What is the difference between an executive agreement and a treaty?
  - Explain** How have the three branches of the federal government defined the scope of the Constitution?
  - Evaluate** Do you think the Framers intended for the government to expand as it has? Explain.
- Identify** What is the main goal of a political party?
  - Make Inferences** How can political parties affect judicial interpretation of the Constitution?
- Describe** What are three criticisms of the Constitution?
  - Evaluate** Which criticisms of the Constitution do you agree with, and which do you disagree with?

### Critical Thinking

- Analyze** Copy the chart below. From most to least important in your opinion, list the formal and informal ways in which the U.S. Constitution has been expanded. Explain your reasoning.

Formal	Informal
1	1

**5. Expository** In your opinion, is government gridlock ever good for the country? Why or why not? Express your opinion in a brief letter, with examples, to your congressperson.

CONNECTING TO THE CONSTITUTION

*We the People*  
THE CITIZEN & THE CONSTITUTION

## A New Constitution and a New Government

The Constitution was a plan for the new national government that described the new government, its powers, and the limits on it. The Framers wrote the Constitution as a general framework and left out details they knew would be added in the future.

**What are Congress's constitutional powers?** John Locke claimed that the legislature is the most powerful branch of government because it makes laws. Mistrusting any concentration of political power, the Framers carefully limited Congress's power:

- Article I, Section 8: The Constitution limits Congress's law-making powers to those "herein granted ..." In addition to 17 specific powers, Congress has a generalized eighteenth 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."

- Article I, Section 9: The Constitution identifies several matters on which Congress “shall not” legislate. For example, it cannot tax articles “exported from any state.” It cannot grant titles of nobility. It cannot draw any money from the Treasury “but in Consequence of Appropriations made by Law.”

Bill of Rights Added to the Constitution in 1791, the Bill of Rights lists rights upon which Congress “shall not” infringe. For example, the First Amendment states that “Congress shall make no law” establishing a national religion or abridging free speech or press. The Eighth Amendment prohibits Congress from levying “excessive fines” and imposing “cruel and unusual punishments” on convicted criminals.

Even with these limitations, Congress today has far-reaching powers, which include enumerated and implied powers.

Enumerated powers Enumerated, or express, powers are those listed in the Constitution. Article I, Section 8, for example, gives Congress power to “regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes.” Other parts of the Constitution also give Congress power:

- Article II: The Senate must advise and consent when the president makes treaties and appoints ambassadors, other public ministers, judges of the Supreme Court, and many other public officials.
- Article III: Congress has complete control over the appellate jurisdiction of the Supreme Court and authority to create lower federal courts.
- Article IV: Congress can admit new states and adopt all rules and regulations respecting U.S. territories and properties.
- Article V: Congress, like the states, can propose

constitutional amendments. Congress has proposed all 27 amendments to the Constitution and many that have not been ratified.

**Implied powers** Some express grants of authority to Congress imply, or suggest, other powers. The “necessary and proper” clause in Article I gives Congress power to legislate on at least some subjects not expressly described in the Constitution.



**What are the president’s constitutional responsibilities?** Article II of the Constitution places “the executive Power,” the powers of the executive branch of government, in the president of the United States. Unlike Article I, which gives Congress those powers “herein granted,” Article II does not define executive power. The Constitution lists some of the president’s powers, but those listed have never been thought to be the president’s only powers. The listed powers include the following:

- commanding the army and navy (as commander in chief)
- heading the executive department (cabinet and executive departments)
- granting reprieves, or postponement of punishment, and pardons
- making treaties (subject to the advice and consent of the Senate)
- nominating ambassadors, public ministers, consuls, and judges of the Supreme Court and other federal courts

- recommending legislation to Congress
- reviewing legislation passed by Congress and returning bills to which the president objects
- receiving ambassadors and other public ministers (chief diplomat)

Presidents have asserted many reasons to justify a broad definition of executive powers, particularly in times of national emergency, such as the Great Depression, and war. The Constitution has proven flexible enough to adapt to changing understandings of presidential power.

**What are the constitutional powers of the Supreme Court?** Article III of the Constitution created the Supreme Court and gives Congress power to create other courts that are inferior to, or below, the Supreme Court. It gives courts created under the authority of Article III (called federal courts) jurisdiction, or power, to decide only certain cases. These are cases arising under national laws and involving citizens from more than one state. Finally, the article guarantees trial by jury in all criminal cases except impeachment. The Supreme Court also exercises the power of judicial review, deciding whether acts of Congress, the executive, state laws, and even state constitutions violate the U.S. Constitution.

The Constitution gives the Supreme Court jurisdiction to decide two categories of cases:

**Original jurisdiction** This term refers to the power of a court to pass judgment on both the facts of a case and the law. The Supreme Court has original jurisdiction in “cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party.” When the Supreme Court hears a case in its original jurisdiction, it is the only court to hear the case.

**Appellate jurisdiction** This term refers to the power of a superior, or higher, court to review and revise the decision of an inferior, or lower, court. The Supreme Court has appellate jurisdiction in all cases not in its

original jurisdiction “with such Exceptions and under such Regulations as the Congress shall make.”

---

## Reviewing Ideas

- 1. Explain** In your own words, explain what the Article I, Section 8, phrase “necessary and proper” means to Congress.
- 2. Make Generalizations** Why do you think that Article II, Section 1, gives the president the “executive power” of the United States but does not specifically define what that power is?

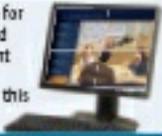
## Critical Thinking

- 3. Elaborate** How does the power of judicial review make the judicial branch a co-equal branch of government?

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## Quiz and Review

**GOV 101**

Examine key concepts in this chapter.

**ONLINE QUIZZES**

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## Comprehension and Critical Thinking

### SECTION 1

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: popular sovereignty, rule of law, separation of powers, checks and balances, judicial review, federalism.
- b. Summarize** Why is it important to maintain a balance between state and national authority in a federal system? Be prepared to defend your analysis.

**c. Evaluate** Are the goals and objectives of the Constitution, such as the rule of law, relevant today? Support your answer with examples.

## SECTION 2

- 2. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: supermajority, repeal.
- b. Analyze** How have both Madison's and Jefferson's views of amending the Constitution proven true in some ways over the course of U.S. history?
- c. Elaborate** Give examples of how the Constitution has both endured and changed since it was ratified.

## SECTION 3

- 3. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: executive agreements, political party.
- b. Explain** How does each of the three branches of government apply the Constitution to its job responsibilities?
- c. Develop** Describe the impacts that political parties, customs, and traditions have had on the U.S. system of government.

## Critical Reading

*Read the passage in Section 1 that begins with the heading "Checks and Balances." Then answer the questions that follow.*

- 4.** In which of the following bodies must government-funding laws originate?
- A** the Supreme Court
  - B** the Senate
  - C** the president's cabinet
  - D** the House of Representatives
- 5.** Which of the following does the Senate have the sole authority to approve or reject?

- A overseas trade negotiations
- B government projects
- C security legislation
- D treaties with foreign countries

*Read the passage in Section 3 that begins with the heading “The Federal Government Applies the Constitution.” Then answer the question that follows.*

6. Executive agreements are usually used by a president to support which of the president’s executive powers?
- A conducting overseas trade negotiations
  - B financing domestic government projects
  - C ensuring the passage of legislation
  - D appointing ambassadors and judges

RESPONSIBILITIES OF LEADERSHIP



7. The Line Item Veto Act of 1996 allowed the president to cancel individual items in appropriations bills passed by Congress. Research the Supreme Court case of *Clinton v. City of New York* (1998). Analyze and summarize all the opinions in the case. Then, in terms of **separation of powers**, evaluate the final decision reached by the Court.

8. The role of the U.S. Supreme Court is to say what the law is. The Court, however, is composed of nine individual justices. Select one justice and research his or her judicial philosophy. Evidence of the justice’s philosophy may be found in his or her opinions in cases involving freedom of speech or religion; the commerce clause and states’ rights; Fourth Amendment issues; and the death penalty. Create a spreadsheet to collect and sort your evidence. From these opinions, classify the justice as a strict or loose constructionist of the Constitution. Write a short biography of the justice. Using examples from the justice’s opinions, describe his or her judicial philosophy, including whether the justice is considered conservative, liberal, or in the center of the Court’s philosophical spectrum. Share your results with the class.

9. Read Article I, Section 8, of the Constitution in the Reference Section at the end of your textbook. List any powers of Congress that are not included that you think should be. Also list which powers, if any, that are included but that you think should not be. Provide one or two sentences of support for each addition or deletion that you make.

**ANALYZING PRIMARY SOURCES**

**Political Cartoon** *The Constitution contains a system of checks and balances that is supposed to prevent any one branch of government from becoming all-powerful. The system works only if each branch follows the rule of law and the other principles of government in the Constitution.*



10. **Analyze** What is happening in this cartoon?

11. **Draw Conclusions** How does the imagery in the cartoon illustrate the cartoonist's opinion of the constitutional system of checks and balances?

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**FOCUS ON WRITING**



**Persuasive Writing** *Persuasive writing takes a position for or against an issue, using facts and examples as supporting evidence. To practice persuasive writing, complete the assignment below.*

Writing Topic: Constitutional Democracy

**12. Assignment** Two basic principles of government in the Constitution are that all government power comes from the people and that the individuals we elect to be our representatives are to speak for us in government. Write an editorial in which you convince people that these two principles apply—or do not apply—to issues the nation faces today. Give examples to support your editorial position.



## CHAPTER AT A GLANCE

### SECTION 1 Dividing Government Power

- After much debate, the Framers designed a federal system that they hoped would strengthen the national government and protect states' rights.
- The Constitution divides power between two levels of government: national and state governments.
- The Constitution delegates certain powers to the national government.
- The powers granted to state governments are called reserved powers.
- Concurrent powers may be exercised by the national and state governments.

- States must give full faith and credit to the laws of other states.

## **SECTION 2 American Federalism: Conflict and Change**

- Federalism has changed over time to meet new political needs.
- The Supreme Court acts as a referee in the division of power between the national and state governments.
- Before the Civil War, American federalism was guided by the principle of dual federalism, or the idea that the national and state governments were equal in authority.
- Over the course of U.S. history, American federalism has experienced a steady expansion in national power.
- In recent years, a trend in American federalism called devolution has attempted to return power to the states.

## **SECTION 3 Federalism Today**

- Fiscal federalism is a system in which the national government uses grants and mandates to influence state policy to achieve national ends.
- Grants-in-aid from the national government to the states have increased the influence of the national government.
- Today American federalism continues to evolve in the face of new issues

**CONNECTING TO THE CONSTITUTION**



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the

People: The Citizen and the Constitution” pages in this chapter for an in–depth exploration of how states serve as “laboratories of democracy” in the American federal system.



# Dividing Government Power

## BEFORE YOU READ

### Main idea

The Framers of the Constitution established a federal system that divides powers and responsibility between the national and state governments

### Reading focus

1. Why did the Framers choose federalism?
2. What powers does the national government have?
3. What powers do state governments have?
4. What powers are shared by both the national government and the state governments?

### Key Terms

enumerated powers  
implied powers  
inherent powers  
reserved powers  
concurrent  
powerfull faith and credit clause

5. How does the Constitution limit the powers of the state and national governments?
6. How does the Constitution guide the relationships between the nation and the 50 states?



Use the graphic organizer online to take notes on the purposes of government.



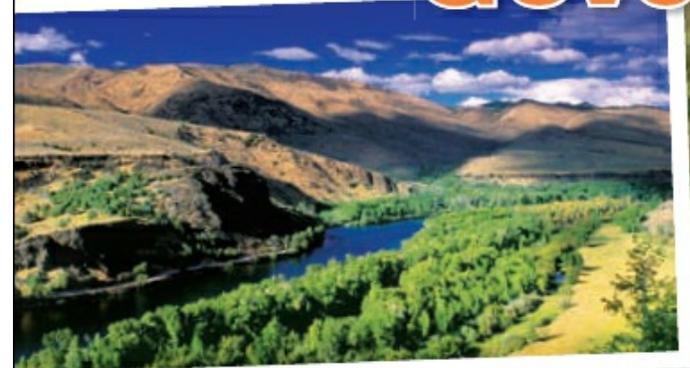
**Federalism in Action** What do fish swimming in Idaho's Snake River have to do with American federalism? The Snake River runs more than 1,000 miles through Idaho. It provides water for power plants and local communities, irrigation for 3.8 million acres of farmland, and a vital habitat for endangered salmon

For the last 20 years, the Snake River has been the subject of one of the longest-standing water disputes in the western United States. In May 2007 the state of Idaho, the U.S. government, and the Nez Percé finalized the terms of the Snake River Water Agreement. The agreement aimed to sort out more than 150,000 water claims, including those made by the Nez Percé, who in 1855 signed a treaty with the U.S. government that granted the tribe fishing rights in the river.

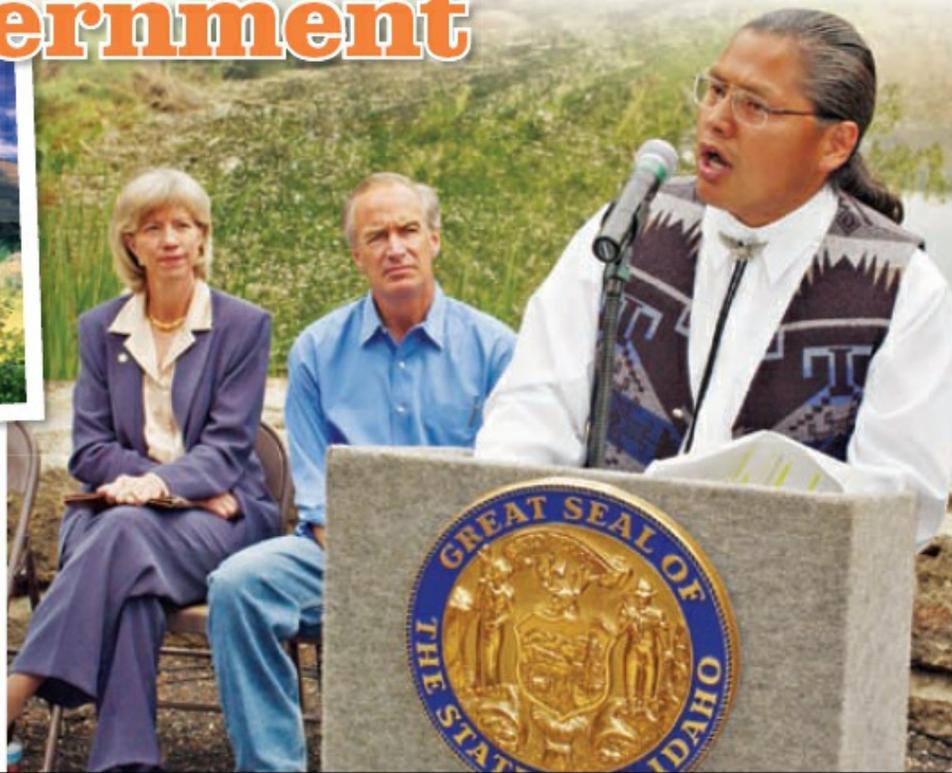
In exchange for giving up their claims, the Nez Percé will receive more than \$95 million in U.S. funding. Idaho will be able to settle disputes and safeguard its water. Such complex, multi-level government

action may be a far cry from what the Framers imagined, but it still takes place within a basic structure for federal government the Framers outlined in the Constitution. ■

## A Basic Structure for Government



In 2004, Nez Percé tribal chair Anthony Johnson announced the proposed settlement of the Snake River Basin at a joint press conference held with then Idaho governor Dirk Kempthorne and former U.S. Secretary of the Interior Gale Norton.



### Why Federalism?

American federalism was invented in Philadelphia in 1787. When delegates to the Constitutional Convention met to consider strengthening the national government, federalism was an obvious choice. As you have read, under the Articles of Confederation, the new nation struggled to function as a confederation, and it was failing. Without the power to raise funds, the national government was simply not strong enough to deliver the stability and economic unity that the young nation needed.

Moreover, unitary rule—rule in which all power is held by a strong central authority—was out of the question. This was the system the American colonies had known under the British monarchy. It left the nation's founders deeply suspicious of a powerful central government. Some found the idea so distasteful that they outright declined to attend the Philadelphia Convention. They worried that delegates were plotting to put in place a strong national government that would diminish states'

rights. Virginian Patrick Henry claimed that he ‘smelt a rat.’

The Framers did have in mind a few ways to prevent government abuse of power. As discussed in Chapters 2 and 3, the Framers sought to forge a republic. In so doing, they relied heavily on the writings of a number of philosophers—such as Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Adam Smith—who advocated self-rule and limited government.

They also drew ideas from the French philosopher Baron de Montesquieu. In Montesquieu’s *Spirit of the Laws* (1748), he wrote extensively on the virtues of dividing power between different parts of government. According to Montesquieu, dividing power was the best way to defend people’s freedom from a too-powerful government. This idea would be thoroughly absorbed by the Framers of the Constitution.

The Framers faced a difficult balancing act. How could the national government address the needs of the nation, preserve states’ rights, and ensure a republican government? In the spring of 1787, echoing Montesquieu, James Madison described his idea for the new government.

### **PRIMARY SOURCE**

**“I have sought for some middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities wherever they can be subordinately [secondarily] useful.”**

–James Madison, letter to George Washington,  
1787

After much debate and a series of compromises, the Framers devised a plan for government that balanced authority between the nation and the states. In other words, the new government was federal in form. The Framers carefully divided powers between two levels of government—state and national. The Framers assigned all powers having to do with the states’ common interests, such as national defense and control over

currency, to the national government. All other powers remained with the states.

# THE UNITED STATES: FROM CONFEDERATION TO FEDERAL SYSTEM

QUICK  
FACTS

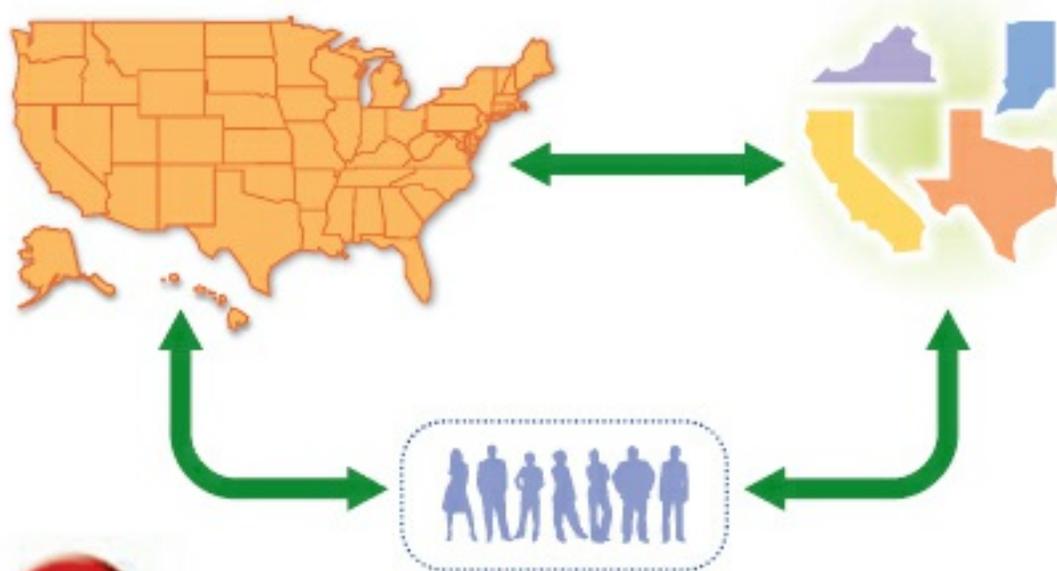
## The United States as a Confederation

From 1781 to 1788, the states were united as a confederation under the Articles of Confederation. The national government received its power from the states, but it had no direct authority over the people.



## The United States as a Federal System

Under the U.S. Constitution, the national and state governments are based on the consent of the people and exercise authority directly over the people.



**Skills  
FOCUS**

### INTERPRETING CHARTS

In what ways was the United States as a confederation similar to and different from the United States as a federal system?

# Powers of the National Government

The U.S. Constitution gives the national government the power to:

- Borrow and coin money
- Levy taxes
- Conduct foreign relations
- Raise armies, declare war, and make peace
- Regulate commerce with foreign nations and between states
- Establish post offices
- Regulate immigration and naturalization
- Establish and operate the federal court system
- Make laws necessary and proper to execute national powers



The Constitution specifically grants the national government the power to raise armed forces, such as the Coast Guard.

The arrangement was a practical solution to the nation’s needs. In 1787 the nation’s people were spread far apart, and its transportation and communications systems were far too primitive to make governing from a central location feasible. In the Framers’ eighteenth century world, matters of local concern really were best left to the states.

The Framers deliberately avoided detailed provisions. They recognized that general rules stated briefly would give the nation and the states flexibility to meet the needs of the people. In this regard, the Framers were right. The basic structure of federalism crafted in Philadelphia remains in place today.

**READING CHECK** Identifying Supporting Details Why did the Framers choose federalism?

## National Powers

The Constitution outlined a federal system that would provide strong national government and protect states' rights. In the U.S. federal system, some powers belong to the national government, others are reserved for the states, and still others are shared by both. Much of the Constitution deals with the expressed, implied, and inherent powers of the national government.

**Enumerated Powers** The Constitution lists powers granted to the national government. These powers are called **Enumerated Powers** and are sometimes referred to as enumerated powers. For example, Article I, Section 8, lists the enumerated powers of the legislative branch. Congress has the power to issue money, collect taxes, pay government debts, regulate trade among the states and with other nations, declare war, and raise and maintain armed forces.

The enumerated powers of the other two branches are listed in Articles II and III. Article II gives the president the power to command the armed forces and to conduct foreign relations. Article III gives the judicial branch the power to rule on constitutional issues, cases involving the U.S. government, and disputes among the states.

**Implied Powers** The national government also possesses **implied powers**. In contrast to expressed powers, implied powers are not specifically listed in the Constitution, but they are logical extensions of expressed powers. The constitutional source for implied powers is the last clause of Article I, Section 8, which is often referred to as the necessary and proper clause.

## PRIMARY SOURCE

**“[Congress has the 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.”**

The necessary and proper clause is also referred to as the elastic clause because it has been used to stretch the powers of Congress. Many congressional policies, ranging from building highways to regulating food are justified as implied powers. For example, the Sixteenth Amendment gives Congress the power to collect income taxes, but nowhere does the Constitution explain how taxes should be collected. Using its implied powers, Congress established the Internal Revenue Service, the agency that collects your taxes.

**Inherent Powers** The national government also has **inherent powers**, or powers that historically have been recognized as naturally belonging to all governments that conduct the business of a sovereign nation. In other words, the U.S. government has inherent powers simply because it is a national government. These powers include the power to acquire new territory and to conduct foreign affairs. The United States has done all of these things since its earliest years, even though these powers are not specifically granted by the Constitution.

**READING CHECK** **Contrasting** How do expressed, implied, and inherent powers differ from one another?

## State Powers

The Constitution has considerably less to say about state powers. In the days leading up to the ratification of the Constitution, James Madison suggested that, although state powers were not listed in the Constitution, that did not mean they did not exist. In **Federalist Paper** No. 45, Madison explained that the constitutional powers granted to the national government were “few and defined.” By contrast, the powers that remained with the states were “numerous and indefinite.”

To protect states’ rights, Madison’s idea was worked into the Constitution in 1791 as part of the Bill of Rights.

**PRIMARY SOURCE**

**“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.”**

– U.S. Constitution, Tenth Amendment

This provision is often called the reserved powers clause. **Reserved powers** are not specifically mentioned in the Constitution, but they belong to the states because the Constitution neither delegates these powers to the national government nor prohibits them to the states.

**QUICK FACTS**

## Powers of the State Governments

The U.S. Constitution gives state governments the power to:

- Draw electoral district lines
- Conduct elections
- Maintain state militias (the National Guard)
- Regulate commerce within the state
- Establish and operate state court systems
- Levy taxes
- Ratify amendments to the Constitution
- Exercise powers not specifically delegated to the nation or prohibited to the states

States have the power to draw electoral lines, like these proposed by Georgia state senator Tom Price in 2004.

State governments have drawn heavily on their reserved powers to regulate the health, public safety, morals, and general welfare of their citizens—the areas that most directly impact the day-to-day lives of people. For example, state laws tell you when you can get your license to

drive a car and how fast you can drive on a highway.

Among the states' other reserved powers are the ability to regulate marriage, form local governments, conduct elections, control public school systems, and establish and enforce criminal laws. States also have the power to regulate businesses operating within their borders and to issue licenses to doctors, lawyers, and even the person you pay to cut your hair.

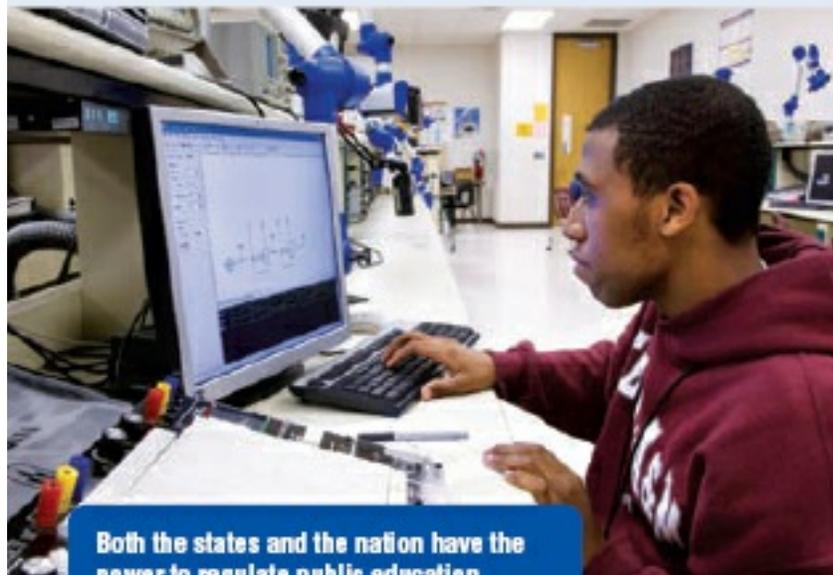
**READING CHECK** Summarizing What powers does the Tenth Amendment give to the states?

## Powers Shared by the Nation and the States

QUICK  
FACTS

The Constitution gives some powers to both state and national governments. These powers are called concurrent powers.

- Collect taxes
- Provide for the health and welfare of the people
- Build roads
- Conduct commerce
- Establish courts
- Borrow money
- Take private property for public use, with just compensation
- Pass and enforce laws
- Charter banks and corporations
- Regulate education



Both the states and the nation have the power to regulate public education.

## Shared Powers

In addition to their reserved powers, states may also share powers with the national government. If the Constitution does not specifically state

that a power belongs *exclusively* to the national government, then the states may exercise that power, too. For example, when Americans file their income tax returns every April, many people file two forms, one for their state government and another for the national government. This is because the power to collect taxes is a **concurrent power**, or a power held by the national government and the state governments at the same time.



Read the supremacy clause in Article VI, Section 2, and the Tenth Amendment to the Constitution. How do the two provisions help explain why the national government and the states seem to be locked in a perpetual struggle for power?

In addition to collecting taxes, both levels of government can establish courts, make and enforce laws, build roads, provide education, and borrow and spend money. Both the states and the national government perform these tasks, often at the same time and for the same people. In short, this means that citizens are subject to two levels of authority. In the state of Texas, for example, you must follow both Texas laws and national laws.

What happens, though, if a national law and a state law come into conflict? Who prevails? The Framers considered these questions very carefully. They laid out their answer in Article VI of the Constitution. Often called the supremacy clause, Article VI states that the Constitution, national laws, and treaties form the “supreme Law of the Land.” The clause specifically says that judges in every state have to obey the Constitution, even if it contradicts state laws. The supremacy clause establishes that national laws are supreme over state laws, so long as the national government acts within its constitutional limits.

**READING CHECK** Identifying Supporting Details Name three

powers that are held by both the national government and the state governments.

## **The Limits of Power**

In addition to granting powers, the U.S. Constitution denies certain powers to the national and state governments. As you have read, the Framers believed strongly in limited government. By placing limits on both levels of government, they hoped to prevent tyranny and protect individual liberties.

**Limits on National Government** Fearful of tyranny, the Framers included provisions in the Constitution to prevent the national government from growing too-powerful. These provisions aimed to protect the people of the United States from specific injustices that the colonists had experienced at the hands of the English monarchy.

For example, Article I, Section 9, states that the government cannot deny a citizen the right to trial by jury, grant titles of nobility, tax exports between states, pass laws favoring the trade of one state over another, or spend money unless authorized to do so by Congress. The national government also may not exercise powers that are reserved to the states, and it may not pass laws that threaten the federal system as established by the Constitution.

The power of the national government is further limited by the Bill of Rights. The Bill of Rights guarantees that the government cannot interfere with basic liberties such as freedom of speech and freedom of the press.

**Limits on State Governments** To prevent conflict between the states and the national government, Article I, Section 10, denies specific powers to the state governments. For example, states are not allowed to coin money or tax imports and exports from other states. States are also prohibited from having their own armies, separately engaging in wars, and entering into treaties with other states or nations. If states did such things, they would undermine national unity.

**Powers Denied to Both Levels** Other powers are specifically denied by the Constitution to both the national and state governments. Neither level, for example, can deny people accused of crimes the right to a trial by jury or grant titles of nobility. The Constitution also forbids both levels from passing ex post facto laws, or laws made “after the fact.” This protects people from being convicted of an offense that was not a crime at the time the offense was committed.

**READING CHECK** **Summarizing** What limits did the Framers place on state governments?

## **Nation and State Relations**

The Constitution does more than divide government power. It also describes the responsibilities that the national government and the states have toward one another. American federalism might never have worked had the Framers not included these guidelines for interaction.

**The Nation and the Fifty States** The Framers wanted to be sure that state governments would themselves be republics, democracies led by elected representatives of the people. Toward this end, Article IV, Section 4, of the Constitution states that the national government must “guarantee to every State in the Union a Republican form of government.” In other words, the national government will only officially recognize representative state governments.

The national government is also responsible for protecting the states, both from foreign invasion and domestic uprisings. For example, when terrorists attacked the World Trade Center in New York City and the Pentagon in Washington, D.C., on September 11, 2001, the national government responded with military force to the crisis.

In addition, the Constitution ensures that the states be treated as equals by the national government. The national government must grant states equal representation in the Senate, and it cannot tax the people of one state more than another. Finally, although the national government can admit new states, it cannot split up states that already exist or change

state boundaries in any way.

**Relations between the States** The Constitution gives states the right to manage affairs within their borders, and it also encourages states to cooperate with one another. Imagine the chaos that could result if states did not recognize each other's laws. A person could break a law in one state but escape punishment by fleeing to another state. The Constitution was designed to prevent this from happening. Although state laws differ and states are not required to enforce the criminal laws of other states, the Constitution says that states are required to extradite, or return, a person charged with a crime to the state in which the offense was committed for prosecution.

Article IV of the Constitution, often referred to as the **full faith and credit clause**, ensures that extradition can take place. Article IV requires that states give "full faith and credit," to the public acts, official records, and judicial proceedings of every other state. For example, this means that a contract signed in one state must be recognized and honored by officials in other states. It also means that state drivers' licenses are valid in any state, from Maine to California. Similarly, the full faith and credit clause ensures that if you marry someone in one state, the other states must recognize that marriage.

The Constitution also takes measures to prevent states from discriminating against the citizens of other states. It does this in a clause of Article IV, Section 2, that is often called the privileges and immunities clause. This clause specifies that citizens of each state should receive all the "privileges and immunities" of any state in which they happen to be. This ensures, for example, that a New Yorker living in or visiting the state of North Carolina will pay the same sales tax and enjoy the same police protection as North Carolinians do.

Still, there are many exceptions to the privileges and immunities clause. A state can offer reduced state university tuition to residents, and it can charge its own residents less for services funded by taxes, such as public health facilities.

**What about Local Government?** The U.S. Constitution does not include a single word about local government. Thus, creating local governments is a power reserved for the states. Each state outlines a plan for local government in a state constitution. The relationship between state and local government, however, is quite different from the relationship between the national and state governments. The most important difference is that state government has the power to reorganize local government at any time to better address state needs.

**Native American Sovereignty** The Constitution says little about the sovereign Native American nations that existed in the United States long before the arrival of Europeans. However, Article I, Section 8, does grant the national government the power “to regulate Commerce . . . with the Indian Tribes.” The national government used this power to make treaties with Native American nations.

When a Native American nation signed a treaty, it often agreed to give up some or all of its land as well as some of its sovereign powers. Signing also meant entering into a trust relationship with the United States, in which the U.S. government promised benefits and rights, such as fishing and hunting rights, to Native Americans in exchange for land.

In most cases, the treaties resulted in loss of land, sovereignty, and individual rights for native peoples. Moreover, Native Americans were not granted full citizenship until 1924. In Chapter 11 you will learn about how Native Americans have since worked to attain full civil rights.

**READING CHECK Summarizing** How does the full faith and credit clause affect relations among states?

SECTION

1

ASSESSMENT

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ONLINE QUIZ

## Reviewing Ideas and Terms

- 1. a. Recall** What philosopher influenced the Framers’ vision of a federal system?

**b. Analyze** Why did the Framers of the Constitution choose a federal system of government?

**2. a. Define** What are inherent powers?

**b. Evaluate** Do you think the necessary and proper clause was a good idea? Why or why not?

**3. a. Identify** What does the Tenth Amendment have to do with American federalism?

**b. Contrast** How does the Constitution delegate powers to the nation differently from how it gives powers to the states?

**4. a. Recall** Name two powers that are denied to both the states and the national government.

**b. Explain** Why did the Framers want to limit the powers of the national and state governments?

**5. a. Define** What is a concurrent power?

**b. Predict** Could the American federal system survive without the supremacy clause? Explain.

**6. a. Define** What is the full faith and credit clause?

**b. Predict** What might happen if the national government taxed citizens of one state more than others?

## Critical Thinking

**7. Compare** Use the graphic organizer below to list the powers of the national government and the powers of the state governments. Which level of government do you think most affects your daily life? Provide support for your answer.

National Government	State Government
1.	1.
2.	2.

**8. Expository** Write a paragraph explaining the constitutional powers of the national government. Describe how expressed, implied, and inherent powers differ and give examples of each.



# American Federalism: Conflict and Change

## BEFORE YOU READ

### Main idea

Over the past 200 years, conflicts over the balance of power between the national and state governments have led to changes in American federalism

### Reading focus

1. What role does the Supreme Court play in American federalism?
2. How was government power divided in dual federalism
3. What events caused the expansion of national power in the twentieth century?
4. What is new federalism

### Key Terms

dual federalism

doctrine of nullification

doctrine of secession

cooperative federalism

creative federalism

new federalism  
devolution



Use the graphic organizer online to take notes on the roots of American democracy.

**WHY IT MATTERS** **Crisis at Fort Sumter** In the early hours of April 12, 1861, shots rang out at Fort Sumter, a U.S. fort in South Carolina, and continued for 34 hours. The attack did not come from a foreign army but from armed forces raised by a group of southern states that had decided to separate from the Union.

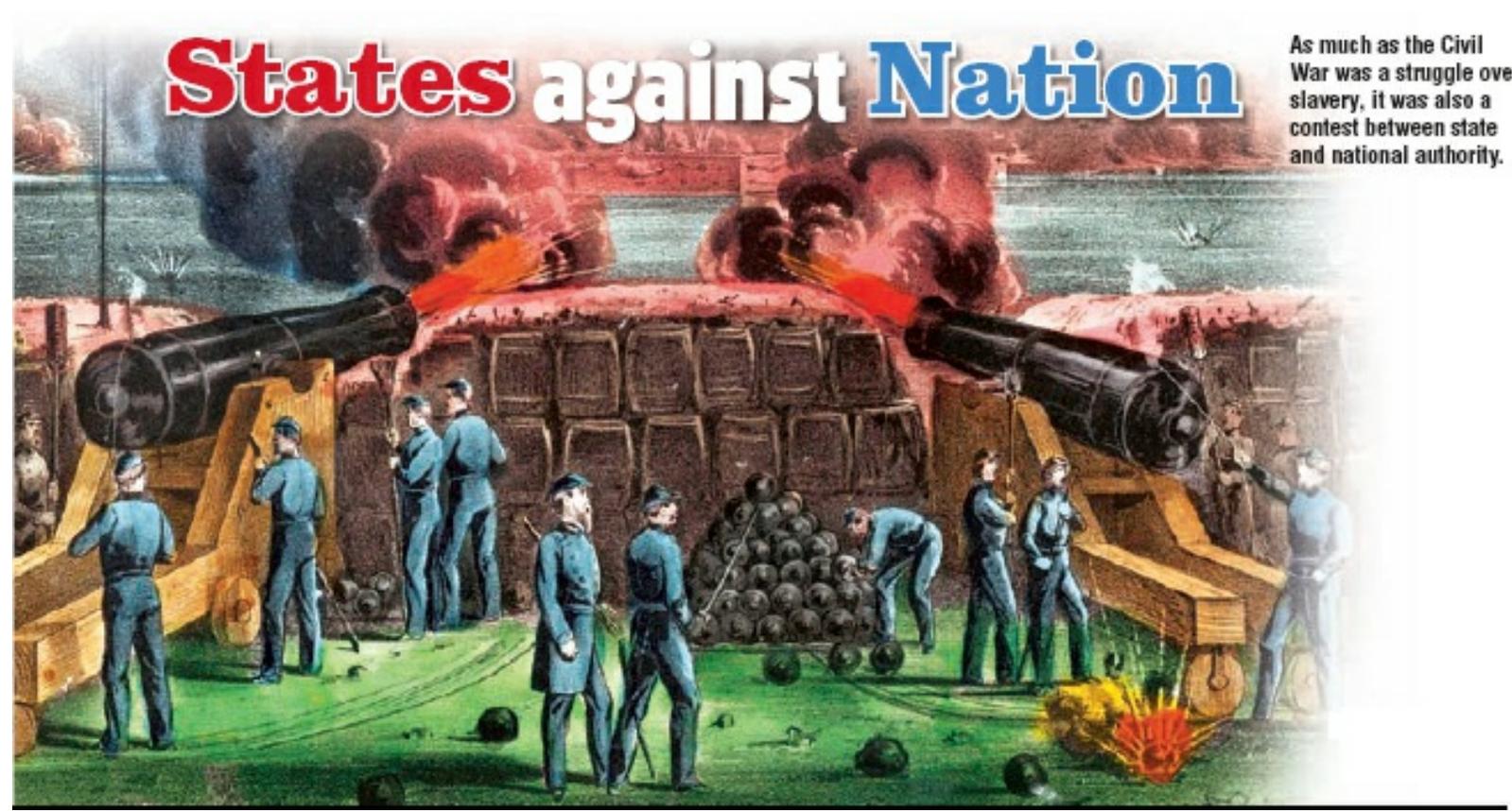
Calling themselves the Confederate States of America, the southern states claimed that since Fort Sumter lay in the South, it rightfully belonged to their Confederacy. On April 14, Fort Sumter surrendered to Confederate forces. President Abraham Lincoln readied U.S. troops to fight back. The War between the States—the Civil War—had begun.

Could the nation survive this challenge to its very union? In the end, the Union survived, but it was forever changed. Over the course of American history, the states and the national government had come into conflict many times. This was the first—and the only time since—that such a conflict escalated into war. The Union's victory restored the nation and redirected the course of American federalism.

One of the final outcomes of the war that pitted states against nation was that the nation emerged victorious over the states. The war put to rest the most extreme arguments for states' rights and established the supremacy of the national government in the American federal system. ■

# States against Nation

As much as the Civil War was a struggle over slavery, it was also a contest between state and national authority.



## Role of the Supreme Court

Long before the Civil War, the Framers anticipated that the government they created might lead to conflicts between the states and the national government. They were concerned, for example, that states might pass laws that conflicted with laws passed by the national government. How did the Framers plan to resolve such conflicts?

In the previous section, you read about how the Framers disagreed over which level of government—the states or the nation—should have ultimate authority in the new nation. For this reason, they made no attempt to outline solutions for specific types of conflicts in the wording of the Constitution. Instead, the Framers came up with a problem-solving strategy. They gave the Supreme Court the power to resolve conflicts between the nation and the states.

Article III of the Constitution gives the judicial branch the authority to hear cases involving the Constitution, U.S. laws, and disputes between states. This gives the judicial branch, especially the Supreme Court, the power to act as a referee, sorting out conflicts between the nation and the states. In sports, referees make decisions based upon the rules of a game.

Similarly, in the federal system, the courts make decisions based on the rules in the Constitution.

The Framers also addressed the question of how to resolve conflicts between the states and the national government in Article VI of the Constitution. As you read in Section 1, this article of the Constitution includes the supremacy clause, which declares that the Constitution, national laws, and treaties made by the national government are “the supreme law of the land.”

Acting in the role of referee, the Supreme Court has influenced how power is divided between the nation and the states. For 200 years, the Court’s interpretation of the supremacy clause and other articles of the Constitution has gradually increased the power of the national government. This trend would not be broken until the 1990s.

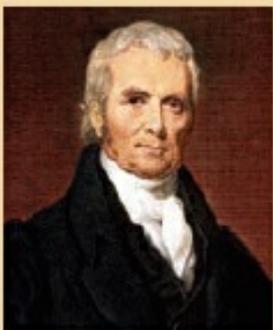
Over time, American federalism has continually changed to meet the needs of new generations. The changes in our federal system may best be understood in terms of four historical eras: dual federalism, cooperative federalism, creative federalism, and new federalism.

**READING CHECK** Summarizing How does the Supreme Court serve as a referee in the federal system?

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## Eras of Federalism

American federalism has evolved over time. Until recently, one general trend has characterized American federalism—the expansion of national power.



### Dual Federalism 1789–1930s

Dual federalism was guided by the idea that both the national and state governments were sovereign within their own spheres. During this era, leaders such as Supreme Court Chief Justice John Marshall (left) helped to gradually increase the power of the national government.



### Cooperative Federalism 1930s–1960s

Cooperative federalism was marked by the belief that all levels of government should work together to solve problems, such as poverty. During the Great Depression, the national government created the Works Progress Administration (WPA) to give unemployed workers jobs. WPA workers (left) dig a well at Big Bend National Park in Texas.

## Dual Federalism

The first era of American federalism, dual federalism, lasted from about 1789 to the 1930s. Under **dual federalism**, both state and national governments were equal authorities operating within their own spheres of influence, as defined by a strict reading of the Constitution. The powers of the national government included only those powers listed in the Constitution. The Tenth Amendment reserved all other powers to the states. Political scientists often compare dual federalism to a layer cake, with each layer representing a distinct level of government

**The Great Debate** From our nation's very beginning, dual federalism was at the center of a great debate. On one side of the debate stood nationalists, or advocates of a strong, centralized national government. They counted among their numbers George Washington and Alexander Hamilton. On the other side were proponents of states' rights, such as Thomas Jefferson, who held that the national government should not unduly intrude in state affairs.

In 1790 nationalists faced off against supporters of states' rights when President George Washington's secretary of the treasury, Alexander Hamilton, urged Congress to create a national bank. Thomas Jefferson objected to the bank, claiming it was unlawful because the national government had no constitutional power to establish banks. In response, Hamilton argued that because the national government had a constitutional power to regulate currency, it had an implied power to create a bank.

Congress sided with Hamilton and granted a 20-year charter for the First Bank of the United States. But the question of whether the bank was constitutional remained. When the bank's charter expired, Congress refused to renew it.

The dispute resurfaced in 1816 when Congress chartered the Second Bank of the United States. Maryland had imposed a tax on all banks operating within the state, but James McCulloch, an officer at a Maryland branch of the national bank, refused to pay the tax. Maryland pressed its

case in court.

**The Marshall Court** The bank dispute reached the Supreme Court in the case of *McCulloch v. Maryland* (1819). At the time, the Court was under the leadership of Chief Justice John Marshall, a judge with strong nationalist leanings. Starting with *McCulloch*, the Court's rulings did much to expand the powers of the national government.

The Court ruled decisively in favor of the nation's authority to start a bank. Marshall argued that the bank's charter was justified by the Constitution's necessary and proper clause, which gives Congress the power to take actions necessary and proper to carrying out its expressed powers. In this case, Marshall concluded that it was reasonable for the nation to exercise an implied power to start a bank since it would help the nation properly execute its powers to regulate commerce and currency.

Furthermore, Marshall argued that Maryland could not tax the bank because "the power to tax involves the power to destroy." If states could tax a national institution, then they could weaken or destroy it. This, Marshall asserted, violated the supremacy clause of the Constitution.



### **Creative Federalism**

**1960s–1980s**

In this era, the national government funded state and local programs that met national goals, such as fighting poverty. In the 1960s, First Lady Lady Bird Johnson (above) visited a school program funded by national grants.



### **New Federalism**

**1980s–2001**

In the 1990s supporters of New Federalism and devolution, such as Newt Gingrich (above), argued that decreased national spending and returning power to the states would improve government.

**“A House Divided”** In the years leading up to the Civil War, the United States became bitterly divided over the issue of slavery, a debate that was wrapped up in arguments about states' rights and the extent of national

power. The slave states—the southern states—resisted all measures taken by the national government to outlaw slavery in new states and territories. They held fast to the notion that the states were sovereign and could make such decisions for themselves.

Politicians in some southern states believed that states had the right to nullify national laws that they believed contradicted or clashed with state interests. This was known as the **doctrine of nullification**. The idea of nullification was not new. From the nation’s earliest years, proponents of states’ rights—including James Madison and Thomas Jefferson—had argued that states could refuse to follow national laws they found objectionable and could even declare such laws “null and void.”

## ACADEMIC VOCABULARY

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**nullify** to cancel

In 1832, for example, the South Carolina legislature voted to nullify specific national tariffs, or taxes. The effort was led by South Carolinian John C. Calhoun, who believed the tariffs favored northern industry over southern plantations. Calhoun argued that because the national government was created by the states, the states had the right to challenge federal laws

According to the doctrine of nullification, if a state challenged a national law, threequarters of the other states would have to ratify an amendment allowing Congress to enact the law. At that point, the state that had challenged the law could either choose to follow the law or separate from the Union. The idea that states had the right to separate themselves from the Union was known as the **doctrine of secession**. Secession was the most extreme option for those who believed in state sovereignty.

## ACADEMIC VOCABULARY

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**secession** a formal withdrawal or separation

The issue of state sovereignty would soon come to a head. In 1860 Abraham Lincoln was elected president. Southerners feared that President Lincoln would try to limit slavery or stop the practice altogether. Just a few years earlier, as the Republican nominee in a race for an Illinois Senate seat, Lincoln had made his views on the divisive nature of slavery clear.

## **PRIMARY SOURCE**

**“A house divided against itself cannot stand. I believe this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved—I do not expect the house to fall—but I do expect it will cease to be divided.”**

—Abraham Lincoln, Senate nomination acceptance speech, 1858

After Lincoln’s presidential election, events quickly led to secession and war. South Carolina was the first to secede, followed by 10 other states. These states united to form a confederation, a group of sovereign states, officially called the Confederate States of America. By 1861 the United States was divided by the Civil War. For four years, the Union and the Confederacy battled each other in the bloodiest war in U.S. history.

After the Civil War In 1865 the Confederacy surrendered and the Union was restored. The defeat of the Confederacy settled the matter of slavery in the United States once and for all. The war also profoundly changed the relationship between the states and the national government. The Union’s victory firmly established national supremacy and put to rest the most radical interpretations of state sovereignty. No longer could states claim a right to nullify national laws or withdraw from the union.

The Civil War also led to expanded constitutional powers of the national government. After the war, Congress passed the Thirteenth, Fourteenth, and Fifteenth amendments to the Constitution, known

collectively as the Reconstruction Amendments. These amendments abolished slavery, defined citizenship, prohibited the states from denying citizens' rights, and extended voting rights to African American men.

The Reconstruction Amendments were significant because they set national standards that states had to follow. In time, the national government would use its new constitutional powers to protect the rights of African Americans, women, and other groups of people from discrimination by state and local governments.

**READING CHECK** Identifying Cause and Effect How did the Civil War resolve the issue of secession?



The banner features a blue background with a white image of the Supreme Court building on the left. The text "LANDMARK SUPREME COURT CASES" is written in large, bold, yellow letters. Below it, "Constitutional Issue: Federalism" is written in white. On the right, there is a logo for the "DIVISION FOR PUBLIC EDUCATION" and "AMERICAN BAR ASSOCIATION" with a magnifying glass icon.

**LANDMARK  
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Constitutional Issue: Federalism

***McCulloch v. Maryland*** (1819)

DIVISION FOR  
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EDUCATION  
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## ***McCulloch v. Maryland*** (1819)

### **WHY IT MATTERS**

*In McCulloch v. Maryland the Supreme Court had the first of many opportunities to influence the division of power in the federal system. The Court's decision led to the expansion of national power*

### **Background**

In 1791 Congress passed a law that established the First Bank of the United States. However, in 1811 an attempt to renew the bank's

charter failed. At that time, a number of states took advantage of this situation by chartering their own banks.

After the War of 1812, the nation needed money to repay its war debts. Because there was no longer a national bank, Congress borrowed money from several state banks. As a result, Congress set up the Second Bank of the United States in 1816. The states generally opposed the National Bank. Some state banks, including the state bank of Maryland, placed a tax on all banks operating within their borders. When the Maryland branch of the National Bank refused to pay the tax, the state of Maryland sued the National Bank's cashier, James McCulloch.

In 1819 the legal battle reached the U.S. Supreme Court. According to Chief Justice John Marshall, the Court had two crucial questions to resolve. The first question was whether or not the Constitution gives Congress the power to establish a national bank. The second question involved whether or not the Constitution gives states the power to tax a national bank

## **Arguments for McCulloch**

The question of whether Congress had the power to establish a bank was not new. It had been asked in 1790, when President George Washington's secretary of the treasury, Alexander Hamilton, pushed Congress to establish the First Bank of the United States. Supporters of the First Bank claimed that, even though the Constitution did not specifically grant the national government the power to create a bank, Congress had an implied power to do so because it had the constitutional authority to regulate commerce.

## **Arguments for Maryland**

Opponents of the National Bank argued that the Bank was unlawful because the national government had no constitutional power to start banks. Moreover, they argued that because the states are sovereign, selfgoverning entities, each state should have the right to impose taxes on businesses and institutions operating within its borders.

Led by Chief Justice John Marshall, the Supreme Court unanimously ruled in favor of the Bank. Marshall asserted that Article I, Section 8, of the Constitution gave Congress the power to make all laws “necessary and proper” for carrying out its responsibilities, such as regulating commerce. Moreover, Marshall argued that Maryland’s tax was invalid. “The power to tax,” Marshall wrote, “involves the power to destroy.” If a state could tax one of the national government’s activities, then it would have power over the national government. The McCulloch decision set a precedent for the expansion of national power and for the role of the Court as a referee in the federal system.

### CRITICAL THINKING

**What Do You Think?** Chief Justice Marshall’s decision in *McCulloch v. Maryland* expanded the power of the national government. What might have happened if Marshall had ruled in favor of Maryland? What part of the Constitution could he have drawn upon to support his argument?

## Expanding National Power

The Civil War reinforced the supremacy of the national government over the states. In the years following the war, new challenges— including those posed by business interests, the economy, and unfair social conditions— continued to shift the balance of power in favor of the national government.

**Turn-of-the-Century Reforms** The turn of the twentieth century was a time of tremendous change in the United States. New technology, such as railroads, the telegraph, and industrial machinery changed how Americans lived and worked. In addition, the country experienced unprecedented growth. Between 1870 and 1916 the population of the United States more than doubled, and hundreds of thousands of people

flocked to the nation's cities

These dramatic changes were accompanied by a range of social and economic problems. Cities grew overcrowded, and crime rates rose. Many laborers suffered from long workdays and dangerous working conditions. Powerful corporations developed great economic influence, often at the expense of working-class Americans. These issues grew so widespread that it became difficult to address them at the state level. The national government eventually stepped in, passing legislation to reform social conditions and business practices.

In 1887 Congress passed the Interstate Commerce Act to regulate the railroad industry. As new railroad lines crisscrossed the nation, railroad companies gained unprecedented power. In some areas, railroads were the only effective means of transportation, and companies realized that they could charge higher prices for their service. The Interstate Commerce Act set restrictions on the rates these companies could charge.

The government undertook other forms of regulation as well. In 1890 Congress passed the Sherman Antitrust Act to prevent monopolies, or the exclusive control of a good or service in a particular market, and to encourage fair competition in all industries. In the early 1900s the Sherman Antitrust Act was used to break up a number of large monopolies, including that of the American Tobacco Company.

## PRIMARY SOURCES

# Monopoly Busting

By the twentieth century, powerful  companies had formed monopolies by establishing exclusive control over a good or service. As a result, they could eliminate competition and control prices, often at the expense of consumers. During the Great Depression, monopolies were of particular concern to the national government. In 1937 President Franklin Roosevelt vowed to make "every effort to end monopoly in business." This 1937 cartoon illustrates Roosevelt's determination to curb the power of monopolies.



**Skills  
FOCUS**

## INTERPRETING PRIMARY SOURCES

**Analyzing Political Cartoons** Why do you think the artist portrayed a monopoly in this way? Explain.

Although these new laws did expand the national government's power to regulate business, several Supreme Court cases limited the reach of national power. For example, in *United States v. E.C. Knight Company* (1895) the Court ruled that a combination of sugar refining companies was not a monopoly under the Sherman Antitrust Act. The Court's decision explained that since the sugar companies operated locally, they could not be regulated by the national government.

**The New Deal** In the 1930s an economic crisis led to another expansion of the authority of the national government. In 1929 the American stock market crashed, triggering a major economic downturn known as the Great Depression.

As a result of the Great Depression, poverty and unemployment soon became widespread. Previously the job of helping the poor had fallen to the states and to local community groups. So great was this crisis, however, that local organizations were unable to respond adequately. It soon became clear that more help was needed.

In 1933 newly elected President Franklin Roosevelt responded with a plan to bring immediate relief. His program, known as the New Deal, created a series of national programs to address the needs of Americans. Some programs provided for the unemployed. For example, the Social Security program was established to assist the unemployed and the elderly. Other programs provided food, protected homeowners, and created jobs.

The New Deal marked a major change in the role of the national government. For the first time, the national government assumed responsibility for the social and economic welfare of the people. Since the national and state governments worked together to meet the crisis, federalism under the New Deal was known as **cooperative federalism**.

Because the New Deal was such a major shift, legislation was often challenged in the courts, and several cases reached the Supreme Court. Opponents argued that the constitutional powers to tax and regulate commerce did not give the national government the power to enact many New Deal programs. In time, however, the Supreme Court upheld most New Deal legislation.



Franklin D. Roosevelt holds the distinction of being the only president elected to four terms of office. During his 12 years as president, he led the nation through two of its greatest crises, the Great Depression and World War II.

During his first term as president, the nation was in a severe economic depression and unemployment was at an all-time high. In response, Roosevelt proposed a series of far-reaching programs, collectively known as the New Deal. Although Roosevelt and the New Deal were popular, some argued that his programs extended the reach of the national government too far into state affairs. Roosevelt fought against critics that questioned the constitutionality of certain New Deal laws. He claimed the national government should have the

authority to regulate industry and the economy. Eventually, many New Deal reforms achieved widespread national acceptance.

**Making Inferences** Why might the length of Roosevelt's presidency have concerned proponents of states' rights?

**The Great Society** In the 1960s President Lyndon Johnson further expanded the powers of the national government with his Great Society program, a series of initiatives aimed at eliminating poverty and social inequality. Johnson called his approach to solving national problems **creative federalism**. It involved releasing national funds, in the form of grants to state and local communities, to achieve national goals. For example, in July 1965, Congress authorized funds for states to set up Medicaid, a program that provides free health care for poor people.



These grants came with strings attached. If the national government thought that states were not fully cooperating, it would withhold funding. The threat of losing money was a powerful tool that spurred states into action against racial discrimination, hunger, unemployment, and pollution.

The grant system greatly increased the size and cost of national government. Grants for subsidized housing and urban renewal, for example, increased from \$212 million in 1964 to more than \$1 billion in 1970. Such spending soon raised concerns about the power of national government.

**READING CHECK** **Summarizing** How did New Deal and Great Society programs change federalism?

## New Federalism

Throughout much of U.S. history, the powers of the national government expanded. Beginning in the 1980s, many political leaders worked to reverse this trend by returning authority to state governments. This era is known as **new federalism**.

The Reagan Years During the 1980s, President Ronald Reagan supported returning power to the states. He believed that the national government was less effective than state governments in providing services to the people. In his first inaugural address, Reagan promised to change the American federal system.

### PRIMARY SOURCE

**“It is my intention to curb the size and influence of the federal establishment and to demand recognition of the distinction between the powers granted to the national government and those reserved to the states or to the people. All of us need to be reminded that the national government did not create the states; the states created the national government.”**

—Ronald Reagan, First Inaugural Address,  
January 20, 1981

As president, Reagan worked to reduce the size of government by cutting national grant money to the states. He relaxed national requirements that specified how states could use national grant money. States, he believed, were more effective than the national government in identifying the specific needs of their citizens.

**The Devolution Revolution** Following Reagan’s example, Republican candidates in the 1994 congressional elections ran with a political message they called the Contract with America. The contract was a promise to achieve specific goals within 100 days of taking office. Central to the Contract with America was the idea of returning power to

states, a concept known as **devolution**.

The Contract with America pledged to reduce the size and power of the national government by eliminating costly federal programs and by combining others. The Republicans also promised to force the government to review federal spending.

Some people, however, opposed devolution. They feared that it might result in increased social and economic inequality, or that states might be unable to adequately fund social programs. Still, concerns about the scope of the national government's powers extended across party lines, leading then Democratic President Bill Clinton to declare: "The era of big government is over."

**READING CHECK** **Identifying Supporting Details** How did Ronald Reagan attempt to reduce the influence of the national government?

SECTION

2

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- Identify** What is the supremacy clause?
  - Explain** How did the Framers plan to resolve conflicts that might arise between the states and the national government?
- Recall** What is dual federalism?
  - Analyze** How did the southern states use the doctrine of nullification to support secession?
- Recall** Why was the Interstate Commerce Act passed?
  - Elaborate** How did the Supreme Court limit the scope of the Sherman Antitrust Act?
- Define** What is devolution?
  - Contrast** How did new federalism differ from previous trends in federalism

## Critical Thinking

**5. Analyze** Use a graphic organizer like the one below to identify the effects of historical events on the American federal system.



### FOCUS ON WRITING



**6. Expository** Write a letter to one of the Framers of the Constitution describing the relationship between the states and the national government during a specific era of American federalism.

### DEBATING THE ISSUE

## Federalism and Hurricane Katrina

*What roles should local, state, and national governments play in responding to natural disasters such as Hurricane Katrina?*

### THE ISSUE

In August 2005 Hurricane Katrina devastated New Orleans, Louisiana, and the Gulf Coast. As the storm approached, officials at all levels of government prepared. Mayor Ray Nagin of New Orleans ordered a mandatory evacuation of the city. The governors of Louisiana and Mississippi declared a state of emergency. The national government authorized the Federal Emergency Management Agency to respond to the storm. On August 29, Katrina made landfall as a strong Category 4 storm. The results were catastrophic. Katrina and storm-related flooding took more than 1,800 lives and caused an estimated \$81 billion in damages. In the storm's aftermath, there was widespread debate over government response to the disaster.



## VIEWPOINTS

**The national government should have done more.** Many people blame the national government for not doing more to protect people from the storm. Some take issue with the failed flood protection system designed by the army and with officials who knew the system might fail if faced with a major hurricane. They argue that more could have been done to prevent New Orleans from flooding. Others argue that during the crisis, supplies, troops, and FEMA-sponsored buses for evacuees were slow to move into areas in need of assistance. They cite a lack of coordination among

government agencies for confusion and delay. Lastly, critics of the Bush administration say that he and his advisers did not act quickly enough to respond to the disaster and save lives.

**Local and state governments should be responsible for disaster relief.** On the other side of the debate, people believe that the bulk of the responsibility lay with the state and local governments. These people argue that state and local officials should have been better prepared ahead of time and had more comprehensive plans in place to minimize danger to citizens. Moreover, the national government has traditionally only sent its military into a state at the request of that state's governor. Some people have criticized the governors of Louisiana and Mississippi for not immediately requesting such action. They also criticize the governors for not moving state National Guard troops into the hardest hit areas soon enough and for not coordinating efforts effectively

# What Is Your Opinion?



1. What might supporters of devolution say about the governmental response to Katrina?
2. Which level of government do you think should be primarily responsible for disaster relief? Explain your answer.



## Federalism Today

### BEFORE YOU READ

#### Main idea

Today the balance of power between the states and the national government is characterized by a system of grants and mandates, as well as by a number of key policy areas.

#### Reading Focus

1. What is fiscal federalism?
2. How does the national government use grants and mandates to influence state policies?
3. What issues most influence American

#### Key Terms

fiscal federalism  
grants-in-aid  
categorical grants  
block grants  
federal mandates

# federalism today



Use the graphic organizer online to take notes on the purposes of government.

**WHY IT MATTERS** **A Need for National Power** September 11, 2001, marked a new day in American federalism. The international terrorist attacks on the World Trade Center in New York City and on the Pentagon in Washington, D.C., that occurred on September 11 sparked calls for increased national security

The American people and their representatives in Congress called on the national government to take the lead in securing the homeland. Under the leadership of President George W. Bush, the national government proposed a massive economic package to aid in homeland security.

Since the September 11 attacks, the national government has released billions of dollars to the states to fund a range of homeland security training measures, including disaster preparedness and emergency response training. The states also assumed enormous responsibilities on their own to protect electrical lines, ports, and the food and water supply. The nation's response to terrorism is characteristic of today's brand of federalism. This newest phase in American federalism depends heavily on a complex web of financial ties to meet the needs of the nation. At the same time, our federal system remains flexible to deal with new issues as they arise. ■

Since September 11, 2001, the national government has increased its spending on disaster preparedness training.

# Facing New Challenges



## Fiscal Federalism

The beginning of the twenty-first century marked yet another shift in relations between the states and the nation. In the wake of the September 11, 2001, terrorist attacks, the need for increased national security led to an expansion in the powers of government. This latest trend in federalism runs against the standard set by new federalism—the return of power to the states. Today the power of the national government to influence state policies occurs within a context of **fiscal federalism**, a system of spending, taxing, and providing aid in the federal system.

Fiscal federalism as we know it took shape during the 1900s. Examples of the national government providing aid to the states, however, may be found farther back in time. For example, under the Articles of Confederation, the Land Ordinance of 1785 set aside land for public schools in the Northwest Territory.

After the Constitution was ratified, the national government continued to give aid to states. The Morrill Act (1862) granted large

tracts of land to states. In turn, the states sold the land and used the money to establish colleges. Seventy state universities, including Texas A&M and Ohio State University, originated from the Morrill Act.

During the twentieth century, the power of the national government expanded with increased use of **grants-in-aid**. Grants-in-aid include money and other resources that the national government provides to pay for state and local activities. This money is used to fund a range of services and policy areas, including low-income housing, community arts programs, energy assistance for the elderly, and disaster preparedness programs.

How does the national government get the money to pay for grants-in-aid? The Sixteenth Amendment, ratified in 1913, gave Congress the authority to set a federal income tax. Federal income taxes are the main source of the nation's income. The ability to give this money back to states, in the form of aid, is the national government's chief tool for aiding and influencing states.

**READING CHECK** **Making Inferences** How might grants-in-aid increase the national government's power?

## **Grants and Mandates**

Fiscal federalism allows the national government to influence state policies in such a way that they support national priorities. Categorical grants, block grants, and federal mandates are among the national government's most important tools for influencing state policy.

**Categorical Grants** Most federal aid is distributed to the states in the form of **categorical grants**. These grants can only be used for a specific purpose, or category, of state and local spending, such as the building of a new airport or crime-fighting in a certain area. The national government also uses categorical grants to provide money to areas affected by natural disasters. The amount of money released in a categorical grant often depends on a state's population, and states may be required to contribute money in addition to the national money.



How would you explain American federalism to a non-American?

**Block Grants** In contrast to categorical grants, **block grants** are federal grants that are given for more general purposes or for broad policy areas, such as welfare, public health, community development, or education. States usually prefer block grants because they are designed to allow state officials to spend the money as they see fit. At the same time, Congress loses some control over how the money is spent.

In the 1980s President Ronald Reagan used block grants in an attempt to decrease the size and influence of the national government. In 1981, as part of a major revision of the federal budget, Congress combined many categorical grants into nine **block grants** to the states.



**The national government uses grants-in-aid to influence state and local policies. Why might it be a mistake for state and local leaders to depend on grants-in-aid for funding?**

**Federal Mandates** State and local governments are usually pleased to receive money from the national government, but the national government often distributes money with strings attached. For example, the U.S. government may impose **federal mandates**, or demands on states to carry out certain policies as a condition of receiving grant money. In some cases, Congress has even imposed “unfunded mandates,” or demands without funding.

# Tools of Fiscal Federalism

## Categorical Grants

Categorical grants are national grants that state and local governments use for specific purposes. For example, categorical grant money is being used to protect the habitat of the whooping crane in Port Aransas, Texas.



## Block Grants

State and local governments use block grants from the national government to address broad policy areas, such as home energy efficiency programs and health services. Block grants usually come with few or no strings attached.



## Federal Mandates

The national government uses federal mandates to encourage state and local governments to comply with national policy. The Clean Air Act was an unfunded mandate that set automobile emissions standards in order to improve air quality.



Federal mandates have been particularly important in enacting civil rights and environmental policies. For example, a number of government actions taken during the civil rights movement, such as school busing, desegregation, and affirmative action resulted from federal mandates. In such cases, the national government often used the equal protection clause of the Fourteenth Amendment to justify its use of mandates.

Likewise, since air pollution, contaminated water, and acid rain can spill across state lines, many environmental regulations come from the national government. The Clean Air Act of 1970 was a national mandate that required states to meet national air-quality levels. In exchange for grant money, the states were required to create programs to reduce pollution. States that did not meet the air quality levels after a certain period of time risked losing federal funding.

As you can probably imagine, unfunded mandates have often been a source of conflict between the national government and the states. For example, in 1993 a federal mandate required states to change their voter registration procedures in an effort to increase the number of voters. Yet some states argued that they should not have to pay for a program they

have not approved.

**READING CHECK** **Making Generalizations** What types of federal aid do the states generally prefer? Why?

## Issues in Federalism Today

Along with the ongoing debates concerning the division of power and funding, new issues challenge American federalism. Today political debates over how the United States will best address key policy areas—poverty, homeland security, environmental protection, immigration, and health care—drive changes in our federal system.

**Poverty** In 1996 Congress passed a welfare reform law that gave the states the authority to manage their own welfare systems using federal block grants. This marked a major change from the previous welfare program—in existence since the New Deal—in which the national government had paid welfare recipients directly.

Since the 1996 reforms, the number of people on welfare in the United States has decreased. Some people credit this to the added flexibility and creativity that can come when programs to help the poor are handled at the state level. Others argue that the decrease only represents a strong economy and question whether the states will be able to continue to meet the needs of the poor.

**Homeland Security** Another policy area shaping federalism today is homeland security. The Department of Homeland Security was formed after the attacks of September 11, 2001, to protect the nation from terrorism, natural disasters, and other emergencies. When Hurricane Katrina hit the Gulf Coast in 2005, local and state governments worked alongside the Department of Homeland Security to respond to the disaster. In the aftermath of the storm, people questioned whether better leadership and better cooperation between the levels of government might have saved lives.

**Environment** Government efforts to protect the environment are often

seen as the responsibility of the national government. There are many practical reasons for this. For one, the environmental policies of one state might affect other states. In addition, a state government might hesitate to enact environmental regulations that might cause businesses to relocate to a different state that has fewer restrictions.

Still, some leaders believe that environmental protection is better handled at the state and local level. Members of Congress representing this view have asked to limit the reach of the national government's Environmental Protection Agency in favor of local recycling and conservation efforts.

**Immigration** In recent years, immigration has become an important issue testing our federal system. Although the national government handles immigration policies, such as citizenship and border protection, immigration is not just a national issue. Many states, including California, Texas, New Mexico, and Arizona, have international borders. Moreover, state governments often take on responsibility for a number of immigration-related issues, including increased education costs, health and social services, employment-related issues, and low-cost housing. For the past several years, Congress has considered various immigration reforms, but they have yet to resolve the issue at a national level.

**Health Care** More than ever, Americans are turning to their state and national governments for creative solutions to the rising costs of medical services, health insurance, and hospitalization. Many are concerned, for example, that in 2003 as many as 45 million Americans did not have health insurance. Some see the trend as an indicator that the United States may be on the verge of a health care crisis. If Americans cannot afford to pay for their own health care, should the government pick up the tab? Which level of government should take the lead, state or national? The answers to these questions will no doubt redirect the course of American federalism in the years to come.

**READING CHECK Making Inferences** Why do you think some people seek a federal solution to poverty

## Reviewing Ideas, and Terms

- Define** What are grants-in-aid?
  - Evaluate** Do you think fiscal federalism gives the national government too much power? Why or why not?
- Identify** For what purposes are categorical grants used?
  - Contrast** In what ways are categorical grants and block grants different?
  - Elaborate** How can the national government use categorical grants, block grants, and federal mandates to influence state policies? Which do you think is most effective?
- Identify** How has welfare reform affected the way state and national governments work together to fight poverty?
  - Evaluate** Which issue facing the United States today do you think poses the greatest challenge to the American federal system? Explain your answer.

## Critical Thinking

- Analyze** Use the graphic organizer below to analyze how grants and mandates have been used to increase and decrease the influence of the national government



## FOCUS ON WRITING



- Persuasive** Write a grant proposal from the viewpoint of a city official. In the proposal, ask the federal government for a block

grant that will have a positive impact on your community

CONNECTING TO THE CONSTITUTION

We the People

THE CITIZEN & THE CONSTITUTION

## Laboratories of Democracy

From health care to taxes and education, the states have a high degree of control over policy areas that affect the daily lives of their citizens. In American federalism, the states are often testing grounds for new approaches to meeting the needs of the people. Over time, many state policies have influenced national policy.

### **Why have the states been called “laboratories of democracy”?**

Supreme Court Justice Louis D. Brandeis observed that one of the principal values of American federalism is that “a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” There are many examples of governance experiments in states and localities. Some innovations catch on in other states or in the nation as a whole. For instance, many states, starting with Wyoming, began permitting women to vote at least in local and state elections well before 1900. Those experiments set the stage for the adoption of the Nineteenth Amendment in 1920, which guaranteed women the right to vote in all elections.

**What democratic methods have been tested in the states?** Initiative, referendum, recall. This trio of methods, begun during the Progressive

Era of the late nineteenth century, allows citizens to participate in direct democracy in their states. Initiative, referendum, and recall describe discrete actions but they are related by the direct involvement of citizens.

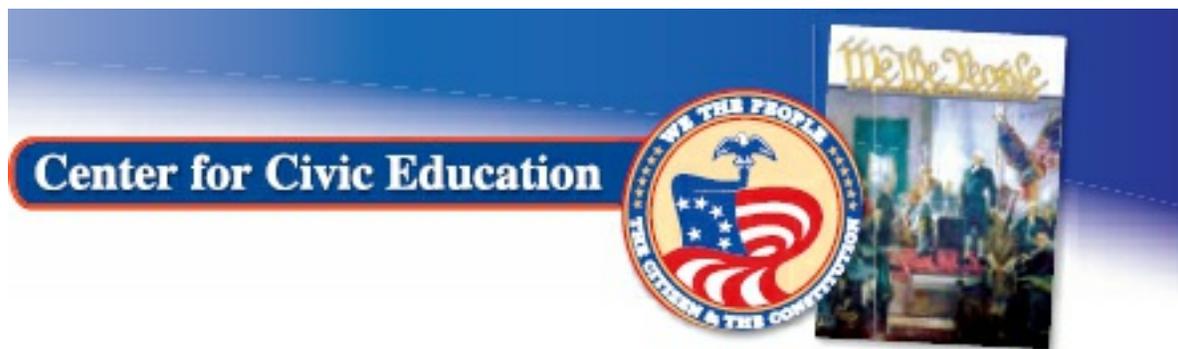
- **Initiative** South Dakota was the first state to permit the initiative. There are two forms of initiative: direct and indirect. In a direct initiative an individual or a group proposes and drafts a law or a state constitutional amendment. Then the initiator gathers a prescribed number of signatures to place the proposal on the ballot for approval or rejection by the voters. In the indirect process proposals first go to the legislature. If legislators reject the proposal or take no action on it, then the proposal goes on the ballot. Twenty-four states today use the initiative.

- **Referendum** The referendum involves placing a measure that has been approved by a legislature on the ballot for popular vote. Some state constitutions require the legislature to refer certain kinds of measures to the people. Others permit citizens to demand a vote on a law that has been passed by the legislature by gathering a prescribed number of signatures. Twenty-four states now use the referendum.

- **Recall** is a process of removing elected officials from office. In the eighteen states that permit recall it is used most frequently at the local level. However, in 2003 enough California voters signed petitions to call an election to recall their governor and elect a new one.

**How have states experimented with innovative environmental policies?** In 1997 some 164 countries signed the Kyoto Accords, an

international treaty aimed at reducing the level of carbon dioxide and five other greenhouse gasses in the air. President Bill Clinton signed the treaty, but the U.S. Senate did not ratify it. When President George W. Bush took office, he withdrew the United States from the Kyoto Accords. In 2006 seven northeastern states entered into the Regional Greenhouse Gas Initiative aimed at achieving most of the emission standards set by the Kyoto Accords. The coalition of states also hoped to put pressure on the national government to commit the United States to the Kyoto Accords.



Also in 2006 California became the first state to impose a cap on the emission of carbon dioxide and other gasses. The Global Warming Solutions Act aims to cut California's emissions by 25 percent by 2020. Many of the nation's cities, from Seattle to New York, also are adopting measures aimed at reducing air pollution and global warming.

**How have the states contributed to health care initiatives?** By the mid-1990s soaring health care costs and increasingly large numbers of people without health insurance had become a major issue of public concern. Congress had not adopted legislation to address the problem. However, by 2006 several states had adopted programs seeking to offer nearly universal access to health insurance for all their residents, regardless of ability to pay. Several other states were considering programs at that time. A former Oregon governor, John Kitzhaber, initiated the Archimedes Movement in 2006, which aimed at mobilizing people at the grassroots level to find a solution to the health care problem that eventually would be accepted nationwide.



**Supporters of the Oregon based Archimedes Movement work to improve health care in their state and for the nation as a whole.**

### **Reviewing Ideas**

- 1. Recall** What is a referendum?
- 2. Explain** Why have the states been called “laboratories of democracy”?

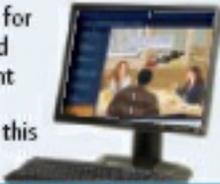
### **Critical Thinking**

- 3. Evaluate** Conduct research to find an example of an initiative, referendum, or recall effort in your state. Explain how this effort was a social, political, or economic experiment

## Connecting Online

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## Quiz and Review

### GOV 101

Examine key concepts in this chapter.

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## SECTION 1

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: expressed powers, implied powers, inherent powers, reserved powers.
- b. Make Inferences** Why do you think the Constitution denies both the state governments and the national government the power to grant titles of nobility?
- c. Evaluate** What are the main reasons that the Framers chose a federal system rather than a confederation?

## SECTION 2

2. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: dual federalism, doctrine of nullification, doctrine of secession, cooperative federalism, creative federalism, new federalism.
- b. Analyze** Why do you think the period of dual federalism was characterized by tension between the levels of government?
- c. Rank** Which event had a greater impact on federalism: the Civil War or the Great Depression? Support your answer with details.

## SECTION 3

3. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: fiscal federalism, grants-in-aid, categorical grants, block grants, federal mandates.
- b. Summarize** How does the federal government provide money and resources to the states?
- c. Predict** What trend do you think will characterize federalism in the near future—an expansion in national power or a return of power to the states? Explain your answer.

## Critical Reading

*Reread the passage in Section 2 that begins with the heading “The Marshall Court.” Then answer the questions that follow.*

4. On what two clauses of the Constitution did Supreme Court Chief Justice John Marshall base his decision in *McCulloch v. Maryland*?
- A the commerce clause; the full faith and credit clause
  - B the necessary and proper clause; the supremacy clause
  - C the full faith and credit clause; the necessary and proper clause
  - D the privileges and immunities clause; the full faith and credit clause
5. What effect did John Marshall's Supreme Court have upon American federalism?
- A It expanded the powers of the state and local governments.
  - B It determined that the full faith and credit clause was unconstitutional.
  - C It expanded the powers of the national government.
  - D It put an end to the process of judicial review

#### RESPONSIBILITIES OF LEADERSHIP

6. To understand important eras of American federalism, create a time line that includes dual federalism, cooperative federalism, creative federalism, new federalism, and devolution. Begin your time line with the Articles of Confederation and end it with a recent event that illustrates how the relationship between the states and the national government is changing. Use your time line to prepare a brief presentation for the class. Be sure that your presentation answers the following questions: How has the American federal system changed over time? In what areas, if any, do you think the nation or the states should have more power and responsibility today?

#### CONNECTING TO THE CONSTITUTION

7. The term federalism is not defined in a single passage of the Constitution. Instead provisions for a federal form of government are scattered throughout the document. Use information from this chapter and from the Constitution presented at the end of your

textbook to complete a three-column chart for “The Constitutional Foundations for Federalism.” In the first column record information about provisions in the Constitution that deal with federalism, such as provisions for national powers, state powers, shared powers, and limits on the powers of each level of government. In the second column, record information about where you found each provision in the Constitution. Lastly, in the third column, write a brief description of what you think each provision means.

**ANALYZING PRIMARY SOURCES**

**Political Cartoon** In 2005 the U.S. Supreme Court, against the wishes of many in Congress, upheld a Florida State Supreme Court decision in a controversial right-to-die case.



8. **Analyze** What is happening in this cartoon?  
9. **Draw Conclusions** How does the cartoonist portray the relationship between the state and the national governments in this cartoon?

## FOCUS ON WRITING



*Think about the following issue:*

**Many people argue that American federalism, as it exists today, would be unrecognizable to the Framers of the Constitution.**

**10. Assignment** Do you think the Framers of the Constitution would approve of American federalism today? Write a three-paragraph essay from the point of view of one the Framers of the Constitution

that evaluates American federalism today. Be sure to identify whether your Framers were supporters of states' rights or of a strong national government.

CHAPTER

5

# Congress: The Legislative Branch

**Essential Question** What powers does the Constitution give to Congress?



**About the Photo** One of the most recognizable symbols of American government, the United States Capitol building in Washington, D.C., is where the Congress conducts its work. Construction began on the original building in 1793. It has since expanded and renovated several times. In 1863, workers completed the cast-iron dome currently in place, atop which stands a bronze statue of Freedom. In the 1870s, landscaping and terraces were added outside the building. Inside, the Capitol building contains over 500 rooms, as well as the expansive House and Senate chambers.



### SECTION 1 Congress

- Members of Congress strive to represent the interests of their constituents while keeping in mind the needs of the country as a whole.
- Congress is a bicameral legislature with a House of Representatives and a Senate.
- Congress plays a vital role in the system of checks and balances.

### SECTION 2 The Powers of Congress

- Congress has extensive expressed, inherent, and implied powers.
- The extent of Congress's implied powers is a subject of debate.
- The powers of Congress have expanded over time with the growth of government.

### SECTION 3 The House of Representatives

- Membership in the House of Representatives is apportioned to each state on the basis of its population. After each census, seats in the House are reapportioned among the states and new district boundaries are drawn.
- The Speaker of the House is one of the most powerful leaders in government.
- The House relies on a committee system to conduct much of its business.

### SECTION 4 The Senate

- Each state has two senators, regardless of population. Like the House, the Senate relies on a system of committees.

- Senate traditions, such as open debate, make it a distinctive body.

## SECTION 5 **Congress at Work**

- Bills may be introduced in either house and usually get assigned to committees for analysis and revision.
- Floor debates differ in the House and Senate.
- Differences between House and Senate versions of a bill are resolved in a conference committee.
- The president needs to sign a bill for it to become law.

### CONNECTING TO THE CONSTITUTION



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of the sources of congressional legislation.



# Congress

#### BEFORE YOU READ

#### Main Idea

The voters elect members of Congress to

#### Reading Focus

1. How does Congress represent the

#### Key Terms

constituents  
apportionment  
appropriation

represent them and to enact laws in their name. Congress plays a vital role in our government's system of checks and balances.

- people?
2. Why is the structure of Congress important?
3. What is the role of Congress in the system of checks and balances?

impeachment oversight



Use the graphic organizer online to take notes on the powers and features of Congress.



**The People's Representatives** Every two years, in January, members of Congress' 535 of them-convene in the Capitol to open a new Congress. They are people from different regions of the country and different walks of life. They bring different viewpoints and life experiences. They come to Washington, D.C., to speak for over 300 million of their fellow Americans.

Opening day of a new Congress is a relaxed time. The business of legislating has not begun. For returning members, it is a chance to meet old friends and congratulate them on winning re-election. For new members there is the satisfaction of knowing they have two years to pursue the policies and agendas that motivated them to run for Congress.

Senate procedures on opening day are fairly routine. Newly elected and re-elected members, about a third of the Senate, take the oath of office, and the chamber passes resolutions on rules. In the House of Representatives, the clerk calls the House to order, checks the roll, and then the members-to-be formally elect a Speaker, who swears in the other 434 representatives.

The oath points to the serious purpose of the day. Before they begin to carry out the people’s business, each member swears to “preserve, protect, and defend the Constitution.” ■

## Opening Day in Congress

With family members present on opening day 2009, House members take the oath of office in the House Chamber.



122 CHAPTER 5

## Congress and the People

The opening words of the Constitution “We the People” signal that, in our nation, it is the people who are sovereign. Yet the people do not take part in national government directly. They do so by electing representatives, whose job it is to make and carry out laws.

Article I of the Constitution gives the law-making power to Congress. It also specifies that the “people of the several States” shall choose the members of Congress in regularly scheduled elections. The U.S. Congress, then, is the body through which the will of the people is made into law.

**Representing the People** Each member of Congress represents the people of a particular geographic area. The people who live within that area are called the member’s **constituents**. Thus, one way in which a member of Congress represents the people is by representing his or her

constituents.

Most constituents have particular interests and concerns. Those interests may be economic' for example, related to their jobs and industries. Interests may also be philosophical or personal' for example, a constituent may have a strong belief in environmental protection. Indeed, constituents may hold a variety of interests. Sometimes these various interests are in conflict with each other, which complicates the job of a member of Congress pledged to represent the constituents' interests.

Members of Congress must also deal with the demands of organized groups of like-minded people who join together to influence government and its policies. These organized groups, called interest groups, may draw their membership from across the nation and represent only a small number of any one of a Congress member's constituents. Still, members of Congress must deal with pressure applied by interest groups as they attempt to represent "the people."

In addition to representing their constituents, members of Congress also keep in mind the needs of the country as a whole. They try to balance their constituents' special needs with a desire to promote the common good' the outcome that is best for all.

This can be a difficult task. Sometimes members seek to serve their constituents directly' for example, by working to bring federal funding to their home district or answering a query. In fact, each member employs a staff of assistants to act on queries from constituents. Other times, members may vote based on what they think is in the best interest of the nation, even if it conflicts with the views of their constituents. These are both ways in which members of Congress represent the people.

**Members of Congress** Who are these men and women representing the people of the nation? How did they get their jobs? Beyond certain minimal requirements of office, which will be explained in detail in Sections 3 and 4 of this chapter, the Constitution places few limits on who can be a member of Congress. Still, members of Congress tend to have more in common with each other than with the constituents they

represent.

Members of Congress tend to be older than the average age of the general population. The average age of members in recent Congresses has been in the mid-to- upper fifties. Members of Congress are also much wealthier than the general population. In recent years there have been dozens of millionaires in Congress.

Most members of Congress are white men. The number who are women, African Americans, Hispanics, or members of other minority groups is low compared to these groups' percentage of the general population. In recent years, however, Congress has become more diverse. The 110th Congress elected the first female Speaker of the House, Nancy Pelosi (D, California). The numbers of women and African Americans in the 112th Congress (which began in 2011) was at an all-time high.

**READING CHECK** **Identifying the Main Idea** What groups do members of Congress represent?

## The Structure of Congress

As you know, Congress is a bicameral legislature. Its two houses are the House of Representatives and the Senate. These houses differ significantly in key details.



How might members of Congress balance their roles as delegates of their constituents and trustees of the common good?

**The House of Representatives** The Constitution states that seats in the House “shall be apportioned among the several States . . . according to their respective Numbers.” **Apportionment** means the distribution of House seats among the states based on population. Each House seat is meant to represent about the same number of people. The larger a state’s

population, the more representatives it has. Each state, however, is guaranteed at least one House member.

Today the total number of House seats is 435. That number was fixed by law in 1929. Congress has since added nonvoting delegates from the District of Columbia, Guam, the U.S. Virgin Islands, and American Samoa. House members serve two-year terms. All seats are contested at the same time. This can result in a rapid swing of control of the House from one party to another after an election.

**The Senate** The Constitution fixes membership in the Senate at “two Senators from each state.” As a result, the Senate today has 100 members.

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### CONGRESSIONAL REPRESENTATION SELECTED STATES, 2009

State	Population*	House Members	Senate Members
California	36,961,664	53	2
Florida	18,537,969	25	2
Georgia	9,829,211	13	2
Illinois	12,910,409	19	2
Indiana	6,423,113	9	2
Texas	24,782,302	32	2
Virginia	7,882,590	11	2
Wyoming	544,270	1	2

\*Census estimates, 2009

**Skills FOCUS** INTERPRETING CHARTS

Do you think having equal representation of every state in the Senate reflects the principle of federalism? Do you think it is fair?

Originally, the Constitution gave the power to choose senators to

state legislatures rather than to the voters. This changed in 1913, when the Seventeenth Amendment, requiring popular election of senators, was ratified. This amendment made the Senate a more democratic institution.

Unlike their colleagues in the House, senators serve six-year terms. These terms are staggered so that every two years, one-third of the seats are up for election. Staggered elections prevent major changes in Senate membership due to any one election.

**The Two-House Structure** Why did the Constitutional Convention create a bicameral legislature? The Framers were familiar with the two-house British Parliament. Several of the states also had bicameral legislatures. These models no doubt had an influence on the Framers' thinking. The decision at the Convention, however, was a result of the Great Compromise' one of the most important compromises of the Convention.

The Great Compromise combined elements of the Virginia Plan, which called for a bicameral legislature with representation based on state population, and the New Jersey Plan, which proposed a one-house legislature in which all the states would be represented equally. States with large populations favored the Virginia Plan, and those with small populations favored the New Jersey Plan. The plan accepted in the Great Compromise featured two houses, one in which small states and large states had equal representation and one in which representation was based on population.

The Great Compromise also settled a Convention debate over how much say to give the voting public. The House, with its frequent direct elections, would more closely reflect the people's will. The Senate, with no direct elections and longer terms, would be less subject to public passions. George Washington compared the two-house system to drinking a cup of hot coffee. "We pour legislation [from the House]," he explained to Thomas Jefferson, "into the senatorial saucer to cool it."

**READING CHECK** **Summarizing** What are the key features and

purposes of the bicameral structure?

## **Congress and Checks and Balances**

As you have read, our constitutional system is built on a system of checks and balances. Governmental power is divided and separated into three different branches. As the legislative branch of government, Congress has potent checks on the powers of the executive and judicial branches.

**The Power of the Purse** Congress alone has the power to approve spending by the federal government. It exercises this power through a special type of act called an **appropriation**, or a bill that sets aside funds for a specific purpose. This congressional power is sometimes referred to as the “power of the purse.” With it, Congress can prevent the executive branch from carrying out policies it disagrees with. The president can make budget requests, yet Congress can refuse to fund those requests.

Likewise, Congress can, in theory, withhold funding for military actions that the president has committed to. In reality, though, when troops are in the field, members of Congress find it politically difficult to withhold funding.

The Framers placed some limits on Congress’s power of the purse. Congress cannot, for example, lower the pay of the president and judges during their time in office. The Framers wanted to make sure that Congress did not use salary as a means to put pressure on or undercut the authority of the other branches.

**The Power of Advice and Consent** The Constitution gives the president the job of making treaties with foreign governments and appointing key government officials. These officials include ambassadors, federal judges and Supreme Court justices, and other top government leaders. These presidential powers, however, are subject to the “advice and consent” of the Senate.

Any treaty negotiated by a president is put to a vote in the Senate. It must receive a two-thirds vote to become law. In fact, several treaties signed by U.S. presidents have never been enacted because the Senate

chose not to approve them.



## The Impeachment Power

Congress can impeach officials, including presidents, for "high crimes and misdemeanors." Presidents Andrew Johnson (top left) and Bill Clinton (top right) are the only two presidents to be impeached. Neither was convicted by the Senate.

The Senate can also reject top presidential appointees. In 1987, for example, the Senate rejected President Ronald Reagan's Supreme Court nominee Robert Bork after a lengthy confirmation battle.

**The Impeachment Power** Congress has the power to charge officials in the executive and judicial branches with wrongdoing and bring them to trial. This is known as the power of **impeachment**. If found guilty, impeached officials can be removed from office before the completion of

their terms.

The impeachment process begins in the House of Representatives, which has responsibility for drawing up the charges against the official. A majority vote to approve the charges results in the formal impeachment of the official.

The Senate then holds a trial, with the vice president serving as the judge. In the event of the impeachment of a president or vice president, the Chief Justice of the United States serves as the judge. A two-thirds vote of the Senate is required to find the official guilty and remove him or her from office.

The Constitution calls for impeachment in cases of treason, bribery, or “high crimes and misdemeanors.” The last phrase gives Congress wide freedom to decide when an official deserves impeachment. In fact, though, Congress has impeached only 17 officials. Most of these were federal judges. Two, however, were presidents’ Andrew Johnson in 1868 and Bill Clinton in 1998.

In 1868 Congress and President Johnson were bitterly divided over Reconstruction. Congress had passed a law requiring Senate approval before the president could remove any top government official. Johnson felt the law was unconstitutional and disobeyed it. The House impeached him. Johnson avoided conviction in the Senate trial by one vote and served out the rest of his term.

In 1998 the House impeached President Bill Clinton. The charges included giving false testimony to a court in a civil case unrelated to the president’s official duties. As in the Johnson case, the Senate fell short of the votes necessary to convict Clinton. He served out the remainder of his term.

Another president, Richard Nixon, faced almost certain impeachment in 1974. Embroiled in the Watergate scandal in which he was accused of covering up illegal activities by members of his re-election campaign staff, Nixon resigned before Congress had a chance to impeach him.

**Other Checks and Balances** Congress balances the powers of the other branches of government in several more ways. For example, Congress can check the power of the judicial branch by starting the process of amending the Constitution. The states have the final authority to ratify any amendments Congress proposes. The ability to help change the Constitution can serve as a check on the power of courts to declare acts of Congress unconstitutional.

Congress can also check the power of the executive branch by voting to override a presidential veto of a bill previously passed by Congress. An override is not easy to obtain. It requires a two-thirds vote of each chamber of Congress. About 100 presidential vetoes, 4 percent, have been overridden since the first Congress convened in 1789.

Congress has broad powers to review how the executive branch is operating and to make sure it is following the laws Congress has passed. This is called congressional **oversight**. Congress can hold hearings and force witnesses to appear, including officials from the executive branch. Congress can use its oversight power to bring great political pressure on the executive.

**READING CHECK Identifying Supporting Details** What are some examples of checks and balances Congress has over the executive branch?

SECTION

1

ASSESSMENT

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ONLINE QUIZ

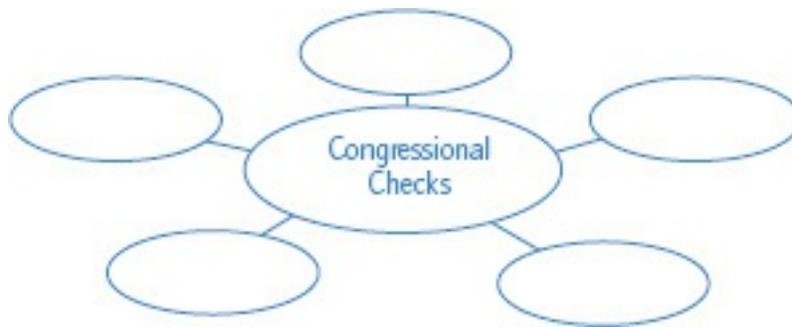
## Reviewing Ideas and Terms

- a. Recall** What is the term for the people represented by a member of Congress?
- b. Explain** What are some of the ways in which members of Congress try to represent the people they serve?
- c. Elaborate** How well do you think the members of Congress have reflected the people they represent in recent times?

- 2. a. Describe** What are some of the key differences between the House of Representatives and the Senate?
- b. Evaluate** How well do you think the structure of Congress addresses the concerns about the power of large states and the influence of public passions on legislation?
- 3. a. Describe** What is impeachment?
- b. Make Inferences** What can you infer from the fact that Congress has impeached just 17 officials in U.S. history?

### Critical Thinking

- 4. Rank** Using your notes and the graphic organizer below, rank the significance of checks on the other branches that Congress has.



### FOCUS ON WRITING



- 5. Persuasive** As a delegate at the Constitutional Convention, write a speech supporting the Great Compromise.



# The Powers of Congress

### BEFORE YOU READ

#### Main Idea

The Constitution gives Congress many expressed powers, and it implies some others. The Constitution also places limits on the powers of Congress.

## Reading Focus

1. What types of powers does Congress have?
2. What are the expressed powers of Congress?
3. What are the implied powers of Congress?
4. What are some of Congress's nonlegislative powers?
5. What are some of the limits on the powers of Congress?
6. How has the power of Congress changed during U.S. history?

## Key Terms

necessary and proper clause

indirect tax

direct tax

deficit

commerce clause

subpoenas

writ of habeas corpus

bill of attainder

ex post facto laws



Use the graphic organizer online to take notes on the powers of Congress.



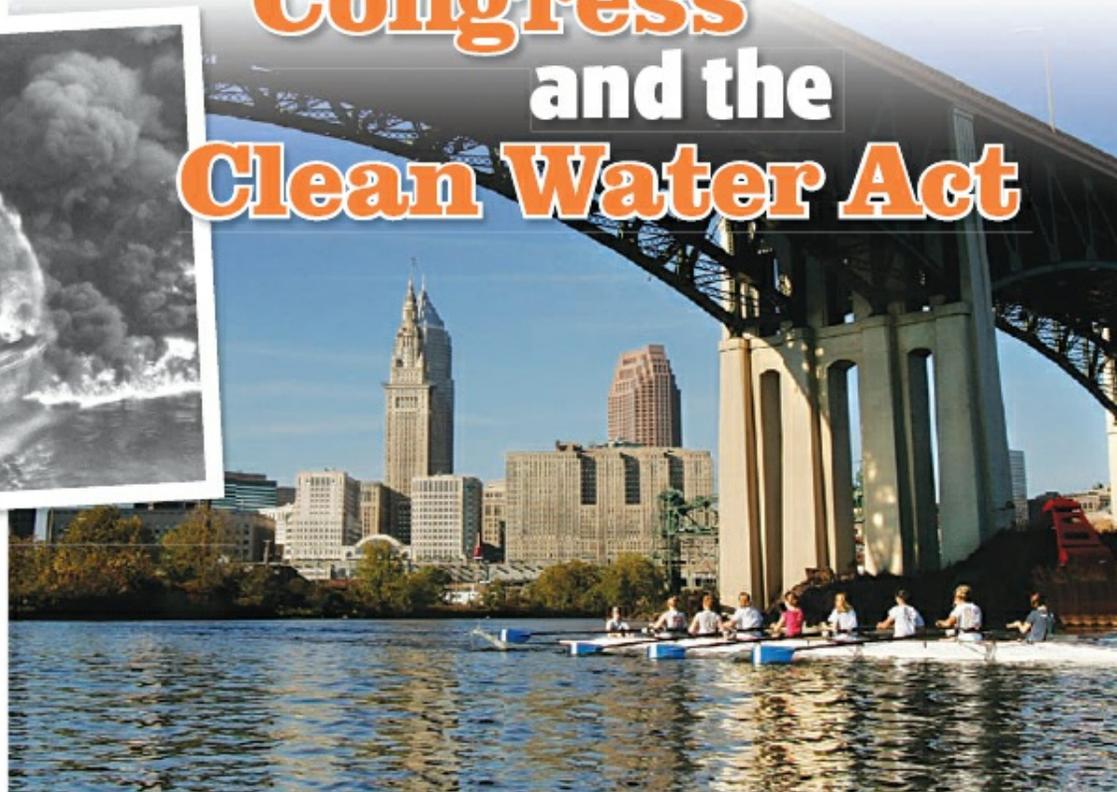
**A Fire Leads to Change** In 1969 the Cuyahoga River, which runs through downtown Cleveland, Ohio, caught fire. Decades of unregulated dumping of industrial wastes had turned the river into a toxic-and flammable-brew of oil and chemicals. The fire that day was not the first time the Cuyahoga had burst into flames, nor was it the biggest to have broken out on the river. In 30 minutes the fire was out. The Cleveland newspapers did not even have time to send photographers to cover the story.

The fire on the Cuyahoga may have burned a short time, but for advocates of a cleaner environment, it came at the right time. A growing environmental movement, spurred by books like *Silent Spring*, was

calling for change. A river catching fire provided a vivid demonstration of why new laws safeguarding the environment were needed. The calls for reform reached the halls of Congress. In 1972 Congress passed the first of a series of environmental laws to protect the nation's waterways that today goes by the name of the Clean Water Act.

Where did Congress get the authority to pass laws protecting the environment? The word *environment* never appears in the Constitution. Nor does Social Security or interstate highways or many other programs we take for granted. Congress used its powers under generally worded clauses to create these programs. The Framers made the Constitution flexible enough to allow Congress to meet new challenges as they arise. ■

## Congress and the Clean Water Act



**The Cuyahoga River, a fire in 1952,(above) is the scene of rowing races today (right).**

### ACADEMIC VOCABULARY

levy to impose or collect

# Defining the Powers of Congress

As discussed in Chapter 4, the Constitution establishes the structure of Congress and lists its powers. It also includes language suggesting additional congressional powers.

- **Expressed Powers** Article I, Section 8, of the Constitution lists 18 specific powers that Congress is meant to wield, including coining money, collecting taxes, regulating commerce, raising and maintaining armed forces, and declaring war.
- **Implied Powers** Implied powers are those powers only suggested by the Constitution. Congress's implied powers derive from Article I, Section 8, Clause 18, which gives the national legislature the power to "make all Laws which shall be necessary and proper for carrying into execution the [expressed] Powers and all other Powers vested by this Constitution in the Government of the United States." This clause is known variously as the elastic clause or the **necessary and proper clause**.
- **Inherent Powers** Those powers that all governments of independent nations possess are known as inherent powers because they do not have to be spelled out. Examples of inherent power include the power to control borders and to make agreements with other nations. Just which branch of government—the legislative or the executive—holds these inherent powers has never been definitively determined. Because most inherent powers involve foreign affairs, presidents have been more forceful and more frequent in asserting a claim to them. However, Congress has often shown itself willing to contest, or at least modify, these claims.
- **Powers Denied Congress** Since the Framers believed in limited government overall and federalism specifically, they were careful to place some limits on congressional power. Article I, Section 9, lists powers specifically denied to Congress.

**READING CHECK** **Contrasting** What is the difference between an expressed power and an implied power?

## Expressed Powers of Congress

The expressed powers of Congress—those powers explicitly listed in Article I, Section 8, and elsewhere in the Constitution—fall into three broad categories. There are powers relating to government finance and revenue, to the regulation of commerce, and to national defense. In addition, there are other powers that address specific issues of national importance, such as the creation of a postal service and coining money.

**Financing Powers** The Constitution gives Congress the power to raise money to run the government through two means—levying taxes and borrowing money. In giving Congress these powers, the Framers sought to address a major weakness of the Articles of Confederation. Under that document, the national government could ask the states for money, but it could not *force* the states to supply it. In practice, Congress had difficulty obtaining the funding it needed.

Article I, Section 8, Clause 1, of the Constitution expressly grants Congress the “power to lay and collect Taxes . . . to pay the Debts and provide for the common Defense and general Welfare of the United States.” For much of the nation’s history, the majority of tax revenue was generated by tariffs. A tariff is a tax on goods imported into the country. Another important source of revenue was the indirect tax. An **indirect tax** is a tax levied on one person but passed on to another for payment to the government. Today the federal government collects indirect taxes for products such as gasoline, liquor, and airline tickets. The seller simply includes the tax in the price of the product.

The Framers of the Constitution limited the use of the **direct tax**, or a tax an individual pays directly to the government. Article I, Section 9, Clause 4, says that direct taxes have to be levied in proportion to a state’s population as determined by the census. This provision was meant to reassure slaveholding states, who feared having to pay taxes on their

enslaved populations according to a one-to-one ratio instead of the three-fifths ratio used for counting slaves in the census.

In 1895 the Supreme Court used this clause to strike down a federal income tax law. In a sharply divided decision, the Court ruled that an income tax was a direct tax. Unless it was apportioned among the states according to population-something that would be unworkable-an income tax was unconstitutional.

The Sixteenth Amendment addressed this concern in 1913. It specifically empowered Congress to levy an income tax. The amendment also restricted the kinds of direct taxes that could be collected according to “apportionment among the several States.” Today revenue generated by the income tax far outpaces revenue generated by tariffs and other indirect taxes.

The Constitution also gives Congress the power to borrow money on behalf of the United States. This power allows the government to function when there is not enough expected revenue to cover expenses’ a budget **deficit**. Deficits can occur during times of emergency, such as during wars. In recent decades, deficit spending has become standard practice in Congress even during good economic times.

**Commerce Power** The Constitution gives the federal government the right to regulate interstate commerce. That is, Congress alone can pass laws affecting economic activity that takes place across state lines. Under the Articles of Confederation, Congress lacked this power, and individual states promoted their own businesses and penalized those of other states. States placed taxes on the goods of other states or even barred their entry. As a result, the nation’s economy suffered.

Congress’s commerce power is contained in Article I, Section 8, Clause 3, of the Constitution, known as the **commerce clause**. The commerce clause passed with little debate during the Constitutional Convention. The Framers were all too aware of the problems under the Articles of Confederation. Yet from 1789 to 1950, no clause in the Constitution was the subject of more litigation than the commerce clause.

Through that litigation, and the Supreme Court decisions that resulted, the commerce clause became the single most important source of federal government power. The shape of our modern economy as well as many activities we take for granted today as the proper responsibility of government derive ultimately from the commerce clause.

An early Supreme Court case, *Gibbons v. Ogden* (1824), helped define the commerce clause. The case involved the right of a state legislature to award a monopoly to operate a steamship line for travel between two states, New York and New Jersey. The Supreme Court struck down the state law, ruling that only Congress has the right to regulate interstate commerce. You can read more about this case later in the section.

Using its commerce power, Congress has passed many laws that, on the surface, seem unrelated to regulating interstate commerce. For example, as part of the Civil Rights Act of 1964, Congress used its commerce power to outlaw segregation in certain types of public establishments. The Heart of Atlanta Motel challenged the idea that the renting of rooms in its motel was an act of interstate commerce. The Supreme Court disagreed. In *Heart of Atlanta Motel, Inc., v. United States* (1964), the Court ruled that the availability of motel rooms affected interstate travel of truckers. Congress acted constitutionally when it used the commerce clause to attack racial segregation.

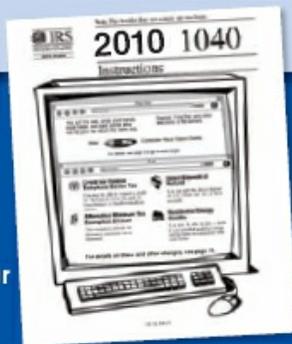
## **ACADEMIC VOCABULARY**

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**litigation** legal dispute

## Expressed Powers of Congress

Article I, Section 8, of the Constitution lists 18 powers that Congress has. These powers are extensive, and some, such as the power to regulate interstate commerce, have been used to accomplish policy goals the Framers never imagined.



Clause 1 gives Congress the power to levy taxes.

Congress's power to regulate interstate commerce rests on Clause 3.

- Clause 1** To levy taxes
- Clause 2** To borrow money
- Clause 3** To regulate foreign and interstate commerce
- Clause 4** To establish uniform rules of citizenship



## Expressed Powers of Congress

- Clause 5** To coin money; to set uniform weights and measures
- Clause 6** To punish counterfeiters
- Clause 7** To establish post offices and post roads
- Clause 8** To make copyright and patent laws

- Clause 9** To establish national courts inferior to the Supreme Court
- Clause 10** To define and punish piracy and other violations of international law
- Clause 11** To declare war
- Clause 12** To raise and support armies

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Clause 5 covers the power to coin money.

Congress created the U.S. Postal Service using its powers under Clause 7.

Federal courthouses, like this one in New York City, exist because of Clause 9.



- Clause 13** To raise and maintain a navy
- Clause 14** To establish military laws
- Clause 15** To call up a national militia in times of uprising or foreign invasion

- Clause 16** To organize, arm, and discipline a militia when it is called into service
- Clause 17** To exercise jurisdiction over the District of Columbia
- Clause 18** To make all laws necessary and proper to the execution of any of the other expressed powers



Congress funds the construction and operation of naval vessels using its powers under Clause 13.

Clause 17 empowers Congress to create a local government and courts for Washington, D.C.



Over time, Clause 18, the necessary and proper clause, has become the source of authority for much of the congressional legislation that affects Americans' everyday lives.

national defense and foreign policy between Congress and the president. The Framers made the president commander in chief because they knew that having a single leader was important for effective military action. The president must also shape and carry out the nation's diplomatic efforts and relations with foreign countries. These duties give the president far-reaching powers to make decisions and take action in this arena.

The Framers reserved for Congress the power to declare war. A congressional declaration of war can send a strong message of resolve to the nation's enemies. In reality, however, a president can make war without a congressional declaration of war. The president simply commands troops into battle, and they go. This has happened frequently in U.S. history.

Following the Vietnam War, where U.S. troops were engaged in combat for nine years without a formal declaration of war, Congress moved to limit the president's ability to fight wars without such a declaration. It passed a joint resolution in 1973 known as the War Powers Resolution. The act requires a president to report to Congress anytime he or she sends troops into possible conflict without a declaration of war. Congress can then declare war or otherwise approve the continued use of U.S. forces. Without congressional agreement, the act requires the president to end the military action within 60 to 90 days, in most cases.

The ability of Congress to use the act to halt a president's use of military power is still unclear. Presidents have, however, made dozens of reports to Congress under the terms of the act. Some see this as proof that the act has increased Congress's involvement in the war-making power of the government.

The Constitution gives Congress the power to create an army and navy and to provide for their funding (Article I, Section 8, Clauses 12 and 13). At the time of the Constitution's writing, there was great fear of standing peacetime armies. The delegates discussed whether to forbid the maintenance of an army in times of peace. They finally chose to place a two-year limit on spending for the U.S. army. The two-year cap would

prevent the army from becoming too powerful and independent of the control of Congress. This constitutional provision today gives the Congress the power of the purse over military activities. If Congress strongly opposed a president's use of the military, it could vote to deny funding.

Congress shares power with the states over the maintenance of the militia-today known as the National Guard. Congress has given the president the power to call out the National Guard in emergencies.

**Other Expressed powers** Many of the other expressed powers aimed either to aid the development of a national economy or to safeguard national sovereignty. These were areas of policy the Framers believed belonged to the national government.

- **Coinage power** Under the Articles of Confederation, the individual states had the power to coin money, resulting in confusion and conflict. The Constitution gave this power to the national government.
- **National postal service** The creation of a fast, reliable postal system was seen as vital to the development of nation's economy.
- **Copyrights and patents** The Constitution gave Congress the power to write copyright and patent laws, which ensure writers and inventors "exclusive rights" to their respective writings and discoveries. The Framers believed that guaranteeing ownership rights and, with them, the chance to profit from one's work would encourage "the Progress of Science and useful Arts."
- **Copyrights and patents** The Constitution gave Congress the power to write copyright and patent laws, which ensure writers and inventors "exclusive rights" to their respective writings and discoveries. The Framers believed that guaranteeing ownership rights and, with them, the chance to profit from one's work would encourage "the Progress of Science and useful Arts."

- **Weights and measures** Standardizing weights and measures' for example, gallons, pounds, and yards' gave people confidence that a pound of goods in one state would be a pound in another.
- **Bankruptcy** Bankruptcy was a major issue in the early days of the nation. Congress is constitutionally charged with the job of establishing laws on the subject of bankruptcy. The fair and clear settlement of bankruptcy cases is an aid to commerce.
- **Naturalization** The Constitution gives Congress the power to "establish an uniform Rule of Naturalization." Naturalization is the process by which an immigrant to this country becomes a citizen. This provision of the Constitution suggests that the Framers expected the country to grow and for immigrants to continue to move here.
- **Federal courts** The Constitution establishes the Supreme Court. Congress is charged, however, with establishing the federal courts beneath the Supreme Court. In Chapter 8, you will read how Congress has used this power.
- **Congressional elections** Congress has the power to make laws about the time, place, and manner of electing its members. In practice, it leaves the details to the states.

**READING CHECK** **Summarizing** How do Congress's expressed powers in finance, defense, and commerce give it a leading role in American life?



# "LANDMARK SUPREME COURT CASES"

Constitutional Issue: Federalism



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## *Gibbons v. Ogden (1824)*

### WHY IT MATTERS

*Gibbons v. Ogden was the first case in which the Supreme Court ruled on the Constitution's commerce clause, which concerns Congress's power to regulate interstate.*

### Background

In the early 1800s steamboat inventors Robert Fulton and Robert Livingston had a monopoly granted by the state legislature on steamboat travel in New York State. Their company later licensed Aaron Ogden to operate steamboat ferries between New York City and New Jersey. When Thomas Gibbons, who held a "coasting license" from the federal government, began to operate a competing ferry line between New York and New Jersey, Ogden sued to keep Gibbons out of New York waters. A New York court ruled that the Fulton-Livingston monopoly was legal and that Gibbons could not operate in New York under his federal license. Gibbons then appealed this decision to the Supreme Court.

### Arguments for Gibbons

Gibbons argued that New York's grant of a steamboat monopoly to Fulton and Livingston conflicted with the congressional power to regulate interstate commerce outlined in Article I, Section 8, of the Constitution.

Navigation, he said, was a distinct form of commerce, one that clearly fell under congressional authority. His steamboat ferry operated between two states; therefore, even though the New York monopoly affected only New York waters, it unfairly restricted him from engaging in interstate commerce.

Gibbons argued that the Court should confirm federal authority over interstate commerce in all its forms. Quite simply, federal regulations—in this case, Gibbons’s federal coasting license—should take precedence over state and local regulations—in this case, New York’s steamboat monopoly.

## Arguments for Ogden

Ogden argued that the commerce clause should be read narrowly and that commerce should be defined as simply the buying and selling of goods. Since Ogden’s steamboat line did not buy or sell goods, he argued that it could not be considered commerce and that steamboat travel could not be regulated by the federal government under the commerce clause. Even if steamboat travel were to be considered commerce, Ogden believed, the New York restrictions on steamboat traffic applied only to New York waters and should not be subject to congressional authority over interstate commerce. Instead, navigation should be regulated only by state or local governments.

 In an opinion written by Chief Justice John Marshall, the Court ruled strongly in favor of Gibbons, saying that the power to regulate commerce “is complete in itself [and] may be exercised to its utmost extent.” Since the *Gibbons* ruling, the commerce clause has emerged as the most important source of federal power. Our modern economy and the federal regulation of any number of industries rest largely on the commerce clause. The commerce clause also frequently underlies congressional action on many issues of morality, criminal activities, the minimum wage, racial discrimination in hotels, restaurants, and other public places, and other areas seemingly unconnected to interstate commerce.

**What Do You Think?** Congress and the Supreme Court have interpreted the commerce clause broadly, expanding the areas open to federal action. Do you think this is appropriate? Explain your answer.

## Implied Powers of Congress

The Constitution's list of expressed powers is long. Nonetheless, the Framers knew that they could not list all possible powers that a future Congress would need. Therefore, they concluded the list of congressional powers with a final clause, known as the necessary and proper clause, that would allow Congress to take actions needed to carry out the expressed powers.

From the nation's founding, the necessary and proper clause has stirred controversy. How should these words, and by implication, the Constitution itself, be interpreted?

**Loose and Strict Constructionists** On one side of the issue, strict constructionists argue that Congress should exercise only those powers clearly granted to it in the Constitution. In the early days of the republic, strict constructionists were known as Antifederalists because they wanted to preserve power for the states as much as possible. Loose constructionists, known as Federalists, wanted Congress to have freedom to act vigorously. If something were “necessary and proper” to the exercise of one of Congress's expressed powers, they argued, then Congress could do it.

Thomas Jefferson and Alexander Hamilton led the opposing sides in the debate over what “necessary and proper” meant. As advisers to President George Washington in 1791, they fought bitterly over the issue. As a strict constructionist, Jefferson argued that “to take a single step beyond the boundaries . . . drawn around the powers of Congress is to

take possession of a boundless field of power.” The Federalist reading of “necessary and proper,” Jefferson said, “would reduce the whole instrument to a single phrase.”

Hamilton countered for the Federalists. He argued that because the needs of the nation were “of such infinite variety, extent, and complexity,” the national government had to have freedom to meet those needs.

The setting for this conflict was a proposal for Congress to create a national bank. Hamilton thought a bank was a necessary and proper tool for regulating commerce. Jefferson countered that the Constitution said nothing about Congress creating a bank, so one should not be created.

Hamilton won the debate, though to get Jefferson and other southerners who opposed the bank to compromise he had to agree to support their plan to move the capital to an area on the Potomac River, site of Washington, D.C., today. In 1791 a national bank was created.

The debate did not end there. The bank’s charter ended in 1811, and a new bank was created in 1814. In 1816, however, Maryland imposed a tax on the activities of the national bank. Maryland’s actions led to a Supreme Court case-*McCulloch v. Maryland* (1819). The Court’s opinion addressed Maryland’s actions. It also addressed the question of whether the necessary and proper clause gave Congress the power to create the bank in the first place. In his opinion, Chief Justice John Marshall wrote:

### **PRIMARY SOURCE**

**“ We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended [surpassed]. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers [gives] are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the**

**manner most beneficial to the people.”**

—John Marshall, *McCulloch v. Maryland*, 1819

**The Necessary and Proper Clause Today** In general, Marshall’s interpretation of the necessary and proper clause has prevailed in American government. Since the Court’s decision, the doctrine of implied powers has been an important source of federal authority. Congress has relied on this view to create programs and laws in a wide variety of areas. For example, Social Security and Medicare are not directly related to any expressed power. They are considered reasonably related to the constitutional duty to preserve the general welfare. Because the necessary and proper clause has led to the stretching of congressional power, it is sometimes referred to as the elastic clause.

# SELECTED EXPRESSED AND IMPLIED POWERS

## Expressed Power

## Implied Power

To collect taxes to support the general welfare



- To create the Internal Revenue Service (IRS) to collect taxes
- To spend revenue on education, roads, housing, etc.

To raise and support armies



- To create a draft or selective service requirement
- To create the air force
- To create the interstate highway system, easing troop transportation

To make all laws necessary and proper . . .



- To create Social Security, unemployment insurance, and Medicare as means to protect the general welfare

To regulate commerce



- To pass minimum wage and overtime pay laws
- To set health standards for foods
- To establish laws regulating labor unions
- To prohibit job discrimination based on age, race, or gender
- To break up anticompetitive monopolies
- To restrict the use of child labor

**Skills  
FOCUS**

## INTERPRETING CHARTS

Implied powers have to be based in specific expressed powers. How can Social Security, Medicare, and unemployment insurance be considered appropriate use of congressional implied powers?

While it is generally agreed that the necessary and proper clause gives Congress and the federal government implied powers, the extent and nature of those powers remains a matter for debate and contention. What policies are truly reasonable extensions of expressed congressional

powers? It is a ever-present question of American politics, one that the Supreme Court is often called on to address but one that perhaps can never be resolved definitively. New conditions call for new solutions, which must be tested against the Constitution.

**READING CHECK** **Identifying Cause and Effect** How did the Supreme Court's decision in *McCulloch v. Maryland* lead to extension of Congressional power?

## Nonlegislative Powers

Congress has a variety of powers that are not directly related to the making of laws. Some of these are held by both houses, some only by the House or the Senate.

**Powers Common to Both Houses** Both houses of Congress together share the power to propose amendments to the Constitution. This requires a two-thirds majority vote of both houses. Congress can, if requested by two-thirds of the states, also call a convention to propose a constitutional amendment. Final amendment power, though, rests with the states, three-fourths of which must approve an amendment for it to be ratified.

Both houses of Congress have the power to conduct investigations. It is their job to oversee the programs they create and the activities of other branches of the national government. To do this work, members of Congress have the power to call witnesses. It can issue **subpoenas**, which are legal documents that require a person to testify in a certain matter. One limit to this power is the president's claim of executive privilege.

You have read also about the roles of the House and Senate in impeachment proceedings. In the case of wrongdoing by a government official, the House can vote to impeach. A trial is then held in the Senate. If two-thirds of the Senate votes to convict, the person can be removed from office.

The Twenty-fifth Amendment states that if the vice presidency is vacant, the president will nominate a replacement. It is the job of both

houses of Congress to confirm the choice by majority vote.

**Powers of the House** The House has the sole power of choosing a president if no candidate gets a majority of votes in the electoral college. The House vote is by state'each state gets one ballot. That is, each state delegation would decide how to cast that state's ballot. The House has had to choose a president on two occasions, in 1800 and in 1824.

The current method by which the House votes is defined in the Twelfth Amendment, which was passed to correct a flaw in the Constitution's original method. Electors were originally supposed to cast two presidential ballots. The top vote-getter would become president, and the second-place finisher the vice president. The Framers did not, however, foresee party tickets, which list presidential and a vice presidential candidates running together. That flaw became apparent during the election of 1800.

That year, Thomas Jefferson was the presidential candidate and Aaron Burr was his running mate. Electors supporting their Democratic-Republican ticket cast ballots for each man, leading to the tie. The election then went to the House, which was controlled by the Federalists: The party that had just lost the presidential race now got to choose the president. The Federalists chose Jefferson, whom they preferred to Burr.

The Twelfth Amendment eliminated this problem. It created two separate electoral college votes, one for president and one for vice president. The House retained the power to choose the president in the event of no majority in the electoral college.

**Powers of the Senate** The Twelfth Amendment also gave the Senate the power to choose a vice president if no candidate gets a majority of the electoral college vote. Each senator takes part in this vote.

The Senate also has the job of providing advice and consent on executive and judicial branch appointments made by the president. The Senate must also approve treaties that the president may negotiate in order for them to go into effect.

**READING CHECK** **Making Inferences** Why do you think the subpoena power is important for Congress?

## Limits on the Powers of Congress

The Constitution was meant to create a stronger federal government, correcting the weaknesses of the Articles of Confederation. Still, the Framers included a number of checks on congressional power.

The separation of powers, which distributes government powers among three branches, is the strongest check on congressional power. The Supreme Court's power of judicial review, which is implied if not spelled out in the Constitution, checks the power of Congress to pass laws deemed unconstitutional. The president's veto power, although subject to override, also checks Congress's lawmaking powers. Moreover, because Congress relies on the executive branch to carry out the laws, a president who is not pleased with an act of Congress can limit the effect of congressional action through lax enforcement of the law. A president may also apply his or her own interpretation of a law. These interpretations are sometimes expressed in presidential signing statements when a president signs a bill into law. Presidential signing statements are discussed in more detail in Section 5.

In addition to the limitations inherent in the system of checks and balances, the Constitution specifically denies Congress certain powers. These are detailed in Article I, Section 9. For example, Congress was forbidden from prohibiting the slave trade until 1808. It was also forbidden from making laws that might favor one or another state's ports or from placing a tax on articles exported from any state.

The Constitution includes several clauses that protect people's basic civil rights. Article I, Section 9, Clause 2, bars Congress from suspending the **writ of habeas corpus**, a court order that forces the police to present a person in court to face charges, except in cases of rebellion or invasion. Habeas corpus is a Latin phrase meaning "you have the body." The purpose of the writ is to prevent a government from holding people in

secret or without charge. When President Abraham Lincoln suspended habeas corpus during the Civil War, a federal court declared the action unconstitutional because Congress had not taken it.

Congress cannot pass a **bill of attainder**—a law that punishes a person without a trial. **Ex post facto laws**, which criminalize an action that took place in the past and that were legal at that time, are likewise forbidden by the Constitution. *Ex post facto* is another Latin phrase, meaning “from after the fact.”

**READING CHECK** **Identifying Supporting Details** What are some of the limitations on the powers of Congress?

## **The Changing Power of Congress**

The scope of Congress’s activities and the range of powers it exercises have grown greatly since the days when Hamilton and Jefferson argued over what the phrase *necessary and proper* means. In response to changing domestic and international conditions, Congress has repeatedly expanded the role of the federal government.

During the Great Depression of the 1930s, for example, Congress responded to the severe economic crisis by passing dozens of far-reaching laws urged on it by President Franklin Roosevelt. These new programs expanded the reach of government into the everyday lives of people as never before—for example, providing Social Security retirement benefits for older people and cash payments to the unemployed.

After World War II, Congress responded to the new status of the United States as a dominant world power by creating new military and intelligence-gathering bodies, such as the U.S. Air Force and the Central Intelligence Agency. Congress created NASA—the National Aeronautics and Space Administration—in the 1950s to catch and surpass the Soviet Union’s program of space exploration.

Significantly, to accomplish these goals, Congress has delegated

some of its powers to new federal agencies it created. These agencies are part of the executive branch, and while Congress retains oversight and budgetary authority over these agencies, the job of monitoring them has proved a huge task. Congressional staffs, both for individual members and for committees and subcommittees, have grown to aid members in this task. Congress has used these expanded resources to defend its position against what it perceives as potential encroachments by an empowered executive branch.

In some sense, this is just what the Framers intended. The system of checks and balances means the legislative and executive branches will always be sparring for power.

**READING CHECK** **Identifying the Main Idea** What has happened to the powers of Congress over time?

SECTION

2

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- Describe** What are the main powers given to Congress?
  - Design** What constitutional solution might be devised to resolve the uncertainty about which branch possesses government's inherent powers?
- Describe** What is an **indirect tax**?
  - Analyze** Is the division of responsibility for national security between the legislative and the executive branch a good idea?
- Identify** What is the key constitutional clause that lies behind most of the implied powers of Congress?
  - Rate** Consider the arguments of both Hamilton and Jefferson and explain which one seems the most compelling to you.
- Describe** What is the significance of **subpoenas** to the work of

Congress?

**b. Evaluate** Why do you think the Constitution gives the House of Representatives the job of picking a president in the event of a tie vote in the electoral college?

**5. a. Recall** Why did the founders of the nation want to limit the powers of Congress?

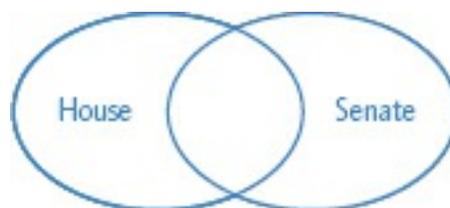
**b. Evaluate** Why do you think the Constitution includes particular mention of **bills of attainder, ex post facto laws,** and suspension of the **writ of habeas corpus**?

**6. a. Identify** What are some areas of American life that Congress is involved in today that it was not at the time of the writing of the Constitution?

**b. Predict** What might have happened if Congress had not become involved in modern-day concerns, such as space exploration?

## Critical Thinking

**7. Analyze** Copy and fill in the graphic organizer below and use it to compare and contrast the powers of the House and Senate.



## FOCUS ON WRITING



**8. Narrative** Prepare a five-minute lecture on the history of Congress, explaining its original purpose, the early debates about its function, and the changes in its role throughout history.



# The House of Representatives

## BEFORE YOU READ

### Main Idea

The House of Representatives, with its frequent elections and regular reapportionment, is the more representative chamber of Congress. Its members carry out much of their work in committees.

### Reading Focus

1. What are the key features of the House of Representatives and its membership?
2. What are some of the challenges that reapportionment and redistricting raise?
3. How is the leadership of the House organized?
4. What is the role of committees in the operation of the House?

### Key Terms

reapportionment  
gerrymandering  
Speaker of the House  
bills  
floor leader  
whips  
party caucus  
standing committees  
select committees  
joint committees



Use the graphic organizer online to take notes on the features of the



Cannon won his reputation while serving as the Speaker of the House, the chamber—s presiding officer and most powerful member. From that post, Cannon controlled much of what happened in Congress—and in the U.S. government. No bill came up for a vote if he did not want it to. “Not a cent for scenery,” he once scoffed at a proposal to protect forests. He decided who would serve on committees. He chaired the Rules Committee himself, which gave him power over the flow of legislation.

In 1910 the House finally revolted against Cannon’s iron rule. “The . . . minority,” he said, “is now in the majority.” The House stripped him of key powers, making changes in the role of the Speaker that would become a permanent part of the office. Indeed, today’s House of Representatives is in no small part a result of, and a reaction to, Cannon’s years in power.



## **Membership in the House**

The Framers intended the House of Representatives to be the chamber most closely in touch with the people. That is why the Constitution calls for House members to be chosen by direct popular vote.

# HOUSE OF REPRESENTATIVES: TERMS, SALARY, BENEFITS AND PRIVILEGES

QUICK  
FACTS

	House Members	Speaker of the House	Majority and Minority leaders
Salary	\$174,000	\$223,500	\$193,400
Term	2 years		
Benefits and Privileges	<ul style="list-style-type: none"><li>• Tax deduction for two residences</li><li>• Travel allowances</li><li>• Staff</li><li>• Health and retirement benefits</li><li>• Franking privilege: free mail to constituents</li><li>• Free printing</li><li>• Use of gym, restaurants, and other amenities in the Capitol</li><li>• Legal immunity for statements made while Congress is in session</li></ul>		

Source: Congressional Research Service, 2010



**What qualifications, other than those listed in Article I, do you think should be used when choosing a member of Congress? Explain your suggestions.**

The idea of popular election of House members concerned some of the delegates to the Constitutional Convention. John Rutledge, for example, questioned whether voters could be counted on to elect qualified people. Rutledge's position did not prevail, but the delegates decided to restrain the House with a Senate. James Madison assured worried delegates that senators, chosen by state legislatures, would act as

a “necessary fence” against reckless representatives.

**Formal Qualifications** Since it is intended as the people’s house, the House of Representatives has less stringent qualifications for membership than the Senate. Article I, Section 2, of the Constitution gives these basic job qualifications. Members must be

- at least 25 years old
- a U.S. citizen for at least seven years
- a resident of the state he or she represents

According to custom, representatives live in the districts they represent, but that is not required under the Constitution.

The Constitution states that the House is judge of the “Elections, Returns, and Qualifications of its own Members.” The power to determine qualifications, however, is limited. In *Powell v. McCormack* (1969) the Supreme Court ruled that the House could only exclude members if they failed to meet the specific standards of Article I, Section 2. The Court wished to grant a high degree of respect to the wishes of the voters.

While Congress can exclude a person only for specific reasons, it can expel a sitting member for any reason. Expulsion, however, requires a two-thirds majority vote. This has happened only five times in U.S. history, most recently in 2002, when James Traficant (D, Ohio) was expelled after being convicted of taking bribes and income tax evasion.

**Informal Qualifications** The most important informal qualification for anyone who wants to be a member of the House is the ability to appeal to the voters in his or district. The qualities needed for this vary by time and place. People with military backgrounds are sometimes popular. Famous people—actors and athletes—have enjoyed success. Today however, the ability to raise money—or have a lot of your own—is vital. In 2010, major-party candidates for seats in the House spent, on average \$1.5 million.

**READING CHECK** **Identifying Supporting Details** What are the formal and informal qualifications for membership in the House?

## **Reapportionment and Redistricting**

As you read Section 1, there are 435 members of the House. They represent more than 300 million Americans, for an average of about 690,000 people per representative.

Some House members represent considerably more or fewer people than the average. One reason is that each state must have at least one representative regardless of its population. For example, Wyoming, with about 500,000 residents, has one representative. At the same time, Montana, with more than 900,000 residents, falls short of the population needed for two representatives. As you can see, Montana's one representative serves nearly twice as many people as Wyoming's representative.

**Changes in Population** The Constitution requires that every 10 years, the House must undergo **reapportionment**, in which seats are redistributed among the states based on the results of the census. Once census results are available, Congress reapportions the congressional seats among the states. States that gain population may gain seats, and states that lose population may lose them.

Before the number of seats was fixed in 1929, Congress simply added seats as the nation's population grew. Fixing the number of seats, however, transformed reapportionment. Now, if a state loses population or grows too slowly, it may lose seats to another state. After the 2000 census 10 states, mainly in the North and East, lost seats. Eight states in the South and West added them.

**Gerrymandering** The Constitution gives Congress the responsibility to reapportion seats among the states. It leaves redistricting, the job of creating district boundaries within the states, however, to state governments. Not surprisingly, the party in power in each state tends to draw the boundaries to its own political advantage—boundaries that

divide and weaken the opponents— strength or that cluster together areas of support. The goal is simple: Give your party the best chance to win as many elections as possible. Drawing district boundaries for political advantage is known as **gerrymandering**.



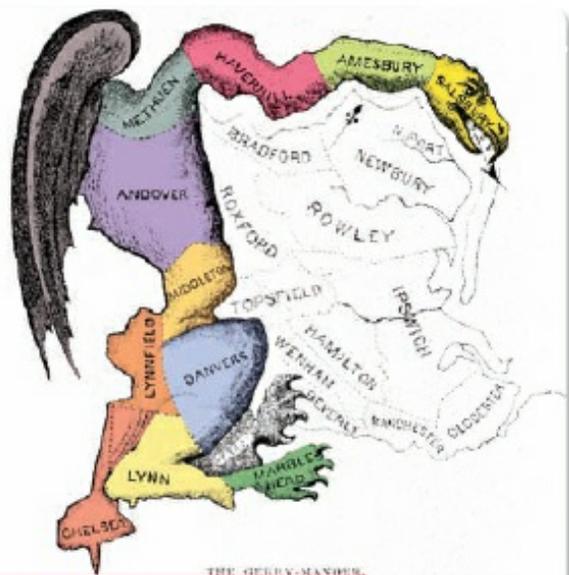
## Gerrymandering

**One Person, One Vote** For much of U.S. history, the Supreme Court largely ignored gerrymandering. In a series of cases over the last 50 years, however, the Court has placed restrictions on the practice.

For example, the 1964 case of *Wesberryv. Sanders* focused on a congressional district in Georgia that had several times as many people as other districts in the state. The Court observed that this arrangement “contracts [shrinks] the value of some votes and expands that of others.” This violates the Constitution, which requires that one person’s vote be worth as much as another’s. To remedy the problem, the Supreme Court ruled that future congressional districts within a state must be of roughly equal population.

# Gerrymandering Past and Present

Gerrymandering takes its name from nineteenth century Governor Elbridge Gerry of Massachusetts. In 1812 Gerry enacted a law that created new state senatorial districts. The shape of one district was said to resemble a salamander. A political cartoonist added wings, claws, and a head to create a "Gerry-mander." Gerrymandering continues today. One example is the Seventeenth Illinois Congressional District shown on the map.



The 1812 "Gerry-mander" cartoon



Seventeenth Illinois Congressional District

## ACADEMIC VOCABULARY

**disenfranchise** deprive of the right to vote

The Court has struggled to define how much consideration should be given to race in determining district boundaries. It has struck down districts purposely drawn to disenfranchise racial minorities. Likewise, the Court has ruled against districts drawn *solely* to benefit racial minorities. Most recently, the Court has sought a middle position, ruling that race can be a factor in drawing boundaries, just not the main one.

In 1986 the Court addressed political gerrymandering. In *Davis v. Bandemer* it held that gerrymandering that causes actual harm to a political party may violate the constitutional guarantee of equal protection of the law. Proving that harm has resulted from gerrymandering, though, has been difficult.

Despite these court decisions, gerrymandering is alive and well. The stakes—control of the House—are too high for either party to surrender

an advantage to the other.

**READING CHECK Sequencing** What are the steps by which House seats are assigned to different states?

## Leadership in the House

The Constitution says that the “House of Representatives shall choose their speaker and other officers . . .” (Article I, Section 2, Clause 5).

These are the men and women who lead the House in its many functions and activities.

**The Speaker of the House** The most powerful member and the presiding officer of the House is the **Speaker of the House**. The Speaker is elected by members of the House of Representatives and comes from the political party that holds the most seats—the majority party. After the 2010 congressional elections, the majority party changed from Democratic to Republican. As a result, Congresswoman Nancy Pelosi (D, California), the first woman Speaker in U.S. history, lost her job. In 2011, John Boehner (R, Ohio) was elected to the post.

The Constitution is silent on the Speaker’s powers. House rules, combined with tradition, however, have given the position a large measure of control over House business. The Speaker presides over debates and recognizes speakers—that is, gives them the authority to speak on the House floor. As presiding officer, the Speaker also rules on points of order. The Speaker assigns **bills**, or proposed laws, to particular committees. The Speaker determines when, or if, a measure comes up for debate and how it is debated. Finally, the Speaker assigns individual House members to certain committees, which gives the Speaker great power over a member’s political career. With the power to shape events in one house of Congress, the Speaker can play a large role in the fate of a party’s political agenda.

The Speaker of the House is also second in the line of succession to the presidency. If both the president and vice president were to die or be

unable to perform, the Speaker of the House would become president.

**Other Leadership Posts** Each party also elects a **floor leader** to help manage the actions and strategy of the party in the House. The floor leader of the majority party, known as the majority leader, serves as the assistant to the Speaker. The floor leader of the minority party is known as the minority leader. He or she acts as the chief spokes-person for the minority party in the House. Minority leaders try to keep their party members united behind common positions. This unity will help to increase the minority's bargaining position with the majority.

The two parties also elect **whips**. The job of the whip is to encourage fellow party members to vote as the party leadership wants. Whips collect information about what members are thinking—and alert leaders about members whose vote cannot be counted on. The name *whip* suggests that sometimes the form of encouragement borders on force. In addition to the whips, each party has upwards of 100 assistant whips reporting to the whip.

The election of party officers—whips, floor leaders, and, for the majority party, the Speaker—takes place at a party caucus at the beginning of a congressional term. A **party caucus** is a meeting of all the House members from a particular political party.

**House Rules** The Constitution allows the House to make whatever rules it considers necessary to carry out its business. As you have read, the House can judge its own members—behavior and expel a member for almost any reason. In addition, the House can vote to issue a reprimand. A stronger statement of House disapproval of a member's actions is called a censure.



### **First Woman Speaker**

During her four-year tenure as Speaker of the House, Congresswoman Pelosi helped Congress pass health care and financial reform legislation.

In addition, the House has a separate Rules Committee. This powerful committee acts as the “traffic cop” for the House, setting the rules for when, how, and under what conditions debate on a bill will take place. For example, a rule may limit the time spent debating a particular bill or place limits on how it can be amended. By setting the rules under which a bill can be considered, the Rules Committee can speed up or delay passage of a bill. For this reason, the chair of the Rules Committee is often a key ally of the Speaker.

**READING CHECK** **Making Inferences** What role does the leadership play in running the House?

### **The Role of Committees**

Think about the challenge of making laws for the entire country. No member could possibly have or acquire all the knowledge needed on the

topics the House considers. To help provide this sort of expert analysis, the House has a system of committees and subcommittees, each concentrating on a specific area of public policy.



The first woman to serve as Speaker of the House, Nancy Pelosi comes from a family with a tradition of public service. Her father was a five-term member of Congress from Maryland and the mayor of Baltimore for 12 years. Her brother also served as mayor of Baltimore. Pelosi first ran for office herself after the youngest of her five children was in high school. She was elected to the House in 1987. In 2002 Pelosi was chosen as House minority leader; after Democrats took control of the House in 2007, she became Speaker of the House. When Pelosi was sworn in as Speaker, she called the occasion “a historic moment—for the Congress, and for the women of this country.”

**Draw Conclusions** Why did Pelosi say that her election as Speaker was “a historic moment”?

**Standing Committees** The House has 20 **standing committees**, or permanent committees. Standing committees address the major areas in which most proposed laws fall, such as agriculture, the budget, and the armed services. For a list, see the next page.

The House Committee on Ways and Means deals with taxes and other revenue-raising measures. Ways and Means also exercises oversight on big programs such as Social Security. Because the Constitution says that all bills dealing with taxes and revenue begin in the

House, the Committee on Ways and Means is a congressional powerhouse.

Standing committees typically have at least four subcommittees. The Appropriations Committee has 13. Subcommittees take an even narrower focus than a committee. So, for example, the Armed Services Committee may have subcommittees dealing with air and land power, sea power, and more.

**Other Committees** The House sometimes creates **select committees** to carry out specific tasks not already covered by existing committees, such as investigations. Select committees are usually created to serve for a limited duration. The Speaker, with advice from the minority leader, appoints all members of select committees.

The House and Senate sometimes form **joint committees**. Such committees address broad issues that affect both chambers. For example, the Joint Committee on Taxation advises Congress on tax policy.

House Standing Committees		
Agriculture	Homeland Security	Small Business
Appropriations	House Administration	Standards of Official Conduct
Armed Services	Judiciary	Transportation and Infrastructure
Budget	Natural Resources	Veterans' Affairs
Education and Labor	Oversight and Government Reform	Ways and Means
Energy and Commerce	Rules	
Financial Services	Science and Technology	
Foreign Affairs		

Another type of committee formed by both chambers of Congress is the conference committee. You will read more about conference committees in Section 5.

**Committee Chairs** Each committee is headed by a chair. Because so much of the work of the House takes place in committee, committee chairs have great power.

Chairs are always chosen by the majority party. Historically, the job went to the committee member with the most seniority—that is, the person who had served on the committee the longest. In the 1970s, however, Congress began to change the seniority system. Hoping to encourage new leadership and new ideas, Congress began holding elections for the committee chairs. Seniority remains a factor in who becomes chair, but it is no longer the *only* factor.

In 1995 Republicans won control of the House and voted to impose term limits of six years on committee chairs. When Democrats regained control of the House in 2007, they agreed to keep the six-year term limit.

**Committee Membership** Members request committee assignments. They may seek a certain post because it is important to their constituents or because it is politically powerful. Some pick a committee based on personal interests. Not all committee requests are fulfilled. In the case of some powerful committees, a member may have to campaign among his or her colleagues for a spot. Final assignments are made by a vote of the party caucus or conference.

In general, House members can serve on up to two standing committees and four subcommittees. There are exceptions to these rules.

While members do important work in their committees, paid staff members do much of the information gathering and background work. A typical committee has a team of managers, lawyers, policy experts, and office staff. The House Appropriations Committee, for example, has a staff of over 150 to assist its members.

**READING CHECK** **Identifying the Main Idea** What is the advantage of having committees in the House?

## Reviewing Ideas and Terms

1. a. **Describe** What are the formal qualifications for the House?

**b. Evaluate** Do you think that there should be more formal requirements for a House member? fewer? Explain your answer.

**2. a. Identify** What is **gerrymandering**?

**b. Explain** What limits has the Supreme Court placed on gerrymandering?

**3. a. Describe** What are the roles of the **Speaker of the House, floor leader, and whips**?

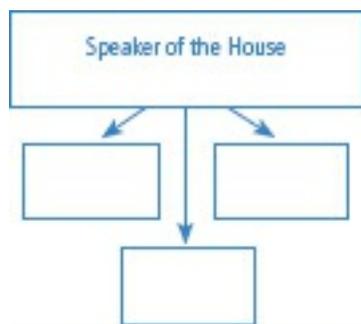
**b. Elaborate** What role do political parties play in the organization of the House?

**4. a. Recall** What is the term for the regular committees that exist to evaluate bills?

**b. Explain** How do committees help the House function?

### Critical Thinking

**5. Evaluate** Using your notes and the graphic organizer below, evaluate the role, powers, and duties of the Speaker of the House.



### FOCUS ON WRITING



**6. Persuasive** Write a letter to the editor urging an end to gerrymandering in your state. Provide reasons for your position.

SECTION  
**4**

# The Senate

**BEFORE YOU READ**

## Main Idea

Senators represent entire states, have longer terms, and follow different rules of debate. These features help give the Senate its reputation as a more weighty and careful body than the House.

## Reading Focus

1. What are the major features of the Senate and its membership?
2. What are the Senate's leadership posts?
3. What is the role of committees in the Senate?
4. What are some of the distinctive rules and traditions of the Senate?

## Key Terms

president of the Senate  
president pro tempore  
Senate majority leader  
seniority rule  
filibuster  
cloture



Use the graphic organizer online to take notes on the features of the Senate.

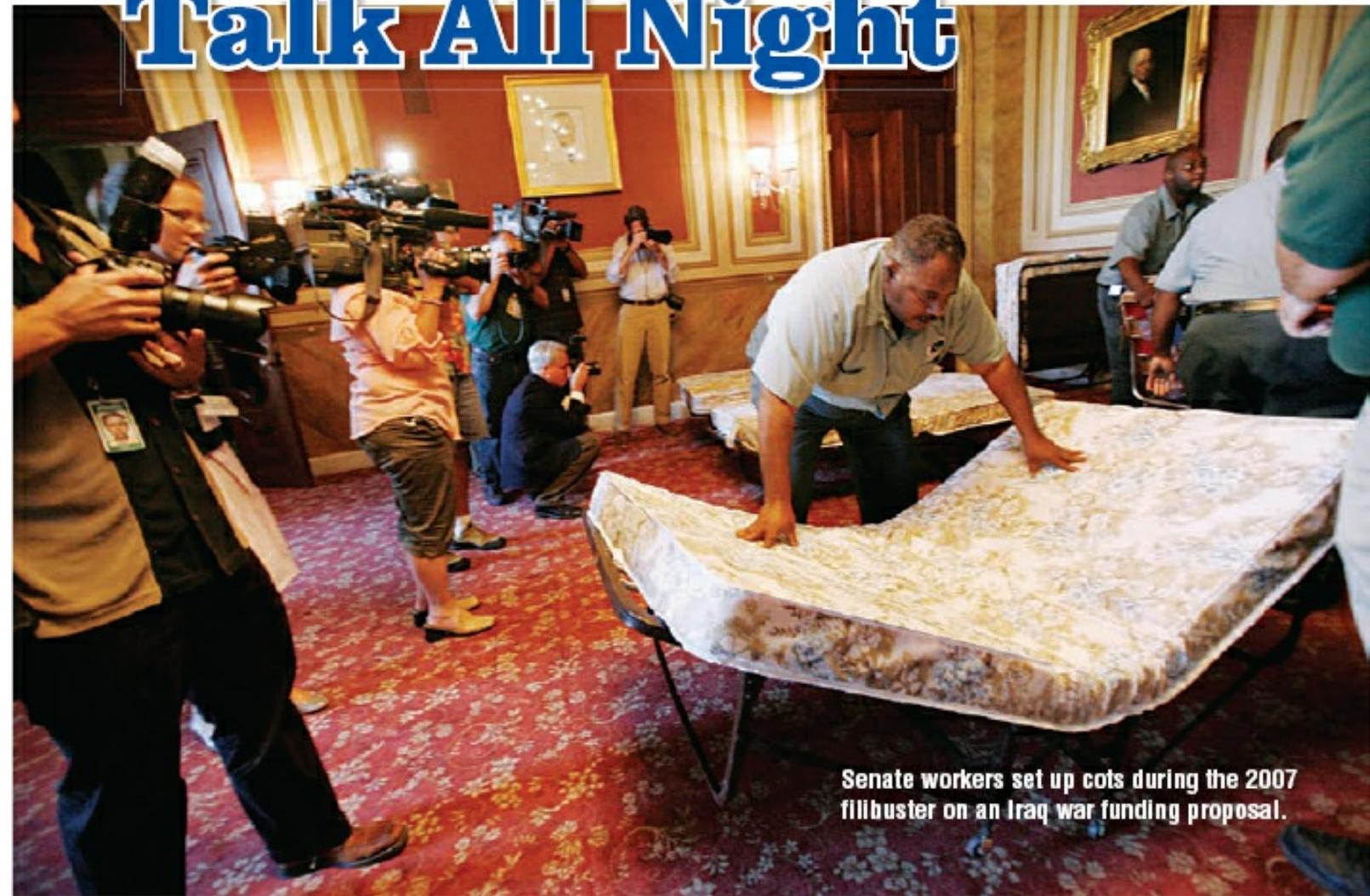
**Debate in the Senate** A crowd of photographers jostles for position to get the best shot. Through their lens they see tomorrow's front page photo—beds being set up in the Senate chambers. Are guests expected? In a way, yes. There is an all-night debate scheduled, and the senators won't be going home tonight.

The senators are participating in one of the distinctive traditions of the Senate: the filibuster. This tradition of nearly unlimited debate gives a minority of the Senate, even a single senator, the power to hold up the passage of bills favored by the majority. This creates leverage to get the bill killed or modified or to receive favorable consideration on some other bill altogether.

Senators have used the tactic for momentous and minor occasions alike. In 1954 Strom Thurmond (D, North Carolina) set the record for the longest speech in Senate history when he opposed a civil rights bill. In 1986 Alfonse D'Amato (R, New York) made the second-longest speech when he protested the cutting of funding to a defense factory in his home state.

Since 1917, the Senate has been able to bring debate to a close, but it requires the votes of 60 senators to achieve that. In 2005, Senate Republicans threatened to change the rules that allowed this tactic. But a compromise was reached. As long as the tactic gives each senator outsized leverage, the Senate is not likely to do away with its distinctive tradition of talk. ■

# Getting Ready to **Talk All Night**



Senate workers set up cots during the 2007 filibuster on an Iraq war funding proposal.

# SENATE: TERMS, SALARY, BENEFITS AND PRIVILEGES

QUICK  
FACTS

	Senators	President Pro Tempore	Majority and Minority Leaders
Salary	\$174,000	\$188,100	\$193,400
Term	6 years		
Benefits and Privileges	<ul style="list-style-type: none"><li>• Tax deduction for two residences</li><li>• Travel allowances</li><li>• Staff</li><li>• Health and retirement benefits</li><li>• Franking privilege: free mail to constituents</li><li>• Free printing</li><li>• Use of gym, restaurants, and other Capitol amenities</li><li>• Legal immunity for statements made while Congress is in session</li></ul>		

Source: Congressional Research Service, 2010



**What are the advantages of having a representative body like Congress made up of seasoned and experienced lawmakers? What are the disadvantages of allowing members of Congress to serve as long as their constituents re-elect them?**

## **The Senate and Its Membership**

The Senate is often called the upper house. The term reflects the greater prestige and power that individual senators have compared to their House colleagues. It also reflects the special powers, such as the power to reject presidential appointments, that the Constitution gives to the Senate.

Senators tend to be better known than members of the House, if only

because they must win statewide election. In addition, the smaller number of senators allows them to become nationally known figures more easily. Perhaps that is why it is common for House members to try to “move up” to a Senate seat. From there, many an ambitious politician has launched a run for the White House, although only a few have succeeded.

**Formal Qualifications** Delegates at the Constitutional Convention thought the Senate required a different type of leader than the House. If the Senate were to fulfill its role as a break on the House, the chamber for ordinary citizens, than it would need to be filled with experienced, knowledgeable politicians. James Madison explained the reasoning in a *Federalist Papers* essay.

**“ The propriety [appropriateness] of these distinctions [between the Senate and House] is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life more likely to supply these advantages.”**

—James Madison, *Federalist Papers* No. 62

Article I, Section 3, of the Constitution sets out the basic job qualifications for the Senate. A person seeking to be a senator must be

- at least 30 years old—five years older than House members
- a U.S. citizen for at least nine years—as compared to seven for House members
- a resident of the state he or she represents

To further encourage a calmer, more thoughtful chamber, the Framers gave senators a longer term of office than representatives and staggered their election so that only one-third of the seats come up for

election every two years. The longer term of office—six years compared to a House member’s two years—is thought to make it easier for senators to focus on serving the nation rather than on pleasing the public. Staggered elections ensure that the Senate membership does not undergo major, rapid shifts and lose experienced political leaders.

**Election of Senators** As you read in Section 1, the Constitution originally gave state legislatures the power to choose senators. This was another feature intended in part to shield senators from public pressure and to help ensure that only the best people would be chosen.

In fact, selection of senators by state legislators proved troublesome. Politically divided legislatures sometimes had trouble reaching a decision, and Senate seats occasionally went unfilled for months or longer. Accusations of corrupt elections undermined trust in the Senate. In the early 1900s, some states adopted popular election of senators, with the results ratified by state legislatures. In 1913 the Seventeenth Amendment made direct popular election of senators part of the Constitution.

**Informal Qualifications** Typically, voters tend to elect older people to the Senate than to the House. Senators tend to be wealthier both than their House colleagues and the general population. That is why the Senate is sometimes referred to as a “millionaires— club.” The wealth of the senators is helpful, because running for Senate is very costly. In a recent election, Senate candidates spent over \$400 million in 33 races.

While Congress overall has become much more diverse, the Senate has lagged behind the House in reflecting the diversity of the general population. In 2011, only 16 women, one African American, two Asian Americans, and two Hispanic Americans were serving in the Senate—not an accurate reflection of U.S. population

**READING CHECK** **Contrasting** How do requirements for a senator’s seat differ from those for a House member?

## Senate Leadership

Like the House, the Senate has a leadership structure that helps the chamber do its work. The Senate's leadership, however, is generally less powerful than the House leadership.

**Constitutional Positions** Article I, Section 3, Clause 4, of the Constitution assigns the job of **president of the Senate** to the vice president of the United States. The position is largely ceremonial. As president of the Senate, the vice president may preside over debate in the chamber, acknowledging speakers and making sure everyone follows the rules of debate. But the president of the Senate cannot take part directly in debate. Nor can the president of the Senate vote, except to break a tie. The position's greatest influence is felt on those rare occasions when Senate membership is divided equally among both parties. When that occurs, the party affiliation of the vice president determines which party will be in the majority.

The Constitution also directs the Senate to choose a **president pro tempore**—the person who presides in the absence of the president of the Senate. By tradition, this position goes to the senator from the majority party who has the longest record of service in the Senate. The president pro tempore is third in line, behind the Speaker of the House, to succeed the president.

**Party Leaders** Like the House, the Senate has party leaders who guide the work of the majority and minority parties. In the Senate, the most powerful position belongs to the **Senate majority leader**. As the name suggests, this figure is chosen by a vote of the majority party. This vote takes place at a party caucus at the start of each term.

The Senate majority leader serves as the spokesperson and main strategist for the majority party in the Senate. He or she works to carry out the party's agenda in the Senate. A majority leader must be willing to work for his or her party members—for example, helping them get desired committee assignments. In return, the majority leader expects cooperation and support from the senators. The power of this position and

the importance of the Senate make the majority leader a major national political figure.

The Senate also has a minority leader. Both the minority and majority party have whips who help the leaders assess how senators are planning to vote.

**READING CHECK** Identifying the Main Idea and Details What is the Senate leadership structure?



### Styles of Leadership

Senate majority leaders use different styles to unite their parties. Shown on the left in the photo above, current majority leader Harry Reid prefers to listen to his fellow senators. At right, Lyndon Johnson, leader from 1953–1961, was known for giving senators the “treatment.”

#### RESPONSIBILITIES OF LEADERSHIP

Party leaders in the Senate need to couple the power of persuasion with an acute ear for the needs of their caucus members. Since the 1970s, they have also been expected to be effective advocates of

**their party's position on television and in the media.**

## **Committees in the Senate**

As in the House, the Senate performs much of its work in committees, reviewing and refining the bills that will become the laws of the nation. Committee assignments allow senators to study an area of public policy in depth. As in the House, Senate committees hire professional staffers who bring additional skills and knowledge to the lawmaking process.

**Types of Senate Committees** The Senate has a similar array of committees to the House. It has 16 standing committees and many dozens of subcommittees. The Senate also has select and special committees. These may be temporary in nature, though that is not always the case. They generally exist to examine a particular issue, to advise the Senate, and to provide oversight of government agencies. They are not generally involved in making laws.



**Throughout American history, deliberative bodies have used committees to facilitate their work. How does the use of committees in Congress promote or undermine the principles of representation, majority rule, and limited government?**

Of course, senators participate in joint committees with members of the House. As you will read in Section 5, they also take part in conference committees.

**Membership in Committees** Senate rules limit the number of committees and subcommittees a senator may serve on. In general, senators serve on no more than three committees and five subcommittees.

Senators seek assignments that align with their interests and the needs of their state. As in the House, committee assignments in the Senate are determined by the party conference or caucus at the beginning

of each session. In general, party caucuses try to accommodate the preferences of individual members, with a priority given to members who have served in the Senate longer. The proportion of seats each party receives on a committee reflects its numbers in the overall Senate.

Senate Standing Committees	
Agriculture, Nutrition, and Forestry	Foreign Relations
Appropriations	Health, Education, Labor, and Pensions
Armed Services	Homeland Security and Governmental Affairs
Banking, Housing, and Urban Affairs	Judiciary
Budget	Rules and Administration
Commerce, Science, and Transportation	Small Business and Entrepreneurship
Energy and Natural Resources	Veterans' Affairs
Environmental and Public Works	
Finance	

**Committee Chairs** Like their House counterparts, Senate committee chairs hold considerable power. They set the committee's schedule, decide what bills will be discussed and when, and call hearings. No senator chairs more than one committee. Chairs are always a member of the majority party.

Traditionally, the chair of a committee has gone to the most senior majority senator on a committee, following the so-called **seniority rule**. When Republicans took control of the Senate in 1995, however, they announced that they would hold secret ballots within each committee to choose the chair. In addition, they placed six-year term limits on committee chairs. When the Democrats gained control of the Senate in 2007, they continued the term-limit rules for committee chairs.

**Senate Committee Power** Senate committees have some functions that are unique to that chamber. Recall that the Senate alone has the job of providing advice and consent on certain top presidential nominees. Nominees are usually first examined by the relevant Senate committee—for example, the Senate Judiciary Committee examines nominees for

federal judges. Typically, the full Senate follows the recommendation of the Senate committee.

The Senate also debates and votes on any treaties that the government negotiates. A two-thirds majority vote is required for a treaty to become law. This gives the Senate—and in particular, the Senate Foreign Relations Committee—great influence. If a treaty fails to win the support of a powerful chair of the Senate Foreign Relations Committee, its chances of passage are slim. In 1919, for example, opposition from Senator Henry Cabot Lodge helped defeat the Versailles Treaty, which President Woodrow Wilson had helped negotiate at the end of World War I.

**READING CHECK** **Contrasting** How do committee assignments differ in the House and Senate?

## Rules and Traditions

As you read in the “Why It Matters,” the Senate is a keen guardian of its rules and traditions. It is these rules and traditions that give the Senate its special character, one very different from the House.

**The Filibuster** Perhaps the greatest difference between the Senate and the House is that the Senate places few limits on debate. This rule allowed for the development of a practice called the **filibuster**. A filibuster occurs when opponents of a measure take the floor of the Senate and refuse to stop talking in an effort to prevent the measure coming up for a vote. The tactic is used when a minority knows that a measure is likely to pass if it ever comes to a vote. Filibusterers hope that if they can stall action long enough, the rest of the Senate will eventually be forced to move on to other business.

In 1917 the Senate moved to place some limit on the filibuster. It adopted a rule by which a two-thirds vote would impose **cloture**—an end to debate. Though difficult to achieve, cloture has been accomplished on a number of occasions. In 1975 the cloture rule was revised. It now

requires 60 votes to achieve cloture.

**Discipline in the Senate** Like the House, the Senate has the constitutional right to judge the conduct of its own members. On 15 occasions it has voted to expel a member. Expulsion requires a two-thirds majority vote. The first expulsion took place in 1797, when Tennessee senator William Blount was expelled for conspiring with Britain to seize Florida from the Spanish. All the other expulsions involved senators who supported the Confederacy in the Civil War.

The Senate has on nine occasions voted to censure, or officially denounce, a senator. The most recent such incident was the 1990 censure of David Durenberger (R, Minnesota) for unethical conduct, including using campaign funds for personal use.

**Filling Vacancies** When a Senate seat becomes vacant due to the retirement or death of a senator, the Seventeenth Amendment calls for the governor of that senator's state to appoint a replacement, provided the state's legislature has given the governor the power to do so. The replacement senator serves until a special election can be held to choose a permanent replacement. Governors usually choose replacement senators from their own party.

**READING CHECK** **Summarizing** What are some of the unique traditions of the Senate?

SECTION

4

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- a. Recall** What are the constitutional requirements to become a member of the Senate?
- b. Evaluate** How do the Senate's unique formal and informal requirements support the notion that it is a more exclusive body than the House?

- 2. a. Identify** What are the roles of the **president of the Senate**, the **president pro tempore**, and the **Senate majority leader**?
- b. Elaborate** How is the Senate majority leader similar to and different from the Speaker of the House?
- 3. a. Recall** How many standing committees exist in the Senate?
- b. Rate** In your opinion, which Senate committee—the Judiciary Committee or the Foreign Relations Committee—has a greater influence on American life?
- 4. a. Define** What is the meaning of the terms **filibuster** and **cloture**?
- b. Evaluate** What are the benefits and drawbacks of having nearly unlimited debate in the Senate?

### Critical Thinking

- 5. Compare and Contrast** Copy the diagram below and compare and contrast the main features of the House and Senate.



### FOCUS ON WRITING



- 6. Expository** You are working on a brief guide to Congress for use by foreign exchange students visiting your school. Write a brief section that compares and contrasts the House and the Senate—their functions, organization, and stature.

### DEBATING THE ISSUE

## The Seniority System

*Should seniority be a determining factor for committee chairs in the*

## *House of Representatives and the Senate?*

### **THE ISSUE**

For most of the twentieth century, committee chairs were chosen strictly according to the seniority system, which reserved these posts for the long-serving committee members of the majority party. A series of reforms in the 1970s and 1990s empowered party conferences to elect their committee chairs through secret ballots and set term limits on a chair's service. Still, committee chairs and ranking minority party members are almost always the longest-serving members of their respective parties on a committee.



**Collectively, senators Orrin Hatch (R, Utah), Arlen Specter (D, Pennsylvania), and Patrick Leahy (D, Vermont) have more than 85 years of senatorial experience.**

### **VIEWPOINTS**

**Committee chairs should be chosen solely on merit, not seniority.** The seniority system is an outdated relic. It lost what little validity it had in the 1940-1950s, when long-serving committee chairs routinely killed civil rights legislation. Even today, there is still too much consideration given to seniority in choosing committee chairs. A senator's accomplishments and skills as a legislator, not longevity, should guide the decision of who serves as committee chairs. In fact, the skills needed to convince fellow party members that you should be chair or ranking minority party member—persuasion, deal-making, and charisma—are just the skills needed to be an effective chair.

**Seniority should be a factor in choosing a committee chair.** Seniority is still a valuable measure of a member's ability to be a committee chair. Long-serving members acquire extensive policy experience and

procedural knowledge, both of which are important for conducting committee work and getting bills passed. This knowledge and experience should be rewarded with greater authority. The current system allows for the removal of chairs who do not take the needs of their fellow party members on the committee or the party's policy agenda sufficiently into account. This makes chairs more accountable, without losing the experience that seniority brings.

## What Is Your Opinion?



1. Should the length of tenure be a factor in choosing a congressional committee chair? Why or why not?
2. Though in theory committee chairs are elected, more often than not the position goes to the most senior member of that committee. Explain how the process might be reformed



# The Legislative Process

<b>Main Idea</b>	<b>Reading Focus</b>	<b>Key Terms</b>
The main job of Congress is to make laws. The process of making laws is well established and orderly.	<ol style="list-style-type: none"> <li>1. How are bills introduced in Congress?</li> <li>2. What happens to a bill in committee?</li> <li>3. What happens to a bill on the floor of the House and Senate?</li> <li>4. What is a conference committee?</li> <li>5. What actions can a president take on a bill?</li> </ol>	rider joint resolution concurrent resolutions discharge petition Committee of the Whole quorum roll-call vote conference committee 576 pocket veto



Use the graphic organizer online to take notes on the process of making law in Congress.

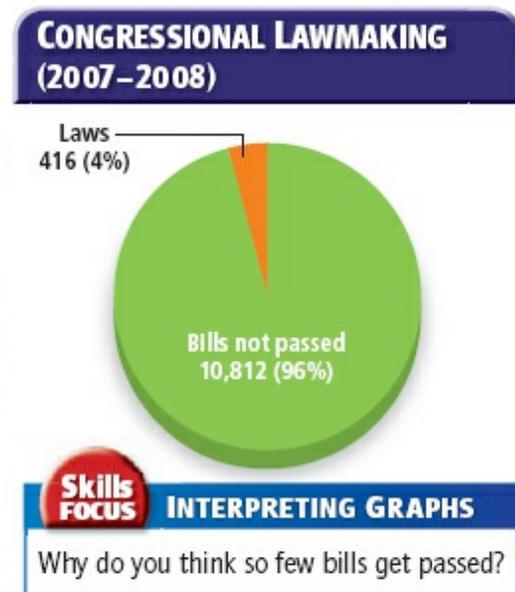
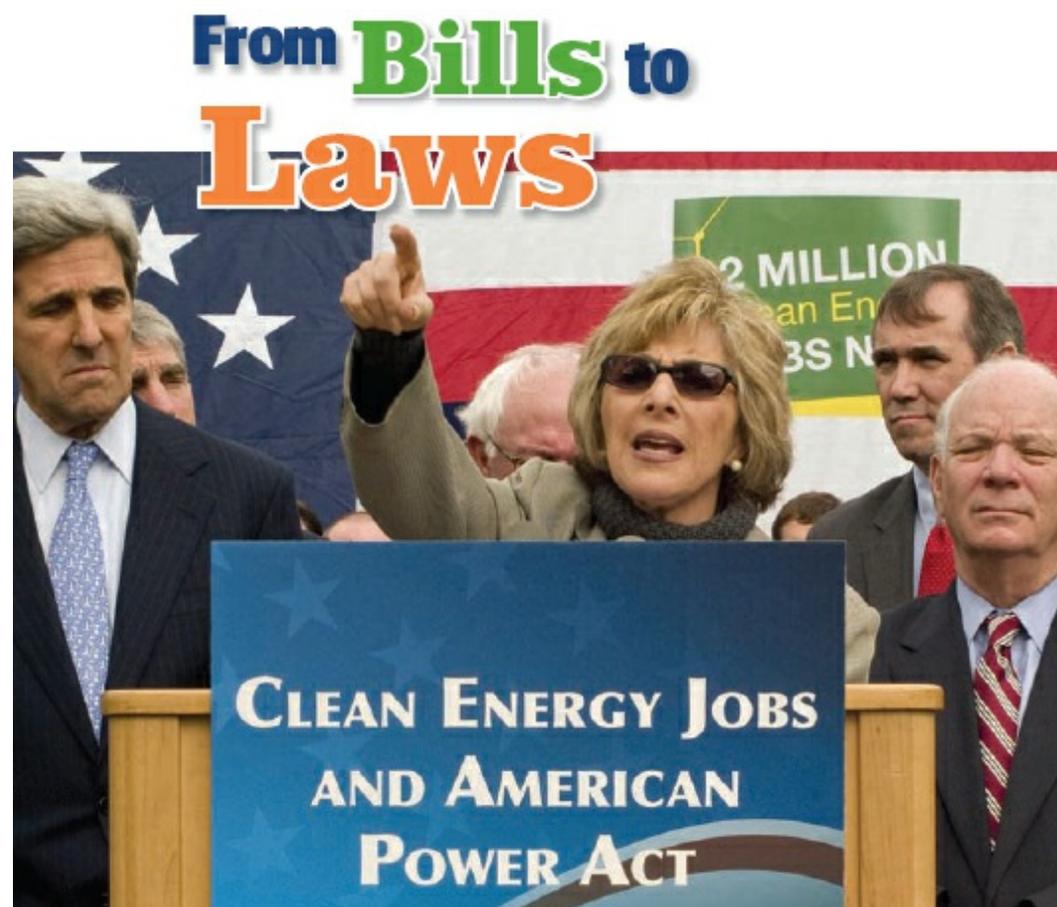


**Purpose of Laws** Congress is the nation’s lawmaking branch of government. But what, exactly, are laws? You can think of some examples. For example, you know that there are laws against driving under the influence of alcohol. You know that it is against the law for one person to kill another.

Federal laws, however, do more than define what is right or wrong. They also establish new government programs, set government policy, and allocate funding to pay for government activities and services.

The U.S. Congress makes all kinds of laws. For example, in its two sessions the 109th Congress considered bills for extending formal recognition to certain Native American groups, protecting portions of specific rivers, authorizing the U.S. Mint to produce dollar coins featuring likenesses of U.S. presidents, and appropriating money for all manner of government activities, and much, much more. All told, the House and the Senate of the 109th Congress considered almost 11,000 bills. Just under 400 became law. In this way, Congress helped determine exactly what actions the federal government will take in a wide variety of areas.

For each action taken by Congress, the members of the House and Senate follow an organized procedure. This procedure ensures a careful, thorough consideration of the nation's legislative business. ■



**The U.S. Senate Committee on Environment and Public Works holds a rally to introduce a draft bill, just one of thousands introduced in the 111th Congress.**

## Bills in Congress

Laws start out as bills introduced by members of Congress. Ideas for bills come from many different sources. Some are suggested by constituents or by interest groups. The president is another major source of proposed legislation. In addition, members of Congress also come up with ideas for bills. Regardless of a bill's origin, only a member of Congress can introduce a bill for consideration.

**Introducing Bills** Both senators and House members introduce bills. The one exception is that, according to the Constitution, any bill for raising revenue—that is, tax bills—must begin in the House (Article I, Section 7, Clause 1). In addition, by custom, appropriations bills also begin life in the House.

Introducing a bill is a simple matter. House members simply place the required documents in a wooden box called a hopper. A senator hands the paperwork to a clerk.

In the 111th Congress, nearly 6,400 bills were first submitted in the House. About 4,000 were submitted in the Senate. Bills submitted in the House are assigned the letters “H.R.” and a number. Senate bills are labeled with an “S.,” followed by a number.

Bills may be public or private. A private bill affects only a particular person, family, or small group. A common example is a bill granting permanent residency to an illegal immigrant. A public bill is one affecting all of society. Most bills are public bills.

A bill may deal with a single subject or many. As they make their way through the legislative process, some bills get riders attached to them. A **rider** is a provision that bears little relationship to the bill's main topic. The goal of a rider is to add an unpopular provision to a bill that is likely to be passed in order to allow the unpopular provision to “ride” in on the broader bill's popularity. In some cases, however, riders are added in hopes of killing a bill. Such a rider, called a “poison pill,” makes the bill too unpopular to pass.

**Other Types of Action** Bills make up the large share of the legislative work of Congress. But House members and senators also deal with other types of measures. For example, they sometimes consider joint resolutions. A **joint resolution** is much like a bill—it follows the same procedures as a bill, and it has the force of law if it is passed by both houses of Congress and is signed by the president. Joint resolutions are used for certain out-of-the-ordinary circumstances. For example, Congress used a joint resolution to authorize President George W. Bush to use military force against Iraq in late 2002. Joint resolutions are also used to propose constitutional amendments. The amendment process is described in Chapter 3.

Congress also sometimes considers **concurrent resolutions**, by which both houses of Congress address matters that affect the operations of both chambers or express an opinion. These are not signed by the president and do not have the force of law.

Finally, each chamber passes resolutions that apply to matters of concern just within that chamber, such as the election to leadership offices or members—committee assignments. Such resolutions can also be used as a means for members of Congress to express their opinion on an important subject. They do not have the force of law.

**READING CHECK** **Summarizing** What are some of the legislative actions that Congress takes?

## **Bills in Committee**

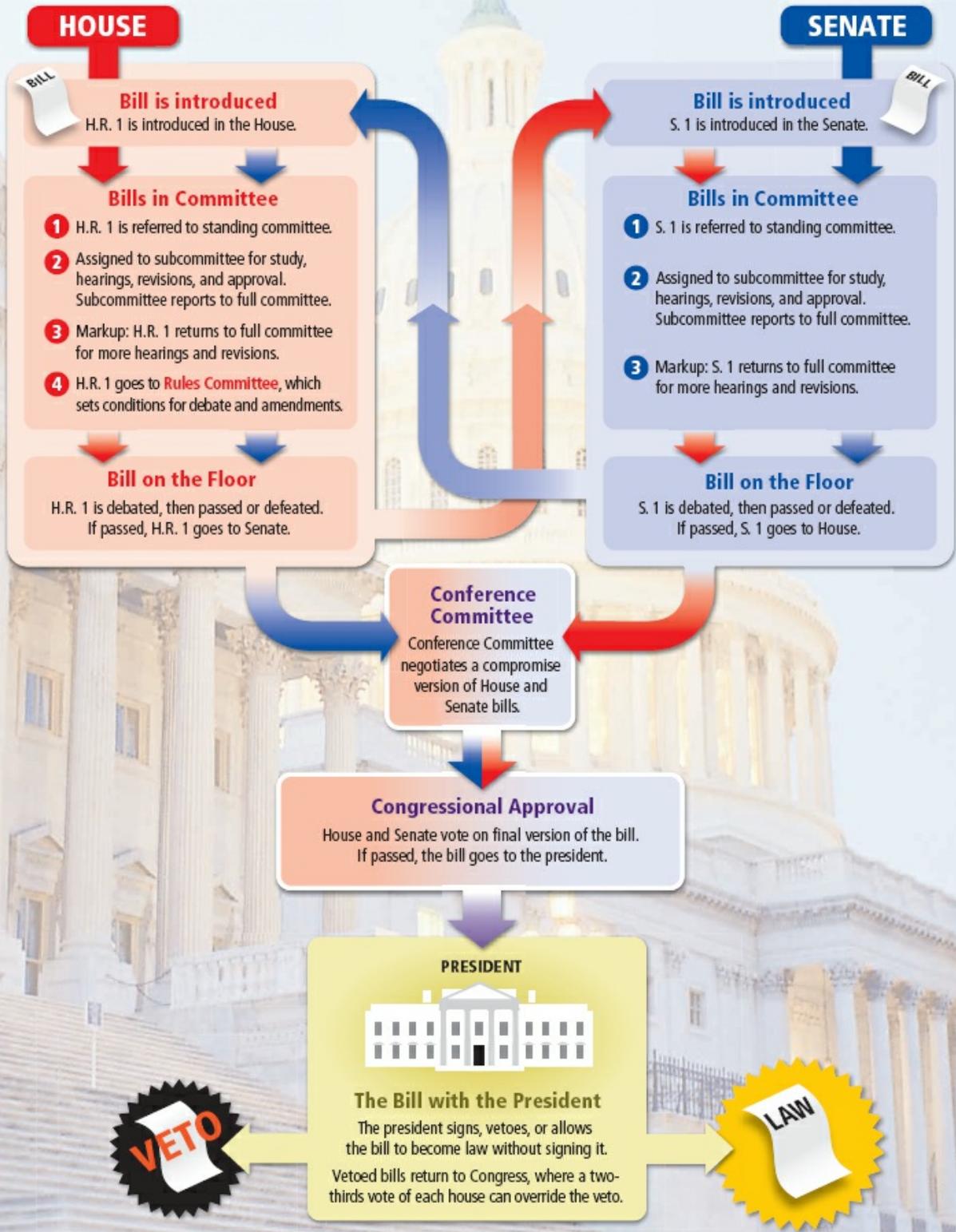
Committees act as the filter of Congress. Most of the bills submitted to Congress simply die in committee and never receive the attention of Congress as a whole. Most of the work on bills, including the decision to kill them, takes place in committee, where bills are studied and adjusted.

**Referral** Bills are assigned to a committee by a process known as referral. In the House, the Speaker is mainly responsible for determining which committee is most appropriate for a given bill. In the Senate, the

majority leader performs this role. In both chambers, written rules help govern the referral process. A bill may go to one or more committees. This happens if the subject matter of the bill falls into the areas of expertise of more than one committee.

# How a Bill Becomes a Law

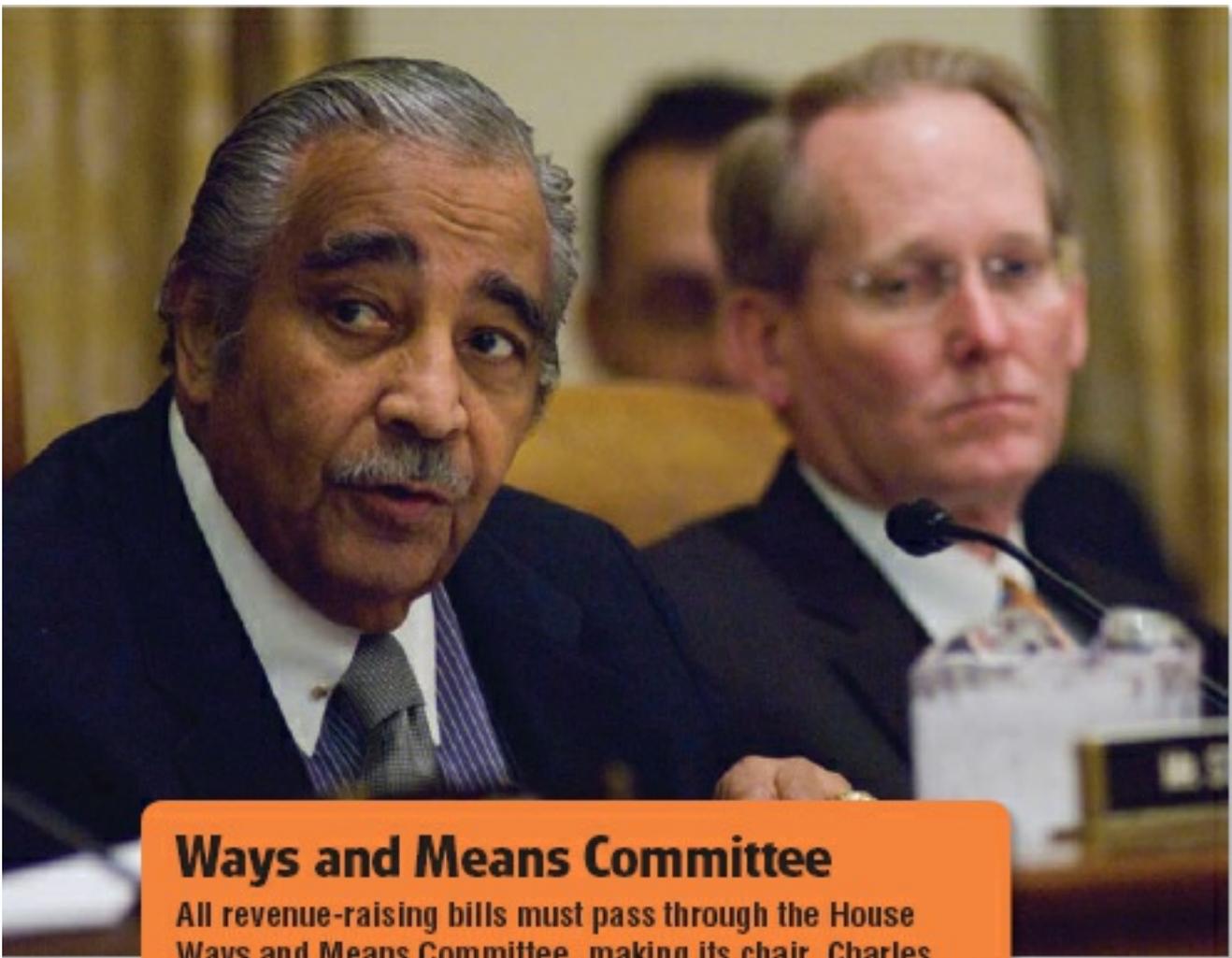
Bills must be passed by both houses of Congress before going to the president. At what point do the different versions of the bill get unified into one bill?



Once in committee, the bill may be assigned to a subcommittee of the main committee. As you have read, committees and subcommittees are controlled by the majority party in each house. This control can help determine the fate of the bill.

**Committee and Subcommittee Hearings** Committees or subcommittees often hold hearings to seek input from interested parties on the bills they are considering. The hearings are open to the public. Witnesses may include other members of the House or Senate, officials from the executive branch, and representatives from special interest groups. Witnesses may appear voluntarily, but the committee can use a subpoena to force them to appear. At the hearing, witnesses usually make a statement and then answer members— questions.

In general, the chair of the committee or subcommittee has considerable control over who appears at the hearings. Minority-party members have only limited ability to call witnesses. The chair can use his or her power over hearings to help shape other people’s views of the bill.



### **Ways and Means Committee**

All revenue-raising bills must pass through the House Ways and Means Committee, making its chair, Charles Rangel (D, New York, at left), among the most influential member of Congress. *Why do you think Congress concentrates such power in one committee?*

**The Subcommittee's Report** Following the hearings, a subcommittee must report on the bill to the full committee. A subcommittee may report a bill favorably, unfavorably, or without comment. The subcommittee may also recommend that the full committee take no further action on the bill, effectively killing it. The subcommittee's report is based on a vote of the members.

In general, House subcommittees may also make amendments to a bill. In the Senate, this task is left to the full committee.

**The Markup Process** The markup is a meeting of the full committee. Here, the committee hears any subcommittee reports, debates the bill further, and considers possible amendments to the bill. It is during the markup process that the bill is reviewed in close detail to ensure that

every aspect of the proposed legislation is in order.

When the markup is complete, committee members vote on how to report the bill to the full chamber. As in the subcommittees, reports may be favorable, unfavorable, or without recommendation. If the bill has been heavily amended, the committee may submit an entirely new bill to the House or Senate that includes all the amendments. This new piece of legislation is called a clean bill.

The committee may also decide to take no further action on the bill. Such a step has the effect of killing the bill. In the House, however, a majority of members may sign a **discharge petition**, forcing the bill out of committee. Though rare, discharge petitions have been used successfully. In 1970, for example, Representative Martha Griffiths (D, Michigan) began a discharge petition to get a proposed constitutional amendment on equal rights for women out of the Judiciary Committee. The proposed amendment had been there for more than two decades.

**House Rules** As you read in Section 3, the House has a separate “traffic cop” committee called the Rules Committee. Its members are chosen by the Speaker and the minority leader. Most bills must pass through this committee before reaching the full House. The rules assigned by the Rules Committee govern how a bill can be debated or amended by the full House.

Rules can vary from bill to bill, but there are three main types: open, closed, and modified rules. Open rules allow amendments to the bill. Closed rules mean that there can be no amendments. Modified rules limit amendments to certain parts of the bill. Rules also limit the time available for debate.

The Rules Committee has significant power. By limiting debate or the ability to amend a bill, for example, it can prevent opponents of a bill from mounting a successful attack on it. The Rules Committee can in some cases even prevent a bill from being considered by the full House. Bills in the Rules Committee are, however, subject to a discharge petition.

Some privileged bills can bypass the Rules Committee. Examples include major budget or appropriations bills. In addition, the House can agree to suspend the rules for some minor bills that are not controversial. If two-thirds of the House agrees, “suspensions” come to the floor for quick debate and with no option for amendment. Suspension of the rules is a way for the chamber to dispose of many bills quickly.

**READING CHECK** **Sequencing** What are the steps a bill follows while it is in committees?

## **The Bill on the Floor**

Once a bill leaves a committee and receives a rule, it goes to the full House or Senate for consideration. Depending on the nature of the bill, this may be an involved and dramatic piece of political theater—or a simple, routine procedure. The process differs somewhat in the two chambers.

**The Bill in the House** The first step in the process is the adoption of the rules put forward by the Rules Committee. This is accomplished by a vote of the House.

Sometimes, the whole House then debates the bill. In many cases, however, the House forms itself into a **Committee of the Whole**. In effect, all House members become members of a single committee. The Speaker of the House names a member of the majority party to serve as chair of the committee.

Why does the House take this step? According to the Constitution, the full House can only conduct business when at least half its members are present. Today that means 218 representatives. But for the Committee of the Whole, the **quorum**, or the number needed to legally conduct business, is only 100. The Committee of the Whole, then, allows the House to function even when many members are at hearings or are otherwise absent.

The rule for the bill regulates the debate in the Committee of the

Whole. The available time is divided equally between the two parties. Members discuss the substance of the bill and any amendments made in committee. Members can also recommend amendments, and debate on these is limited to ten minutes—five minutes for, five minutes against. When the time for debate is over, the chair asks the speaker to stop talking.

According to House rules, amendments must be related to the subject matter of the bill in question. Indeed, this rule applies to all amendments made in the House. As you will read, however, this rule does not always succeed in preventing unrelated amendments from becoming attached to bills.

The Committee of the Whole cannot pass a bill. Instead, when it has completed its work, it dissolves. Then the full House votes on the measure and any amendments to it. The House votes first on the amendments. Then it votes on the bill itself, along with the amendments it has passed.

The most important votes are usually called record votes, in which each member is required to publicly state his or her vote. Such a vote is sometimes also called a **roll-call vote**. According to the Constitution, a roll-call vote must take place when one-fifth of the lawmakers present demand it.

**The Bill in the Senate** What happens when a bill leaves a Senate committee and heads to the Senate floor? Unlike the House, the Senate does not have a Rules Committee. Nor does it use a Committee of the Whole. Further, Senate rules generally do not limit debate or the right to offer amendments.

A senator *can* request that limits be placed on a particular bill, including limits on debate and restrictions on amendments. To take effect, however, such requests require the unanimous consent of the Senate. The unanimous consent requirement to limit debate opens the door to a filibuster, the delaying tactic discussed in Section 4. The Senate can end debate, however, with a three-fifths majority vote, or 60 senators,

on a cloture motion.

## ACADEMIC VOCABULARY

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**suspend** to set aside or make temporarily inoperative

When the Senate completes debate, it votes on the amendments and the bill. As in the House, important bills are often subject to roll-call votes.

### READING CHECK Comparing and Contrasting

How does floor debate on a bill differ in the House and Senate?

### The Conference Committee

Bills can become law only after they are passed in identical form by both houses of Congress. If the House passes a measure that is then changed and passed by the Senate, the two houses must agree on a common version of the bill. For minor bills, the two sides might work informally before passage to reach agreement over differences in wording and amendments. But for major bills, resolving the differences between the House and Senate versions is the job of a **conference committee**.

Members of a conference committee are drawn from each chamber, usually from among the committees that handled the bill. The presiding officer of the Senate names the Senate representatives. The Speaker of the House names the House conferees.

House and Senate members in conference committee discuss the differences between the two versions of the bill. There are no formal rules for these meetings. The chair often rotates from one chamber to the other.

A conference committee sometimes fails to reach an agreement. In such a situation, the bill may die. Usually, though, there is strong desire on both sides to find a solution. After all, each chamber has passed a version of the bill, hoping it would become law.

When the conference committee reaches agreement, it issues a conference report. Both chambers receive this report. Debate on the report is allowed, but amendment of it is not. In some cases, one or the other house may request that the conference committee make further changes. One or the other house can also reject the report. But if and when both sides accept the report, the bill moves to the president's desk.

**READING CHECK** Identifying the Main Idea What is the purpose of a conference committee?

### PRIMARY SOURCES

## Pork-Barrel Spending

21<sup>ST</sup> CENTURY

Getting a majority of members of Congress to agree on a bill can involve a lot of bargaining. Often, a member will agree to support something that will benefit the constituents of another member provided the other member supports something benefiting the first member's constituents. Multiply that sort of bargaining by 535 members, and there is a lot of room in the federal budget for what is known as pork-barrel spending, or spending on projects that target a small constituency but that all taxpayers fund. Large bills, such as highway or farm bills, are particular targets for pork-barrel spending because so many members have highways or farms in their districts. Recent years have seen a rise in the use of earmarks, in which individual members insert provisions into bills mandating specific sums of money to be spent on specific projects of interest to them.



Skills FOCUS

### INTERPRETING PRIMARY SOURCES

**Understanding Points of View** What do you think the cartoonist is trying to say by drawing the Capitol with a pig's nose?

See **Skills Handbook**, p. H4.

## Presidential Action on a Bill

When the president receives a bill that both houses have passed, there are several possible outcomes:

- The president can sign the bill, which makes it law.
- The president may choose not to sign the bill. After 10 days (excluding Sundays), if Congress remains in session, the bill becomes law. But, if during those 10 days Congress

adjourns—ends its session—the bill does not become law.

This last tactic is known as a **pocket veto**.

- The president may veto the bill. The president does this by returning the bill to the chamber where it began its life. The president may also include a “veto message” that outlines specific objections.

Different presidents have taken different approaches to vetoes. Some presidents veto many bills, some hardly any—or none at all. George Washington, for example, vetoed just two bills. John Adams vetoed none. Franklin D. Roosevelt, on the other hand, tops all presidents. During his three full terms and part of a fourth in the 1930s and 1940s, he issued 635 vetoes. In the little over two years that he was president, Gerald Ford logged in 66 vetoes.

Congress can attempt to override a veto. This requires a two-thirds majority vote in each chamber. As a result, overrides are rare. There have been just 106 overrides in U.S. history out of a total of over 2,500 vetoes.

From 1996 to 1998, congressional legislation gave the president line-item veto power. This tool allowed a president to veto any part of a spending bill. Many state governors have this power. The Supreme Court ruled, however, that presidential line-item veto violated the Constitution, which prescribes specific veto procedures not including the line-item veto.

President George W. Bush has issued few vetoes, but he has made frequent use of signing statements. These are formal statements in which a president declares an intention to enforce a law in a certain way. Bush was not the first president to issue signing statements, but his use of them has been considered controversial. For some, it is a proper assertion of presidential power. For others, it amounts to an encroachment on the lawmaking powers of the legislative branch and on the interpretive powers of the judicial branch.

**READING CHECK** Summarizing What are the different ways a president has to reject a bill?

RESPONSIBILITIES  
OF LEADERSHIP

Presidents need to evaluate laws, but so do ordinary citizens. Developing criteria by which you determine whether or not you support a law is one part of being an informed and engaged citizen.

SECTION

5

ASSESSMENT

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ONLINE QUIZ

## Reviewing Ideas and Terms

- Recall** What are the types of measures considered by Congress?
  - Make Inferences** What advantages might there be for Congress in passing a joint resolution instead of a typical bill?
- Identify** What is the purpose of a **discharge petition**?
  - Evaluate** Do you think committees and subcommittee chairs should have more or less power over the progress of bills? Explain your answer.
- Describe** What is the significance of the **Committee of the Whole** in the legislative process in the House?
  - Evaluate** What do you think about the House's use of the Committee of the Whole? Is it a prudent efficiency or an unrepresentative maneuver?
- Recall** Who makes up a **conference committee**?
  - Evaluate** Why do you think that neither house of Congress is allowed to amend conference reports?
- Recall** What can a president do to make a bill into a law?
  - Elaborate** Why do you think the Constitution grants the

president the power only to pass or veto a whole bill—not just parts of it?

## Critical Thinking

**6. Compare and Contrast** Copy the chart below and fill in the details of how the lawmaking process is similar and different in the House and Senate.

Similarities	Differences
1.	1.

## FOCUS ON WRITING



**7. Narrative** Write a paragraph that describes in narrative form the story of a bill as it travels through Congress.

## CONNECTING TO THE CONSTITUTION



## The Sources of Laws

Where do members of Congress get ideas for legislation and information in deciding which bills to introduce or support? As the people—representatives, they must be open to ideas from a number of sources. Members of Congress often initiate legislation based on campaign promises to constituents, responses to problems or crises, or their own analysis of what laws are needed. They also introduce legislation at the request of others and must decide whether to support bills that are

submitted by others. The Library of Congress through its Congressional Research Service frequently assists Congress by providing information and analyzing issues. The Congressional Budget Office will provide an analysis of the budget for a bill and its projected costs. In addition, information and requests for legislation often come from the following sources:

**The executive branch** Article II, Section 2, instructs the president to give Congress information on the “State of the Union” and to “recommend to their Consideration such Measures as he shall judge necessary and expedient.” The president delivers an annual state of the union address to Congress that outlines the president’s legislative agenda, among other things. This agenda can include creating, consolidating, or eliminating departments or agencies. Members of the president’s party in Congress usually sponsor the president’s legislative proposals.

Executive departments and agencies are another regular source of legislative proposals. Most proposals from the executive branch are aimed at improving the functions of the departments or agencies that Congress already has created. These proposals usually are carefully crafted and ready for a member of Congress to introduce.

**Constituents** Many of those who live in a representative’s district or a senator’s state communicate with their elected officials, recommending the enactment of new laws or the repeal of existing laws. They make telephone calls, respond to public opinion polls, send faxes and e-mail, write personal letters, participate in letter-writing campaigns, and use blogs to inform their elected representatives and to persuade them about the need for particular legislation. Sometimes constituents ask their representative to introduce special legislation to address an individual problem or situation.

**Interest groups** Thousands of individuals and groups seek to influence members of Congress and legislation through lobbying, the practice of trying to affect legislation on behalf of organizations, industries, or interest groups through contact with legislators. Groups that participate in

lobbying include businesses, civic organizations, professional associations, and nongovernmental organizations. The Lobbying Disclosure Act of 1996 requires some lobbyists to disclose the interests they represent, the issues in which they are interested, and how much they spend annually. The act does not limit the amount of lobbying in which any individual or group may engage. The activity of lobbying reflects the First Amendment rights to speak, assemble, and petition. Effective lobbyists, whether individuals or groups, must be

- **Well informed** Members of Congress must be able to rely on the information they receive from lobbyists. Information must be able to withstand scrutiny, and it must be timely.
- **Knowledgeable** Lobbyists need to know not only their own issues but also the intricacies of the legislative process, key players, and which groups support and oppose particular proposals.
- **Organized** Interest groups must convey a consistent message and must be persistent. They must be able to explain how an issue affects their members and clients. And they must use various forms of communication effectively, including personal contact with members of Congress.
- **Cooperative** Successful interests groups, like members of Congress, must be able to build coalitions with other interest groups in the search for workable majorities.

Left, Representative Lincoln Diaz-Balart (R, Florida) met with students in 2007. Right, Former U.S. senator Barack Obama (D, Illinois) listened to the concerns of senior citizens in 2005.



## Reviewing Ideas

- 1. Explain** What are some sources of legislative ideas for members of Congress?
- 2. Analyze** Do you think an individual constituent is more likely to be able to influence a senator or a representative? Why or why not?

## Critical Thinking

- 3. Evaluate** Interest groups employ full-time paid lobbyists to convey their points of view to members of Congress. Do you think this gives them too much influence over legislation? Explain your answers.

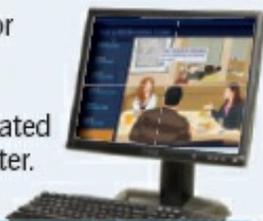


## Chapter Review

## Connecting Online

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# Comprehension and Critical Thinking

## SECTION 1

**1. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: constituents, apportionment, appropriation, impeachment, oversight.

**b. Summarize** What is the role of Congress in the system of checks and balances?

**c. Elaborate** What are the main goals and purposes of the bicameral structure of Congress?

## SECTION 2

**2. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: necessary and proper clause, indirect tax, direct tax, deficit, commerce clause, subpoenas, writ of habeas corpus, bill of attainder, ex post facto laws.

**b. Make Inferences** What did Thomas Jefferson infer from the necessary and proper clause?

**c. Predict** How do you think the powers of Congress will change in the future?

## SECTION 3

**3. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: reapportionment, gerrymandering, Speaker of the House, bills, floor leader, whips, party caucus, standing committees, select committees, joint committees.

**b. Explain** Why did single-member districts evolve in the House?

**c. Elaborate** In what ways is the House closer to the people than the Senate?

## SECTION 4

**4. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: president of the Senate, president pro tempore, Senate majority leader, seniority rule, filibuster, cloture.

- b. Analyze** How does the size of the Senate affect its operation?
- c. Elaborate** How does the practice of the filibuster reflect the special character and structure of the Senate?

## SECTION 5

**5. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: rider, joint resolution, concurrent resolutions, Committee of the Whole, quorum, roll-call vote, conference committee, pocket veto.

**b. Draw Conclusions** What can you conclude from the numbers of bills submitted and the numbers of bills passed in Congress?

**c. Evaluate** Do you think the process of making law should be made more difficult or easier? Explain your answer.

## Critical Reading

*Read the passage in Section 2 that begins with the heading “Implied Powers of Congress.” Then answer the questions that follow:*

**6.** Which of the following was the central issue in the debate over implied powers?

- A** the War Powers Resolution
- B** the commerce power
- C** the necessary and proper clause
- D** the state of Maryland

**7.** The Supreme Court—s decision in the case of *McCulloch v. Maryland* most closely lined up with the position of which of the following?

- A** Alexander Hamilton
- B** Thomas Jefferson
- C** the Antifederalists
- D** the strict constructionists

**8.** Select an **issue of public concern** that interests you. The issue should be something for which federal action is an appropriate solution, rather than state or local action. Write a draft of a bill addressing an aspect of that issue. Make sure your bill is constitutional. Share your bill with the class.

**9.** Identify your **congressional representative**. Visit the representative's Web site or call his or her office. Learn the key issues the representative is interested in, the committees and subcommittees the representative serves on, and the constituent services the representative provides. Select one of the items you learned about and write a paragraph describing it. Share your paragraph with the class.

## CONNECTING TO THE CONSTITUTION

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**10.** Review Article I, Section 8, of the Constitution in the Reference Section at the end of your textbook. Then read the Preamble to the Constitution. Relate each of the powers listed in Article I, Section 8, to the general purposes of government that are found in the Preamble.

**Political Cartoon** *Because of the rising costs of campaigning for office, members of Congress spend a great deal of their time raising money. The law places limits on how much money an individual, business, or group can donate. Still, much of the money comes from interest groups, leading some people to question whether members of Congress are “for sale.”*



11. **Evaluate** Where is the poll being taken?
12. **Draw Conclusions** What do you think the cartoonist means to suggest by having members of Congress willing to talk in return for money?

## FOCUS ON WRITING

**Expository Writing** *Expository writing gives information, explains why or how, or defines a process. To practice expository writing, complete the assignment below.*

**Writing Topic: The Differences Between the House and the Senate**

**13. Assignment**Based on what you have read in this chapter, write a paragraph explaining the differences between the House and the Senate.

CHAPTER

6

# The Presidency

**Essential Question** What are the formal and informal powers of the presidency?



**About the Photo** The chief executive's residence was originally called the President's Palace, but renamed the Executive Mansion in 1810. In 1902 its official name was changed to the White House. The White House complex contains numerous reception rooms and the presidential family's living quarters. Both the West Wing and the East Wing contain offices; the president's Oval Office is in the West Wing.





## CHAPTER AT A GLANCE

### SECTION 1 The President

- The Constitution names the president as the head of the executive branch of the U.S. government.
- The president's official and unofficial roles include: chief executive, chief administrator, commander in chief, foreign policy leader, chief agenda setter, chief of state, party leader, and chief citizen.
- The Constitution and its amendments set the presidential term of office, the process of electing the president, the line of succession to the presidency, and the president's salary.
- There are few formal qualifications for the president, but there are many informal ones.

### SECTION 2 The Powers of the Presidency

- The Constitution grants the president specific executive, diplomatic, military, judicial, and legislative powers. The president also has some informal powers that are not expressly stated in the Constitution.
- The powers of the president are checked by both the legislative and the judicial branches.
- Presidential power has grown and changed since the Constitution

was adopted.

## SECTION 3 The President's Administration

- The Executive Office of the President works closely with the president to determine domestic, economic, and foreign policy.
- The role of the vice president has grown a great deal. Nine vice presidents have had to assume the title of president when the position has been left vacant.
- Over the years, the cabinet has increased in size, and presidents have varied in how much they rely on the cabinet for counsel.

### CONNECTING TO THE CONSTITUTION



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of how the Constitution gives power to the president.



# The President

#### BEFORE YOU READ

#### Main Idea

Main Idea The Constitution gives only a brief description of the president's

#### Reading

#### Focus

1. What are the

#### Key

#### Terms

chief

qualifications and powers. Yet the job is vast and complex, as the president must fulfill many roles.

roles of the executive president? commander in chief  
2. What are the formal foreign policy characteristics of the diplomacy chief of presidency?  
3. What are the informal state succession qualifications for the presidency?



Use the graphic organizer online to take notes on the duties and qualifications of the president.



**Responsibilities of a President** President Lyndon Johnson once said, “A president’s hardest task is not to do what is right, but to know what is right.” Presidents make hundreds and hundreds of decisions that affect the nation, and, in making these decisions, they must try to consider what is in the best interest of the country and act accordingly.

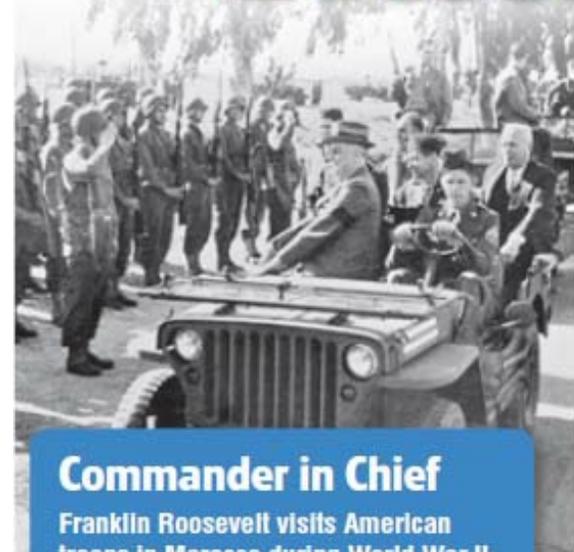
When Richard Nixon became president in 1969, the Cold War was at its height. American military forces were fighting Communist forces in Vietnam, and the United States and the Soviet Union were locked in a nuclear arms race. The Communist government of China seemed to be a solid ally of the Soviet Union. Nixon, however, believed that China and the Soviet Union were not as friendly as they appeared. So he took a risk. Nixon decided that improved relations with China would give the United States an advantage in the Cold War against the Soviet Union.

In 1972 Nixon made an historic trip to China, meeting with China’s

Communist leader, Mao Zedong. In doing so, Nixon officially recognized the People's Republic of China, causing many other nations to do the same.

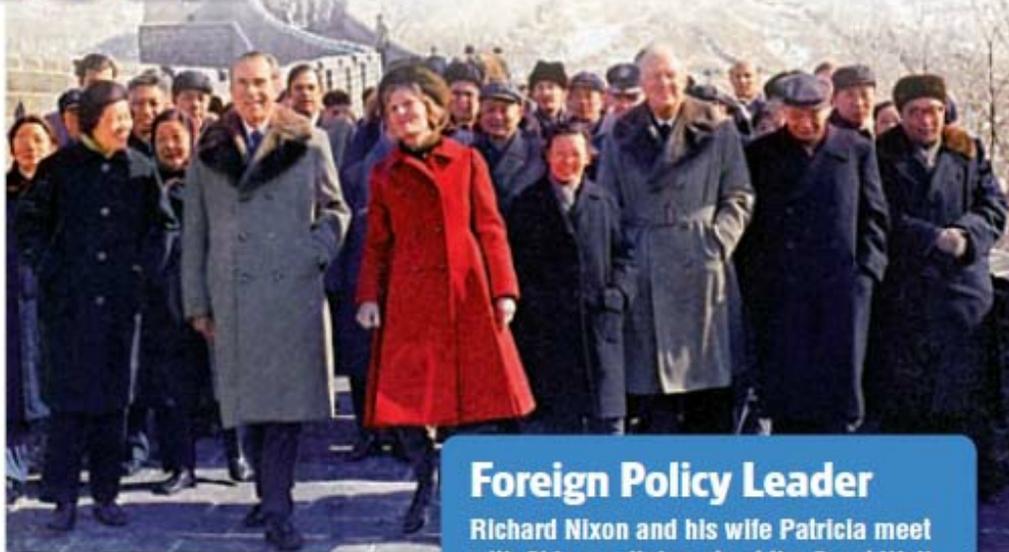
Presidents make countless decisions every day. Some are historic and have long-lasting consequences, like Nixon's decision to visit China. Some are routine. Each decision is a part of the full-time, 24-hour-a-day job of leading a nation. ■

## LEADING A Nation



### Commander in Chief

Franklin Roosevelt visits American troops in Morocco during World War II.



### Foreign Policy Leader

Richard Nixon and his wife Patricia meet with Chinese diplomats at the Great Wall.

## Roles of the President

The presidency is one of the most complex jobs in the world. The person who sits in the Oval Office must fill a variety of roles in order to lead the nation. Some of these roles are stated in the Constitution. Others have developed over time.

**Official Roles** Article II of the Constitution outlines the executive branch of the federal government and, in particular, the presidency. It assigns the president the following duties:

- chief executive
- chief administrator
- commander in chief

- foreign policy leader
- chief agenda setter

The Constitution states, “The executive power shall be vested in a President of the United States ...” (Article II, Section 1, Clause 1). “Executive power” means the power to execute, or carry out, the nation’s laws. The president carries out this duty as **chief executive**. It is the president’s responsibility to see that government programs are carried out and that the laws passed by Congress are implemented. In running the government, the president does not act alone. The Constitution assumes that the president will have assistance. It states that the president “may require the opinion, in writing, of the principal officer in each of the executive departments.” As the leader of the executive branch, the president acts as the chief administrator, or manager, of the fifteen executive departments and the numerous federal agencies that help carry out government policy.



## Chief Agenda Setter

Barack Obama delivers an address to a joint session of Congress.

Today the job of chief administrator is an enormous task. The executive departments employ about 1.8 million people while the postal

service and other government agencies employ millions more.

The Constitution also names the president **commander in chief** of the nation's military. As commander in chief, the president has the authority to order troops into action and to call them back home. This power is a significant one. While it is Congress's duty to declare war on other nations, more often than not, U.S. forces go into action at the direction of a president and not because Congress has declared war.

As **foreign policy** leader, the president has the job of formulating the nation's plans and procedures for dealing with other countries. This can involve negotiating treaties and receiving foreign ambassadors. The president also directs the activities of the country's ambassadors and its diplomatic efforts. **Diplomacy** is the art of negotiating with foreign governments.

The Constitution specifies that the president will set the government's agenda, or outline of things to do, during an annual State of the Union address. This duty makes the president the nation's chief agenda setter. Often, the State of the Union address includes a number of specific programs for Congress to consider enacting into law.

As chief agenda setter, the president also helps Congress prepare the annual federal budget. You will read more about the budget process in Chapter 7.

**Unofficial Roles** In addition to the official duties, a president also fills other key roles in the federal government. These unofficial roles include:

- chief of state
- party leader
- chief citizen

As **chief of state**, also known as the head of state, the president takes on the role of the symbolic figurehead of the United States. When a president represents the country at the funeral of a foreign leader or at a major international sporting event, for example, it is in the role of chief of state. The role of chief of state often overlaps with other roles. For example, the president may host a foreign leader at a formal state dinner.

In this particular instance, the president is acting as both chief of state and foreign policy leader.

The president is also recognized as the official party leader of his or her political party. The president takes the lead in shaping and then promoting the party platform—the important issues for which the party stands. At election time, the president may also help raise money and build support for party members around the country.

The president and vice president are the only two nationwide elective positions in the government. As such, they are said to be chief citizens, or the primary representatives of the nation. They should be seen as models of good citizenship and are often held to a high standard of personal behavior by the American public.

**READING CHECK** **Comparing** How are the president's roles as chief of state and foreign policy leader similar?

## ACADEMIC VOCABULARY

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**ensure** make certain

### Formal Characteristics of the Presidency

In addition to describing the roles of the president, the Constitution lists the qualifications, term of office, election, succession, and benefits for the position. These topics are covered in only a few short paragraphs.

**Written Qualifications** As outlined in the Constitution, there are three formal qualifications for the presidency. Presidents must:

- be at least 35 years old
- have lived in the country for 14 years
- be a natural-born U.S. citizen

A natural-born citizen is a person who has been born a citizen of a country. Natural-born U.S. citizens also include persons born of U.S. citizens overseas or people who are born on U.S. soil, territories, or military bases overseas. No naturalized citizen—a person made a citizen by law, after his or her birth—can become president.

Why did the Framers restrict the presidency to natural-born citizens? They saw it as a way to safeguard the gains of the American Revolution. They feared that, without such a restriction, a rich duke or king could come to the United States and assume the presidency. That person might use the presidency to overthrow representative government. “The safety of a republic,” observed Alexander Hamilton, “depends essentially ... on that love of country, which will almost invariably be found to be closely connected with birth.”

Some Americans today feel that the requirement unnecessarily blocks qualified people from the presidency and call for an amendment to the Constitution to eliminate it. Some of the people interested in re-evaluating this requirement cite the example of California governor Arnold Schwarzenegger, who is not allowed to run for president because he was born in Austria.

**Term of Office** Today a president can serve two four-year terms. At the Constitutional Convention, the Framers considered several different term lengths for the president, including a single six- or seven-year term. They also debated whether to allow a president to seek multiple terms. They wanted to ensure that a president had enough time in office to govern effectively without granting the officeholder too much power. In the end, they compromised on a four-year term with the chance for re-election.

George Washington, the first president, served two terms and declined to seek another because he felt himself beginning to weaken physically and desired some leisure time free from political stresses. Washington’s decision established an unofficial two-term limit that guided future presidents for nearly a century and a half.

In 1940, however, Franklin Roosevelt broke this tradition and ran for a third term. At the time, World War II was raging in Europe, and Roosevelt believed the nation needed experienced leadership to help it get through this tumultuous time. While some criticized his decision, the voters returned him to office. Four years later, with American troops fighting in the war, Roosevelt sought and won a fourth term.

Roosevelt died in office in 1945. Two years later, Congress proposed a constitutional amendment to limit a president to two full terms and no more than 10 years in office. Proponents felt the amendment was necessary in order to prevent one person or party from gaining a dangerous hold on government. Opponents argued that it weakened a second-term president's authority, since Congress and foreign leaders knew that the president would soon be leaving office. Despite the opposition, the states ratified the Twenty-second Amendment in 1951.

**Election to Office** The formal process for electing the president of the United States is outlined in the Constitution. As discussed in Chapter 3, voters do not directly elect the president and vice president. Instead, voters are actually choosing electors, or people pledged to support the candidates that the voters choose. Taken together, these men and women are known as the electoral college.

The electoral college was a product of a Constitutional Convention compromise. Some of the Framers wanted direct popular election of the president while others worried that the public would be unable to make a wise choice and wanted Congress to select the president. The resulting compromise was the electoral college. The electoral college would help to maintain the balance between the small and large states. It would also ensure that a president would be elected by a cross-section of the country's voters.

Under the Constitution, every state is granted a number of electors equal to the number of its members in the House and the Senate. These electors represent the voters of the state. Additionally, Washington, D.C., has three electors. Today there are 435 representatives and 100 senators, which adds up to 535. Add in the three electors from Washington, D.C., for a total of 538 electors.

Each state has a different number of representatives, so those states with more representatives, such as California, New York, and Texas, have more electoral votes. This fact makes a win in these states a big advantage for a presidential candidate.

The Constitution gives states the power to decide how to pick their electors. Historically, some states chose their electors by popular vote; others through their state legislatures. Today all states use the popular vote. Electors can be nominated through a primary election or at the party's convention. Electors can also be named by campaign committees who work on behalf of a certain presidential candidate.

## JUNE/JULY: Electors are Selected

Electors are nominated by state political parties the summer before the election.

States nominate electors through different means:

- Primary elections
- Party conventions
- Named by campaign committees

Names from each political party are submitted to the secretaries of state at least one month prior to the election.

## NOVEMBER: Election Day

Voters cast ballots for presidential and vice presidential candidates. Each vote is awarded to a slate of voters who represent the candidates.



In all but two states, the slate of electors representing the candidate who wins the popular vote become members of the electoral college. \*

\* Maine and Nebraska elect two electors by statewide ballot, and the remainder are chosen by district.



## DECEMBER: Electoral Votes Counted

At separate meetings in each state 41 days following the election, electors cast one ballot for president and one for vice president. Six days later, the current vice president officially counts the electoral votes during a joint session of Congress. The candidate who receives the majority of electoral college votes—270—wins the election.



**Skills  
FOCUS**

### INTERPRETING CHARTS

What political issues are raised by the use of the electoral college? Explain.

**H**  
**HISTORY.**

**VIDEO**

The Electoral College

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Today electors have little or no discretion in deciding for whom to vote. Each political party chooses a slate of electors pledged to represent its candidate. In most states, if that candidate wins the popular vote, then the party's electors cast their votes for that candidate. This "winner-take-all" rule is required by 48 states. However, two states, Maine and Nebraska, pick some of their electors by congressional district. In these states there could be a split in electoral votes since their electors are pledged to choose the popular candidate in their district only.

As discussed earlier in Chapter 3, there are criticisms of the electoral college system. The original purpose of the electoral college, that of having more enlightened people select the president, no longer exists. What remains is a system that gives small states unequal representation but requires candidates to campaign broadly across the country in order to win electoral votes.

**Succession** According to the Constitution, the vice president is the first in the line of succession to the presidency. **Succession** is the process of succeeding, or coming after, someone. The Constitution's wording, however, was unclear as to whether a vice president becomes president, or just acts as president, if there is a presidential vacancy.

This question was first tested in 1841, when William Henry Harrison died in office. Vice President John Tyler assumed not just Harrison's duties but also the title of president. The nation followed this custom for more than a century. In 1967 the Twenty-fifth Amendment formally incorporated it into the Constitution.

The Twenty-fifth Amendment not only set guidelines for succession but it also created the procedures for handling presidential disability, such as temporary illness. In such cases the vice president assumes the role of acting president until the president is no longer disabled.

The Constitution gives Congress the power to decide the order of succession. In 1947 Congress passed the Presidential Succession Act. It establishes the Speaker of the House as the person next in the line of succession after the vice president. President Truman, who signed the act,

pushed for the Speaker of the House to be the next in line because the Speaker is elected by his or her district and is the chosen leader of the House. The Speaker, Truman argued, was a true representative of the people.

**QUICK  
FACTS**

## **Presidential Succession**

Following the president pro tempore, the executive departments heads are next in the line of succession. The order is determined by the order in which Congress established each department.

1. Vice President
2. Speaker of the House
3. President Pro Tempore of the Senate
4. Secretary of State
5. Secretary of the Treasury
6. Secretary of Defense
7. Attorney General
8. Secretary of the Interior
9. Secretary of Agriculture
10. Secretary of Commerce
11. Secretary of Labor
12. Secretary of Health and Human Services
13. Secretary of Housing and Urban Development
14. Secretary of Transportation
15. Secretary of Energy
16. Secretary of Education
17. Secretary of Veterans Affairs
18. Secretary of Homeland Security



**Vice President Lyndon Johnson takes the oath of office following the assassination of President John F. Kennedy. On the right is Jacqueline Kennedy, President Kennedy's widow.**

**Salary and Benefits** Compared to the average American's income, the president and vice president make quite a lot of money. The president makes \$400,000 per year, and the vice president makes \$208,100 per year. The Constitution states that a president's salary is not to be altered during his or her term in office. This clause stops Congress from threatening to cut a president's salary as a bargaining tool or from rewarding a popular president.

In addition to a salary, presidents receive other benefits. The president has a large staff that includes chefs, butlers, and doctors who are on call whenever the president may need them. Presidents live with

their family in a mansion in Washington, D.C., the White House, for the duration of their term and receive health and retirement benefits along with special tax deductions. The president also has access to numerous cars and *Air Force One*, the president's private plane.

**READING CHECK** **Summarizing** How did the current plan for presidential succession come to be?

## **Unwritten Qualifications for the Presidency**

The constitutional requirements for the presidency are few. However, the informal qualifications—the experience and personal qualities that the public looks for in a president—are many.

**Presidential Backgrounds** The back-grounds of the people who have become president share many common features. Most presidents have been well-educated white men from middle- to upper-class families. In 1984, though, Geraldine Ferraro became the first woman to run for vice president on a major party ticket. Several African American men and women have sought the presidency, none winning a major party's nomination until 2008. That year, Barack Obama made history when he was elected the first African American president of the United States, after winning the Democratic Party's nomination.

# PRESIDENT AND VICE PRESIDENT: TERMS, SALARY, AND BENEFITS

QUICK  
FACTS

Title	Term	Salary
President	Four years	\$400,000
Vice President	Four years	\$208,100

Benefits		
<ul style="list-style-type: none"><li>• Travel allowances</li><li>• Staff including Secret Service officers for protection</li></ul>	<ul style="list-style-type: none"><li>• Tax deduction for two residencies</li></ul>	<ul style="list-style-type: none"><li>• Health and retirement benefits</li></ul>

Source: Congressional Research Service, 2007

All presidents to this point have had a religious background in some Christian denomination. There has only been one Roman Catholic president thus far—John F. Kennedy, who was elected in 1960. Al Smith, who lost to Herbert Hoover in 1928, was the first Roman Catholic to be a major presidential candidate. In the 2000 election, Joe Lieberman made history as the first Jewish person to run for vice president.

Three-fourths of the presidents have had some background in the military. George Washington established a pattern followed by such men as Andrew Jackson, Zachary Taylor, and Ulysses S. Grant.

In recent years, Americans have tended to favor former governors for the White House. For example, four recent presidents—Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush—have served as governors.

**Personal Qualities** A president does not get the position by filling out an application. Instead, a president must win the support and eventually the votes of the American public. While the backgrounds of potential presidents are important, presidents must also possess appealing personal qualities. Successful presidents are likeable and possess evident qualities

of leadership. They are also able to communicate their ideas effectively. They should be persuasive at a minimum and, if possible, inspiring.



In the age of television and the Internet, when public access to the president is at an all-time high, a president's appearance is also significant. A president needs to appear dignified, confident, and poised, and should demonstrate a certain degree of charisma.

Presidents must continue to demonstrate these qualities in the faces of constant challenges. As President Harry Truman soon realized, there is no relaxing as president.

**PRIMARY SOURCE**

**“ Within the first few months I discovered that being a President is like riding a tiger. A man has to keep on riding or be swallowed.... [A] President either is constantly on top of events or, if he hesitates, events will soon be on top of him. I never felt that I could let up for a single moment.”**

—Harry S Truman, *Memoirs, Volume Two: Years of Trial and Hope*, 1956

Day in and day out, presidents must work well with friends and foes alike. They must effectively manage the vast workings of a huge executive department. They must be able to present a clear vision of what they plan to do for the nation and how they plan to do it. When a crisis strikes, they must exhibit calm and control, and they must do all of this under constant scrutiny and enormous pressure.

## **READING CHECK** Identifying Supporting

**Details** What are some of the personal qualities that presidents have possessed?

SECTION

1

ASSESSMENT

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ONLINE QUIZ

## **Reviewing Ideas and Terms**

- Define** What is diplomacy?
  - Contrast** What are the differences between the president's jobs as **commander in chief** and **chief of state**?
  - Rank** Which of the presidential roles do you think is the most important? Explain your answer.
- Describe** What are some of the benefits that the president and vice president receive?

**b. Explain** Why do you think that the presidential requirement of natural-born citizenship is still in effect today?

**c. Evaluate** What is your opinion about the arguments for and against the electoral college?

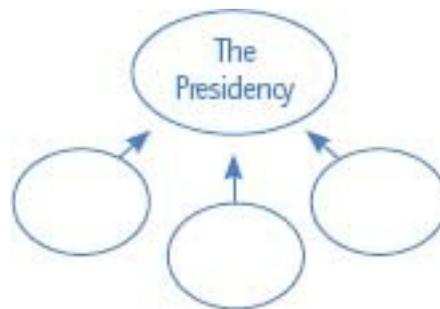
**3. a. Describe** What are some informal job requirements for the presidency?

**b. Make Generalizations** In what ways have presidents past and present been similar?

**c. Design** What are some possible features and qualities that you think an ideal president should have?

## Critical Thinking

**4. Make Generalizations** Copy the graphic organizer below and use information from the section to identify characteristics of the presidency. What are the main features of the American presidency?



## FOCUS ON WRITING



**5. Persuasive** Write a speech in which you, as a presidential candidate, try to persuade your audience that you have the qualities necessary to be a good president. Think about the qualities of past presidents that made them effective leaders.



# The Powers of the Presidency

**BEFORE YOU READ**

## Main Idea

The powers of the presidency, outlined in Article II of the Constitution, are vast and have grown throughout the history of the United States. They are, however, checked by the other branches of government.

## Reading Focus

1. What are the executive powers of the president?
2. What are the diplomatic and military powers of the president?
3. How does the president exercise legislative and judicial powers?
4. What are some of the informal powers of the president?
5. How are the president's powers

## Key Terms

executive orders  
executive privilege  
diplomatic recognition  
reprieve  
pardon  
amnesty  
commute

checked by  
the other  
branches?

6. In what ways  
has  
presidential  
power  
changed over  
the years?



Use the graphic organizer online to take notes on the powers of the presidency.



**The Burden of Power** With great power comes great responsibility and the pressure that goes with it. The president of the United States is one of the most powerful people in the world, and the decisions that he or she makes affect not only American citizens but also people throughout the world.

In 1962 President John F. Kennedy experienced the full weight of presidential responsibility during the Cuban missile crisis. Government intelligence revealed that the Soviet Union was stockpiling missiles in Cuba, just 90 miles off the coast of Florida. For Kennedy, the stakes could not have been higher: One wrong move might plunge the world into nuclear war.

With the world nervously watching and waiting, Kennedy enlisted the counsel of his top advisers. Some suggested an air strike on Cuba, others a naval blockade. In the end, Kennedy chose the blockade and a course of vigorous diplomacy with Soviet leaders. The crisis ended with neither country attacking the other and with Soviet missiles being withdrawn from Cuba.

Presidents today continue to confront challenges. Their office grants

them an incredible array of powers. They must use these powers with care and in the best interest of the nation. ■

# Great Power and Great Responsibility



President John F. Kennedy  
in the Oval Office, 1961

## Executive Powers

When presidents take the oath of office, they pledge to “preserve, protect and defend the Constitution of the United States.” This pledge includes exercising the powers of their office in a constitutional manner. As chief executive, the president has three main powers: appointment and removal of key executive branch officials, issuing executive orders, and maintaining executive privilege.



**Article II, Section 1, gives the president “executive power” but does not define what that power is. What other provisions of Article II give an indication of what the Framers meant by “executive power”?**

**Appointment and Removal Powers** The Constitution gives the president power to appoint people to fill the top posts in the executive branch. These officials help presidents carry out their duties as chief executive. Presidents today directly appoint some 3,000 people.

Oftentimes, a president will use the power to nominate and appoint as a political tool, rewarding political supporters and winning new ones. This power also allows presidents to place in key positions people who support their policies.

Of the many jobs a president fills, about a third are subject to the “advice and consent” of the Senate. Such posts include Supreme Court justices and federal judges, the ambassadors who represent the United States in foreign countries, members of the cabinet, and top military advisers.

Most presidential appointees serve “at the pleasure of the president,” which means a president may remove these people at any time for any reason. However, there are some exceptions. For example, a president is not allowed to fire federal judges, who serve for life. Only Congress can impeach them.

## **ACADEMIC VOCABULARY**

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**issue** make or announce

**Executive Orders** As chief executive, presidents also have the power to issue **executive orders**—a formal rule or regulation instructing executive branch officials on how to carry out their jobs. Executive orders have the force of law. While the Constitution does not specifically permit presidents to issue executive orders, presidents past and present have used this tool as a way of taking “care that the laws be faithfully executed” (Article II, Section 3). Executive orders give the president great power to interpret laws passed by Congress.

Executive orders are used for a variety of purposes. A president may use an executive order to clarify a law’s application. In October 2006 President George W. Bush issued an executive order announcing

penalties against the nation of Sudan under the terms of existing laws.

An executive order may also establish rules and regulations for the operation of an executive agency. In 2000, for example, President Clinton ordered that all executive agencies make appropriate accommodations to employees with disabilities.

As discussed in Chapter 5, presidents also issue signing statements, which have grown increasingly controversial. Signing statements differ from executive orders in that they are issued at the time of the law's signing and often specify some provision in the law that the president plans to ignore or modify.

**Executive Privilege** The final power that presidents claim as chief executive is the right of **executive privilege**. This power allows a president to refuse to release information to Congress or a court. This power, though, is often disputed by the other branches.

Presidents claim the right of executive privilege in order to shield information in the interest of national security. They argue that being able to keep sensitive information secret is vital to the safety of the nation.

Presidents have also argued that they must be able to hold private discussions with advisers in order to make good decisions. They feel that only by guaranteeing confidentiality can a president receive honest feedback from his or her advisers.

The Constitution does not mention executive privilege. Nevertheless, courts have generally supported the concept—within limits. During the Watergate scandal of the early 1970s, for example, President Richard Nixon was accused of covering up crimes committed by members of his administration. The courts and Congress sought audiotapes about specific White House conversations, which Nixon refused to turn over, claiming executive privilege. The case eventually went to the Supreme Court.

**READING CHECK** Summarizing What are the extent of and the limits of a president's right to hire and fire?



## *United States v. Nixon (1974)*

### **WHY IT MATTERS**

*The Supreme Court's decision in United States v. Nixon was a major ruling on the concept of executive privilege and the limits to presidential power.*

## **Background**

During the 1972 presidential election campaign, administration officials of President Richard Nixon helped plan and cover up an illegal break-in at the Democratic Party's campaign headquarters at the Watergate Hotel in Washington, D.C. After the break-in was discovered, President Nixon had to appoint a special prosecutor to conduct a criminal investigation. Congress began hearings on the matter. In those hearings, a former presidential aide revealed that Nixon had tape-recorded conversations in the Oval Office. Investigators realized that these tapes revealed whether Nixon knew of the Watergate burglary, so the special prosecutor subpoenaed Nixon to force him to turn over the tape recordings. Nixon

refused. The special prosecutor, representing the U.S. government, and Nixon's attorneys took the case to the Supreme Court.

## Arguments for the United States

The special prosecutor needed access to certain audiotapes in order to establish the credibility of witnesses and to determine whether or not any criminal activity had taken place. Under claims of executive privilege, past presidents had generally been allowed to keep official presidential conversations and meetings private. In this case, however, the special prosecutor argued that the taped discussions concerned only political matters related to Nixon's re-election committee, not to presidential business. These political conversations, he said, were not protected by executive privilege. Furthermore, Nixon had already released edited transcripts of portions of some tapes, which weakened any claim to confidentiality.

## Arguments for Nixon

Nixon and his attorneys argued that the Supreme Court had no jurisdiction over the matter, claiming that the constitutional separation of powers prevented the courts from stepping into what was a dispute among departments within the executive branch. They compared the matter to a disagreement among congressional committees, which would be resolved by Congress without any involvement by the Supreme Court. Furthermore, they argued that under the right of executive privilege, Nixon was completely within his power to refuse to give the tapes to the special prosecutor and Congress.

 The Supreme Court's decision in favor of the United States was a constitutional landmark that established limits to executive privilege and presidential immunity that are still recognized today. While the president does have some privileges that are not granted to other citizens, these rights have conditions. The president must recognize the legitimate claims of the other two branches of government and understand that these branches may have valid reasons to seek

information from the executive branch. In criminal proceedings, for example, the courts' need for information may outweigh the president's right to confidentiality.

### CRITICAL THINKING

**What Do You Think?** All presidents exert executive privilege at some point during their presidency. Under what circumstances, if any, is such a claim legitimate? Can you think of a case in which they are not legitimate? Explain your answer.

 [hmhsocialstudies.com](http://hmhsocialstudies.com) RESEARCH WEB LINKS

## Diplomatic and Military Powers

The president is foreign policy leader, chief of state, and the commander in chief of the United States. These roles give the president wide, but not unlimited, diplomatic and military powers.

**Diplomatic Powers** As foreign policy leader, the president represents the United States in its interactions with foreign governments. The Constitution gives the president the power to negotiate treaties, or formal agreements between two or more countries that are used to end conflicts, form alliances, and establish trade relationships.

The president's treaty-making power is limited by Congress. Two-thirds of the Senate must vote to approve any treaty, making any amendments it sees fit to in the process. On some occasions, Senate opposition has even blocked treaties. For example, the Treaty of Versailles, the peace settlement following World War I, was never approved by the Senate. In addition, even after a treaty is ratified, Congress can still pass laws that alter or override parts of it.

## PROFILES IN GOVERNMENT

# George WASHINGTON

1732-1799



As the nation's first president, George Washington set precedents that defined the office for generations. In serving only two terms, Washington established the unofficial two-term limit. Washington also established the first cabinet and instituted financial concepts such as the National Bank and the federal debt.

Washington declined to serve a third term as president. He then set the precedent for giving a farewell address upon taking leave from office. In his eloquent address, published in September 1796, he counseled Americans to shun political parties and factionalism, and he warned of the dangers of foreign alliances, a principle that guided America for nearly 100 years. Washington's dignity, reserve, and measured use of presidential power exemplified what the Framers believed the chief executive should be.

**Draw Conclusions** Why do you think Washington believed foreign alliances and political parties were dangerous to Americans?

In addition to their treaty-making powers, presidents also have the power to make executive agreements. Executive agreements are agreements between a president and the head of a foreign government. Unlike a treaty, an executive agreement does not require the advice and consent of the Senate. However, executive agreements are similar to treaties in that they have the effect of law.

In general, presidents employ executive agreements for simple or routine interactions with foreign governments. Yet, executive agreements have sometimes been used for more far-reaching ends. The North

American Free Trade Agreement, or NAFTA, is an example of an executive agreement. NAFTA is now a congressional-executive agreement (see Chapter 14).

The president also has the power to formally recognize the legitimacy of a foreign government. This power is known as **diplomatic recognition**, and it can have a major impact on international relations. President Truman's recognition of Israel's government in 1948, for example, was vitally important to that nation's survival because the United States, as a world power, held great influence over other nations in the region. If the United States recognized Israel, other nations would, and did, follow.

**Military Powers** As commander in chief, the president has the responsibility to ensure the defense and security of the nation and its interests around the world. The Constitution gives Congress the power to declare war, but from the beginning, presidents have claimed the power to take military action without a formal declaration of war from Congress.

Presidents have called out the armed forces more than 200 times in American history. In fact, on only five occasions in U.S. history has Congress actually declared war—the War of 1812, the Mexican-American War, the Spanish-American War, World War I, and World War II. Both the Korean War and the Vietnam War were fought without a formal declaration of war.

Following the Vietnam War, Congress decided to restrain the president's power to commit troops. Over President Richard Nixon's veto, Congress passed the War Powers Resolution in 1973. This law calls on the president to consult with Congress before and during any possible armed conflict involving U.S. military forces.

## PRIMARY SOURCES

# Declaring War

The Constitution grants Congress the power to declare war. However, citing their constitutional role as commander in chief, presidents throughout history have taken it upon themselves to call troops into action without getting a formal declaration of war from Congress. Despite the efforts of Congress to clarify war-making responsibility with the passage of the War Powers Resolution in 1973, there remains tension between Congress and the president when it comes to the use of U.S. troops. According to this political cartoon, the tension is grounded in the Constitution itself.

21<sup>ST</sup>  
CENTURY



Courtesy William Costello

Skills  
FOCUS

## INTERPRETING PRIMARY SOURCES

**Making Inferences** What does this cartoon say about the war-making powers of Congress?

See **Skills Handbook**, p. H9.

Under the terms of the resolution, if a president must commit forces without congressional authorization, he or she must report to Congress within 48 hours to explain the reasons for the action. Unless Congress then declares war or approves continued action, U.S. forces must be withdrawn within 60–90 days. The law allows Congress to force a president to end the use of armed forces at any time if Congress passes a concurrent resolution to that effect.

Since the law's enactment, presidents have contested its constitutionality. They have also frequently ignored its requirement for congressional consultation prior to committing troops. Still, presidents have submitted 118 reports to Congress about military actions. For its part, Congress has not forced the issue by demanding troop withdrawals.

The war in Iraq in 2002 dramatized the constitutional standoff. In authorizing the use of force, Congress explicitly required the president to comply with the stipulations of the War Powers Resolution. However, in his signing statement, President George W. Bush was careful to assert that his "signing ... does not constitute any change in the long-standing

positions of the executive branch on either the President’s constitutional authority to use the Armed Forces ... or on the constitutionality of the War Powers Resolution.”

**READING CHECK** **Sequencing** Under the War Powers Resolution, what must a president do first?

## **Legislative and Judicial Powers**

The Constitution calls for a separation of powers among the branches. However, in order to make the system of checks and balances effective, the Framers gave the president some powers in both the legislative and judicial branches of the government.

**Legislative Powers** The president has great power to influence the work of Congress in the role of chief agenda setter. Through the annual State of the Union address and the federal budget proposal, the president proposes legislation to Congress. Furthermore, the president is permitted to suggest legislation at any time. It is common, in fact, for a president to work closely with lawmakers on a legislative agenda.

The president’s main legislative power is the veto. While the Framers gave supreme lawmaking power to the legislative branch, they also wanted the president to have a voice in the process. That “voice” is the veto. After Congress passes a bill, a president can either sign it or veto it, meaning the president does not sign the bill into law.

Congress has the power to override the veto if two-thirds of the members of each house vote to do so. Overriding a veto is difficult since it can be hard to obtain enough votes. Because it is so hard to override a veto, veto power is a significant check on Congress. The threat of a veto can also hold power. If lawmakers believe that a president is going to veto a bill, they will change parts of the bill in order to gain presidential approval.

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# The President's Legislative and Judicial Powers



President George W. Bush (above) performs a presidential legislative power by signing the "No Child Left Behind" bill into law in 2002. Following the resignation of Richard Nixon, President Gerald Ford (right) pardoned Nixon for crimes during the Watergate scandal. President Ford reads the pardoning statement to the American public in a live television broadcast. *Why is pardoning an important presidential power?*



As discussed in Chapter 5, for a brief time, Congress allowed the president to use the line-item veto, which gave the president the power to cancel certain provisions in a bill without vetoing the entire bill. This procedure was made legal in 1996 but was struck down by the Supreme Court in 1998.

**Judicial Powers** The Constitution gives presidents two means of exercising judicial power. First, presidents may nominate the people who become federal judges and justices. Second, they may alter the sentences of people convicted of crimes through their powers of clemency, or mercy.

The Constitution grants the president the power to nominate federal judges and justices. With this power, a president can place men and women on the Supreme Court and other high courts who have similar political beliefs. The nomination power is checked by the Senate, which must approve and confirm all presidential nominees.

Nominating judges and justices is a great responsibility, especially in the case of the Supreme Court. Supreme Court justices serve a lifetime term. In most cases a president's appointment will remain on the bench for years after the president's term. The justice may continue to rule on cases in a way that supports a president's agenda, allowing a president to have an influence on government long after his or her term has ended.

In addition to the appointment of justices and judges, the Constitution says that the president "shall have the power to grant reprieves and pardons for offences against the United States." A **reprieve** postpones the carrying out of a sentence, or the length of time a person is put in jail. It is sometimes granted for humanitarian reasons or to give a person the chance to present new evidence. A **pardon** releases a convicted criminal from having to fulfill a sentence.

The president can also offer **amnesty**, which grants a group of offenders a general pardon for offenses committed. Though the exact words do not actually appear in the Constitution, included in the power to pardon is the power to **commute**, or reduce, a person's sentence.

A president can issue reprieves, pardons, or commutations for federal crimes. The president has no authority over state cases, and clemency is not allowed in cases of impeachment. Once issued, however, a president's grant of clemency cannot be overturned by Congress or the courts.

Presidents may issue clemency in order to free a person wrongly convicted or for prior or current service to the nation. For example, following the assassination of President Abraham Lincoln, one of the alleged assassination conspirators, Dr. Samuel Mudd, was convicted and sent to prison. Mudd, who claimed that he had no ties to the assassination, served four years of a life sentence. In 1869 President Andrew Johnson pardoned Mudd after he helped stop a yellow fever epidemic that claimed the life of the prison doctor and many other prisoners.

Presidential pardons can be very controversial. President Gerald Ford was widely criticized for pardoning former president Richard Nixon after he resigned from office in 1974. President Bill Clinton also aroused anger for pardoning 140 people on his final day in office.

#### RESPONSIBILITIES OF LEADERSHIP

**Presidential pardons are clear examples of leaders doing what they think is necessary, rather than what is known to be popular. Citizenship calls for the same responsibility.**

**READING CHECK** **Contrasting** What is the difference between a reprieve and a pardon?

### **Informal Powers**

The informal powers of the president are those powers that are not directly stated in the Constitution but, nonetheless, play a major part in the success of a presidency. The two main sources of a president's informal powers are access to the media and the president's position as party leader.

Today a president is followed everywhere by a large group of reporters. Television and radio coverage is available to the president at any time. Presidents can easily present their case to the public at a media press conference. They also employ a professional staff of media experts

dedicated to helping them shape their message and present it most effectively to the public.

A president who is skilled in using the media has greater success in persuading the public and building support. You have read about President Ronald Reagan's skills as a communicator. President John F. Kennedy was also able to charm reporters and voters with his easy manner at press conferences. A president who lacks such skills can find the job of leading the nation very difficult.

Another source of informal power comes from the president's position as party leader. Fellow party members in Congress are expected to follow the president's agenda and work for its passage. The president's staff works to ensure that there is a unified message among all members of the party. In return, the president offers support to fellow party members at election time.

A president's ability to take advantage of these informal sources of power varies. Presidents strive for high approval ratings, which are determined by national polls that rate how Americans feel about the president. A president who has a high approval rating and the support of the public is better able to command respect and lead effectively than a president with low approval ratings.

**READING CHECK** **Identifying the Main Idea** What is meant by the term *informal powers*?

## Checks on the President's Powers

The Constitution places checks on the president and the executive branch. Though the nature of the presidency has changed over the years, these checks on the president remain powerful.

**Formal Checks** Presidential actions are subject to judicial review. Sometimes, a president's actions violate the Constitution. For example, in *Clinton v. City of New York* (1998) the Supreme Court ruled that the use of the line-item veto by President Clinton violated the Presentment

Clause of the Constitution, since it gave the president undue power to amend or repeal parts of laws that had already been passed by Congress. This decision took away the right of the president to use the line-item veto.

Presidential power is also checked by Congress. The Senate, for example, can block a president's choice for certain top positions. Congress can also choose to override a presidential veto if two-thirds of the members of each house vote to do so.

**Informal Checks** The media is the primary source of informal checks on presidential power. The media can keep the American public informed and alert to potential abuses of power. The Framers thought this task important enough to grant it special protection in the First Amendment. The importance of media scrutiny of government was demonstrated during the Nixon administration. The *New York Times* published the Pentagon Papers, revealing how the government had misled the nation about the Vietnam War. Without the media, the public would not have known of this information.

Public approval is another check on presidential power. Presidents today draw much power from their public image. Successful presidents have strong public support and can sometimes bully Congress to follow them. At the same time, presidents who lose public support have a harder time getting Congress to follow them.

**READING CHECK** **Identifying Supporting Details** What are some of the informal checks on a president?

## **Changes in Presidential Power**

The power and influence of the presidency has grown significantly over the years. Two factors have driven this change: the growth of government itself in response to new challenges and changing situations, and the growth of the nation as a world power.

**The First 100 Years** The Framers created a government based on a

separation of powers, and they gave the majority of government power to Congress. They believed, in the words of James Madison in *Federalist Paper* No. 51, that “in a republican government, the legislative authority necessarily predominates.”

Early presidents largely shared this belief and acted accordingly, deferring to Congress on most matters of domestic policy. Neither Presidents John Adams nor Thomas Jefferson vetoed a single piece of legislation during their collective 12 years in office. Jefferson believed that vetoes should be reserved for cases where a president doubts the constitutionality of a measure.

A few early presidents, however, did challenge congressional predominance in the 1800s. Jefferson stretched the boundaries of presidential power when he authorized the purchase of Louisiana from France in 1803, even though the Constitution gave him no clear authority to do so. Andrew Jackson, who was president from 1829 to 1837, viewed the president as the one true representative of the people. To Jackson, this gave a president power that even Congress could not claim. He thus reserved for himself the right to veto acts of Congress simply because he disagreed with them. Most presidents since Jackson have taken a similar position.

## Growth of Presidential Power

Throughout history, presidents have increased presidential power as they deemed necessary. *In what ways has presidential power grown from 1789 to the present?*

1789

George Washington sets the precedent for the two-term limit and creates a cabinet.

1803

Thomas Jefferson authorizes the purchase of Louisiana from France.

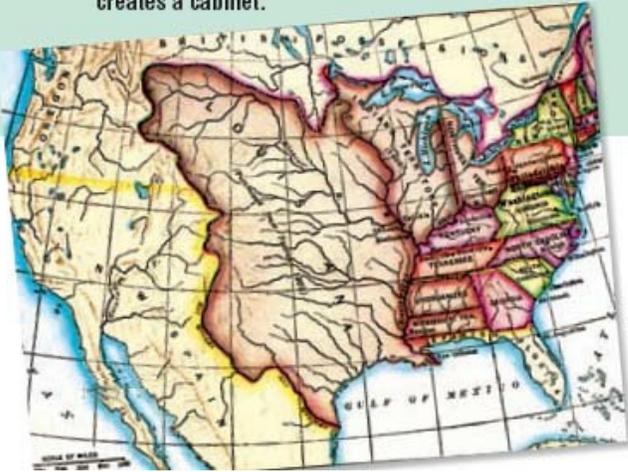
1829–1837

Andrew Jackson expands the powers of the presidency; he vetoes more bills than all six previous presidents combined.

Andrew Jackson portrayed as King Andrew the First in a political cartoon

1861–1865

Abraham Lincoln uses the power of the presidency to preserve the Union during the Civil War.



Boundaries of the United States following the purchase of Louisiana



Congress did not take Jackson's assertiveness kindly. When he withdrew government funds from the congressionally chartered Second Bank of the United States, Congress censured, or reprimanded, him.

**Presidential Power Expands** The Civil War marked a turning point in presidential power. Not only did government itself expand to meet the emergency, but President Abraham Lincoln also took on great powers. Lincoln believed that the threat to the nation endangered the Constitution, which he was sworn as president to preserve. Therefore, any steps he took that were necessary to defend the nation were legal.

Interestingly, Lincoln's relations with Congress were friendly. He deferred to it on most domestic issues and rarely used his veto. Once the war and Reconstruction had ended, Congress resumed its traditional leading role in national affairs. But Lincoln's actions were to prove a model for later presidents intent on vigorous action.

President Theodore Roosevelt was one such person. He saw the presidency as a "bully pulpit" that shaped public opinion and, if necessary, pressured Congress to pass legislation he supported. Roosevelt believed that the rise of big business presented the nation with new challenges and that government needed new tools to meet those

challenges. He convinced Congress to give the executive branch stronger powers to regulate commerce, to protect park lands, and to ensure the safety of the food supply.

The Great Depression offered President Franklin Roosevelt an opportunity to expand presidential powers even further. To meet the economic crisis, he convinced Congress to create a host of new government programs, including Social Security. These New Deal programs represented a shift in the way Americans thought about government and its responsibility. People now looked to the government, and to the executive branch, to help solve problems in society.

By the 1960s and 1970s, some observers began to worry about the growth of presidential power. For conservatives, the government had simply become too big. Liberals felt the presidency had taken on qualities resembling those of a monarchy. Citing concerns for national security, they talked about an *imperial presidency* in which executive power went virtually unchecked.



One of Franklin Roosevelt's New Deal programs, the Works Progress Administration (WPA) provided public-works jobs to Americans in need of relief during the Great Depression.

1901–1909

Theodore Roosevelt uses presidential power to break up trusts, establish conservation lands, and gain control of the Panama Canal.



The Granger Collection, New York

1933–1938

Franklin Roosevelt expands the power of the executive branch with New Deal programs he establishes during the Great Depression.

Theodore Roosevelt uses his "Big Stick" over big businesses and trusts.

1981–1989

Ronald Reagan greatly increases defense spending in order to fight the Cold War.



As unofficial leader of the free world, Reagan calls for the dismantling of the Berlin Wall.

2001–2009

George W. Bush expands the national security powers of the presidency in an effort to protect the nation from terrorist threats.

These concerns were not unfounded. Government today is vastly more powerful than it was at the time of the founding of the nation, and

most of that power is vested in the executive branch. Moreover, following victories in World Wars I and II, the United States became the most powerful nation in the world. Again, much of that power is concentrated in the executive branch, with the president at its head. By virtue of the nation's economic and military strength, American presidents are today the most powerful leaders in the world.

**Presidential Power and the Media** One of the ways modern presidents project that power is through the media. This is nothing new. Though the technology has changed, presidents have long relied on the media to get their message out. Presidents in the early 1800s used posters, pamphlets, and friendly newspapers. Franklin Roosevelt used radio in his famous “fireside chats.” Modern presidents use television and the Internet. The goal is the same: to convince voters—and Congress—to support their plans.

As you read earlier, the media can scrutinize and criticize a president. Presidents go to great efforts to control how their message and image is presented. They prepare rigorously for press conferences and major speeches. They employ experts, often from the media itself, to help them craft their presentations. Choosing the right phrase or backdrop can mean the difference between voter acceptance or indifference. Even “town hall meetings” are carefully scripted to avoid anything embarrassing or unexpected.

#### RESPONSIBILITIES OF LEADERSHIP

**In using the media, presidents balance how much to promise the public with the risk of raising its expectations far beyond what he or she can actually do.**

Despite these efforts, the power available to modern presidents through the media can also work against them. Intense media scrutiny can quickly damage less popular presidents and, as a result, decrease their power as president.

**READING CHECK** **Summarizing** How have the people's expectations of presidents changed over time?

## Reviewing Ideas and Terms

1. **a. Define** What are **executive orders** and **executive privilege**?  
**b. Explain** Why do you think it is necessary for a president to be involved in the hiring of so many people?
2. **a. Define** What is an executive agreement?  
**b. Predict** What might happen if a president were unable to commit military forces without first getting the approval of Congress?
3. **a. Define** What is the meaning of the terms **reprieve**, **pardon**, and **commute**?  
**b. Draw Conclusions** In what circumstances do you think a president might rightfully use a veto?
4. **a. Describe** What is the role of the media as a source of a president's informal powers?  
**b. Predict** How do you think popularity and public approval ratings affect a president's ability to use the informal powers of the office?
5. **a. Identify** What are some formal checks on the president's power?  
**b. Analyze** Why do you think a popular president is able to push Congress into following an agenda?
6. **a. Define** What is meant by the term *imperial presidency*?

**b. Elaborate** How do you think the growing military power of the United States has given it more power in general? Explain your answer.

## Critical Thinking

**7. Rank** Copy the chart below and identify examples of the powers given. Which power do you feel is the most important? Which is the least important? Explain your answer.

Executive	
Diplomatic	
Military	
Legislative	
Judicial	
Informal	

## FOCUS ON WRITING



**8. Expository** Review the ideas of the early presidents regarding the proper relationship among the president, the people, and Congress. Think about the ways in which these ideas have changed and how they have remained constant. Write a brief article that evaluates this relationship.

## DEBATING THE ISSUE

### The Presidential Power to Make War

*Are the chief executive's expanding war powers constitutionally sound?*

#### THE ISSUE

The president of the United States is arguably the most powerful person in the world. Over the years, presidential powers—especially those involving war and national security—have increased. As part of the War Powers Resolution, enacted to check increasing executive power after the Vietnam War, Congress required the president to seek its approval before

committing U.S. troops abroad for longer than 60 days. Presidents have disputed the constitutionality of the law. The legislative and executive branch have yet to resolve the issue once and for all.



**U.S. soldiers talk to a local Afghani farmer through an interpreter while on patrol in the Nuristan Province of Afghanistan.**

## VIEWPOINTS

**The power to make war is a vital and constitutional presidential power.** The Constitution names the president commander in chief of the armed forces in Article II, Section 2. As commander in chief, one of the president's primary duties is to protect the immediate security interests of

the country. To fulfill their oath to “preserve, protect, and defend the Constitution,” presidents have at times been forced to act in secrecy or without the full support of Congress. Citing reasons of national security, presidents sometimes decide that it is necessary to bypass certain channels or checks on their war-making powers. In fulfilling the responsibility as the commander in chief, a president must make quick and effective decisions for the good of the nation. Limiting this power would undermine the authority of the presidency.

**The scope of presidential war powers is too expansive and is overstepping its constitutional bounds.** The Framers did not intend for the chief executive to have as much power as is commonly accepted today. Critics of expanding executive power say that recent presidents have misinterpreted the implicit rights of the president outlined in the Constitution to commit troops to war. Committing a nation to war without the

approval of the people or their representatives is characteristic of a monarchy or dictatorship, not a democracy. Congress has been criticized in recent years for giving the president unusual unilateral, or one-sided, powers following the terrorist attacks of September 11, 2001. Since then, some in Congress have worked to check presidential war-making powers. So far, they have been unsuccessful.

## What Is Your Opinion?



1. Why do you think presidential power has expanded over time? Explain your answer.
2. Should the president be able to commit troops without congressional approval? Why or why not?



# The President's Administration

BEFORE YOU READ

## Main Idea

The president leads a large team of people who help carry out the duties of the office. This team includes a staff of advisers, the vice president, and members of the cabinet.

## Reading Focus

1. What is the Executive Office of the President, and what are its duties?
2. How has the role of the vice president changed over time?
3. What is the cabinet, and how does it work with the president?

## Key Terms

administration  
Executive Office of the President  
White House  
Office  
chief of staff  
National Security Council  
Council of Economic Advisers  
Office of Management and Budget  
executive departments



Use the graphic organizer online to take notes on the president's administration.

**The President's Staff** Early presidential staffs were small, consisting of little more than personal secretaries who



performed a variety of tasks, such as communicating with Congress or dealing with job seekers. As late as 1900, President William McKinley had a staff of fewer than 30 people, including a gardener and telephone operator. But in 1902, in order to accommodate this ever-expanding presidential staff, President Theodore Roosevelt had a new wing, the West Wing, added to the White House. In 1933 President Franklin Roosevelt remodeled the West Wing in order to accommodate even more presidential staff members.

The West Wing today is the nerve center of the executive branch. The president's office, known as the Oval Office, is situated in one corner of the West Wing and is attached to the Cabinet Room, which is where the cabinet holds meetings. The vice president, press secretary, White House counsel, national security adviser, congressional liaison, and the chief of staff all have offices and conduct their daily work within the West Wing. The West Wing also has a press briefing room where the president can meet with the press at any time or have the press secretary share the president's ideas.

In the West Wing, the president is surrounded by key staffers ready to assist with the daily work of the executive branch as well as handle unexpected emergencies. The West Wing is a symbol of how the scope of presidential power, and the presidency itself, has grown since the Framers first created the position of president of the United States. ■

# Inside THE West Wing

The West Wing undergoes construction in 1934. Barack Obama's cabinet (inset) meets in the Cabinet Room of the West Wing.



## Executive Office of the President

A president's **administration** is made up of all the people who work for the executive branch—from your local mail carrier on up to the president. Most of these people are career government employees. But the top ranks of an administration are filled by people appointed to their posts by the president. These people usually change when a new president is elected.

Many of the top administration officials belong to the **Executive Office of the President** (EOP). The EOP consists of a number of separate offices that help the president formulate policy. Among them are the White House Office—the center of much of the daily business in the White House—the National Security Council, the Council of Economic Advisers, and the Office of Management and Budget. You will read more about each of these offices below.

**The Formation of the EOP** The now-vast organization known as the EOP did not exist 100 years ago. Early presidents had small personal staffs. They also relied on a circle of informal, unpaid advisers. Until the turn of the last century, most presidents continued to look to the cabinet as their primary source of advice and assistance.

Starting with the presidency of Theodore Roosevelt, an era of activist government led to an expansion of the president's staff. During the Great Depression in the 1930s, President Franklin Roosevelt and Congress created many new government programs and agencies.

In 1939 Roosevelt asked Congress to authorize a new organizational structure to help manage these new agencies—the Executive Office of the President. Since then, new challenges—global leadership following World War II, the threat posed by nuclear weapons, the need to manage an ever-rising tide of information flooding into the White House—have spurred further growth of the Executive Office of the President.

With some significant exceptions, members of the EOP are nominated by the president and confirmed by the Senate. Today they are often some of the most influential people in a president's administration. As one top staff member of the Clinton White House has said, "In a very fast-moving world ... staff in the closest proximity to the President can have the greatest degree of power in influencing the decisions of that President."

**The White House Office** At the heart of the EOP is the **White House Office**. The White House Office consists of the president's key personal and political staff. They are, in short, the White House staff. Most work in the White House itself or across the street in the Old Executive Office Building. They serve without Senate confirmation.

The president determines the size of his or her White House Office. President George W. Bush, for example, has had more than 400 people on his White House staff. This is a bit larger than President Clinton's staff, but smaller than the nearly 600 employed in President Nixon's White House Office.

To manage the White House Office the president appoints a **chief of staff**. The precise role of the chief of staff varies from president to president. In some cases, the chief of staff focuses on managing the everyday operations of the White House Office. In other cases, the chief of staff is a primary presidential adviser who controls all access to the

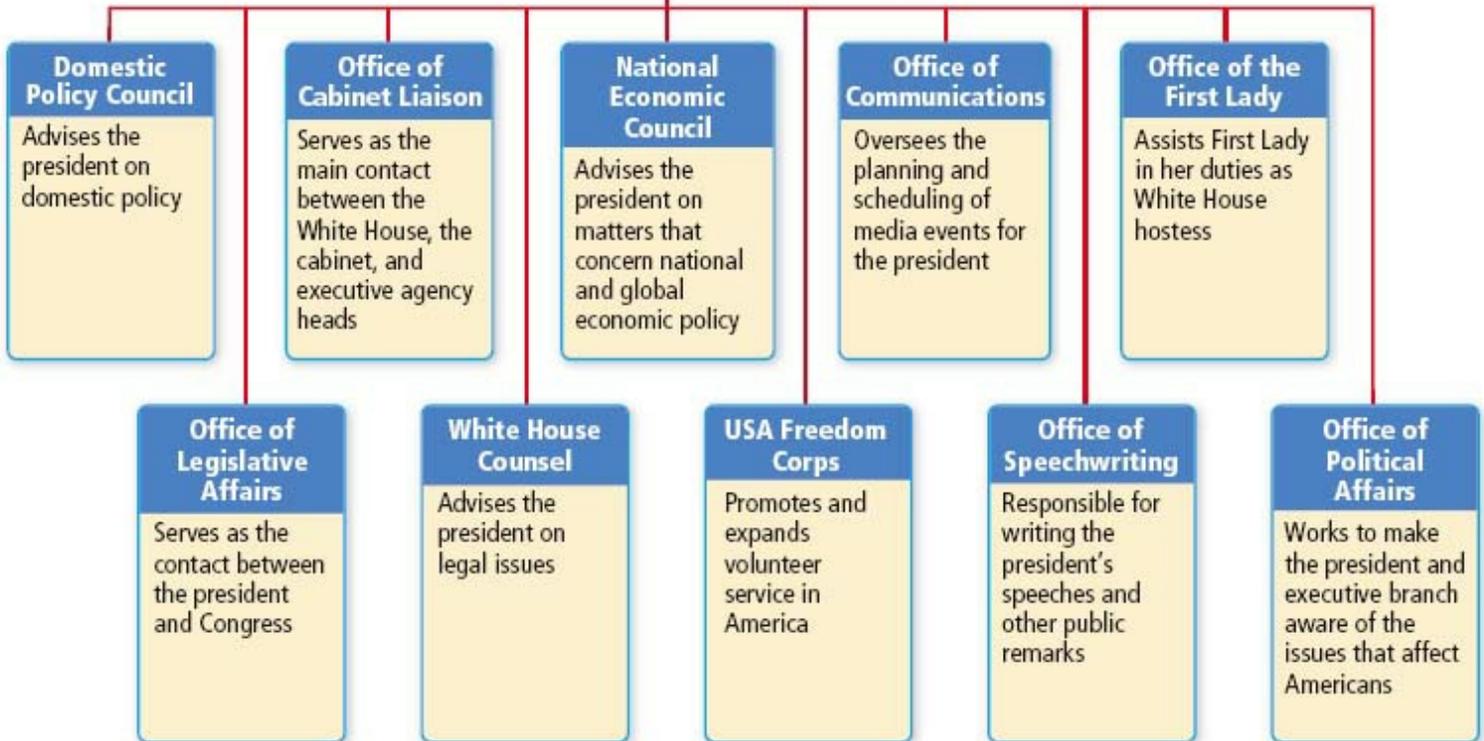
president and helps map political strategy. President Ronald Reagan's first chief of staff, James Baker, took an active role. In the first term of Reagan's presidency, Baker exercised a great deal of influence with the president over domestic policy.

The president's personal secretary and legal counsel report to the chief of staff. In addition to directing these two key staffers, the chief of staff also oversees teams charged with political tasks such as handling relations with Congress and the cabinet, dealing with presidential mail, planning presidential appearances, and hiring other members of the president's staff.

The chief of staff also manages the work of the staff offices that are responsible for getting out the president's message. These offices include the professional speechwriters who work in the Office of Speechwriting. The White House press secretary, whose job it is to handle relations with news reporters, is also a part of the communications staff. This particular position has taken on increasing importance in recent decades as mass media, including television and the Internet, has become more and more important to the success of a presidency.



Chief of Staff



**The Executive Office of the President**

**National Security Council** One of the most important parts of the EOP is the **National Security Council** (NSC). The National Security Council brings together the top military, foreign affairs, and intelligence officials in the administration to coordinate U.S. national security policy.

The NSC was created in 1947. At the dawn of the Cold War rivalry with the Soviet Union, it became apparent that national security required more than maintaining strong military forces. A coordinated plan combining vigorous diplomatic efforts, military preparedness, and secret intelligence-gathering activities was now essential. Congress established the National Security Council to manage these coordinated planning efforts. Eventually, the NSC became part of the Executive Office of the

President.

The president chairs the National Security Council. The activities of the NSC are coordinated by the assistant to the president for national security affairs, also known as the national security adviser. This person is a presidential appointee who does not require Senate approval.

Presidents have differed in how much they rely on their national security advisers. In some cases, the national security adviser has ranked among the most powerful people in the administration. President Richard Nixon, for example, relied heavily on his national security adviser, Henry Kissinger, sending him as a secret envoy to negotiate agreements with foreign nations, often bypassing his secretary of state.

NSC meetings include the vice president, the secretaries of state, treasury, and defense, the director of national intelligence, and the chairman of the Joint Chiefs of Staff. The latter is a group composed of the heads of each major branch of the armed forces. The president's chief of staff, chief counsel, and the attorney general may also be involved in NSC meetings. Other members of the cabinet, including the secretary of homeland security, or senior executives may be invited, depending on the matters under discussion.

**Council of Economic Advisers** Congress created the **Council of Economic Advisers** (CEA) as a part of the EOP in 1946. The CEA provides the president with expert analysis of the economy. Its members examine the economy to see how trends and events may affect the president's economic policy as well as how economic policy is affecting the economy. The CEA also assists the president in forming economic policy.

The Council of Economic Advisers consists of three members nominated by the president. These members must be confirmed by the Senate. In addition to these three advisers, the CEA has its own staff of assistants and advisers. The CEA helps the president prepare the annual *Economic Report*. This report is a detailed study of the nation's economy, published soon after the president submits his or her budget.

It is important to note that the CEA is not the same as the National Economic Council, which is a part of the White House Office. That office is focused on coordinating government-wide economic policies.

**The OMB** Another key component of the EOP is the **Office of Management and Budget** (OMB). The purpose of the OMB is to help develop the federal budget and to oversee its execution by the agencies in the executive branch. The OMB also gathers information and sets policies regarding the management of government finances and the purchase of goods, services, and property for the entire government. The OMB works not only with the president and other members of the executive branch but also with Congress.

The OMB is the largest organization in the EOP, employing more than 500 people. It is headed by an appointed director, who is nominated by the president and confirmed by the Senate. Many of the remaining OMB employees are not political appointees but rather are career staff. That is, they are people with specialized skills who are not replaced when a new president comes to office. You will read more about the Office of Management and Budget in Chapter 7.

**READING CHECK** **Summarizing** What are some of the primary offices located within the Executive Office of the President?

## **The Vice President**

The vice president is also a part of the president's administration. This position is unique in that it is the only other elected position in a president's administration.

## **ACADEMIC VOCABULARY**

---

**trends** tendencies or developments

The Constitution assigns the office of the vice president three major

duties: presiding over the Senate, opening and counting the electoral votes in presidential elections, and serving as president if the president cannot do the job. To date, nine vice presidents have had to perform this last duty. Presidents John Tyler, Millard Fillmore, Andrew Johnson, Chester Arthur, Theodore Roosevelt, Calvin Coolidge, Harry Truman, and Lyndon Johnson all became president after the death of a president. President Gerald Ford became president after Richard Nixon resigned.

**The Early Vice Presidency** In the 1800s, the vice president's role did not amount to much more than carrying out the duties outlined above. They generally did not attend cabinet meetings or help make policy. The very first vice president, John Adams, did not even run for office with George Washington. Adams came in second in the presidential election and was thus made vice president. In 1804, however, Congress passed the Twelfth Amendment, requiring separate ballots for president and vice president.

Besides assuming the presidency in the event of a vacancy, the main role of the vice president in the past was to help elect the president. A vice presidential candidate can help balance the ticket bring in votes from a certain political group or particular geographical areas that the presidential candidate cannot get on his or her own.

For example, Abraham Lincoln's first vice president was Hannibal Hamlin, from Maine. When it came time for re-election, Lincoln felt secure in winning Maine's vote. So he chose Andrew Johnson, from the less-certain state of Tennessee, for his second running mate.

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## **The Vice Presidency**

### **Then**

**Many early vice presidents felt as though the job was not challenging and that the position held little prestige. The first vice president, John Adams, said of the position:**

*“My country has in its wisdom contrived for me the most insignificant office that ever the invention of man contrived or his imagination conceived.”*

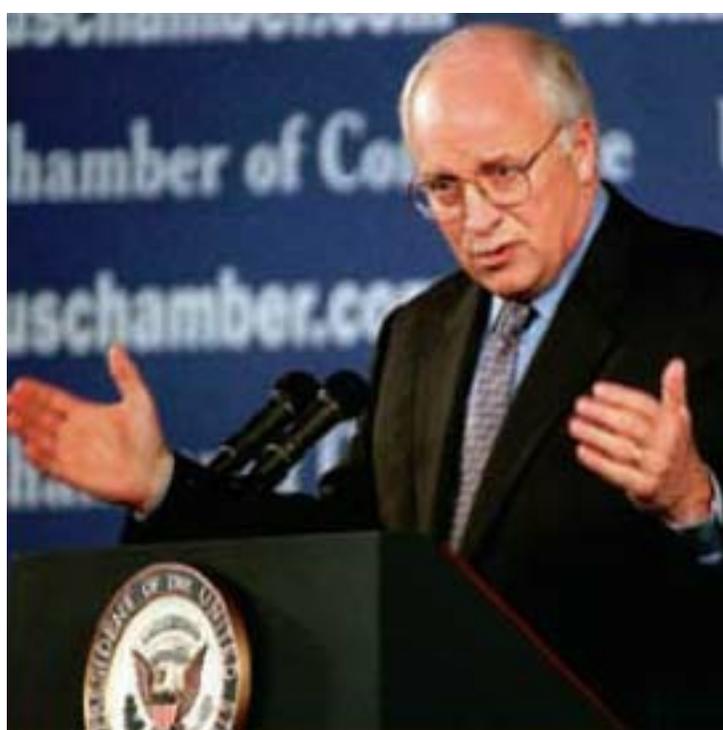


## **Now**

**Today’s vice presidents, in comparison to earlier ones, have taken a far more active role. As vice president in the Bush administration, Dick Cheney demonstrated this active role during his two terms in office by:**

- **Attending cabinet meetings and sitting on the National Security Council**
- **Making several visits to foreign nations as one of President Bush’s foreign policy liaisons**
- **Serving as a key adviser to the president**

*How was Dick Cheney’s role as vice president different from that of John Adams?*



The few formal duties for the vice president have both pleased and troubled the people who held the office. Thomas Jefferson had a positive outlook on the position:

### **PRIMARY SOURCE**

**“ A more tranquil and unoffending station could not have been found for me. It will give me philosophical evenings in the winter [while at the Senate] and rural days in the summer.”**

Thomas Jefferson, letter to Benjamin Rush, 1797

On the other hand, Theodore Roosevelt, who served under William McKinley, called the vice presidency a “steppingstone to ... oblivion” and complained, “I would a great deal rather be anything ... than Vice President.” John Nance Garner, who was vice president under Franklin Roosevelt, called it the “spare tire on the automobile of government.”

**The Modern Vice Presidency** Since the 1970s presidents have begun to rely more heavily on their vice presidents to help make policy and carry out their programs. Jimmy Carter’s vice president, Walter Mondale, established a tradition of weekly lunch meetings with the president. Some recent vice presidents have also been given special assignments. Bill

Clinton charged Vice President Al Gore with a project to reform the organization of the executive branch. Similarly, President George W. Bush relied heavily on his vice president, Dick Cheney, who took an extremely active role in assisting the president with foreign policy and energy programs.

To help them carry out their duties, vice presidents today have their own staffs. Additionally, the vice president's office is in close proximity to the Oval Office in the West Wing, which allows for more interaction between the two offices.

**READING CHECK** Making Generalizations How has the role of the vice president changed over time

## The Cabinet

Another key part of the president's administration is the cabinet. As discussed in Chapter 3, the cabinet is an organization made up of the heads of the executive departments. The **executive departments** are responsible for carrying out laws, administering programs, and making regulations in their particular area of responsibility. You will take a look at the departments in more detail in Chapter 7.

The main task of each department head, or secretary, is to run his or her department, helping to formulate and carry out the president's policies. When assembled as the cabinet, though, the secretaries can act as an advisory body to the president. Cabinet members are nominated by the president, but they must be confirmed by the Senate. In recent years, presidents have given other administrative officers, like the director of the OMB and the chief of staff, cabinet rank.

**The Cabinet's History** The Articles of Confederation called for committees similar to what we know today as the executive departments. But these departments were a part of the legislative branch of government, not the executive branch.

The Constitution does not directly mention the term *cabinet*. It does

say, though, that a president “may require the opinion, in writing, of the principal officer of each of the executive departments.” From these words, as well as the ideas from the Articles of Confederation, came the plan for creating an advisory body of “principal officers,” or a cabinet. President George Washington created the first cabinet, which consisted of only four members the secretaries of state, war, and treasury, and the attorney general.

Historically, cabinets provided valuable guidance to presidents. In order to receive the best advice, some presidents choose people with varying political views to serve as members of their cabinet. Abraham Lincoln, for example, assembled a cabinet that included many top figures from his political party. This cabinet, however, included bitter political rivals, many of whom had run against Lincoln for the Republican presidential nomination in 1860. There was often disagreement and dissent between these cabinet members. Despite these differing views, or perhaps, because of them, Lincoln got much useful advice and input from his cabinet.

Some presidents choose a different course, placing skilled administrators on their cabinets rather than powerful political figures. Presidents also often choose cabinet members with strong ties to the business community an important source of funding during election campaigns.

**The Cabinet Today** Today’s cabinets are nearly four times as large as the first cabinet. As new executive departments have been created, the size of the cabinet has increased. Today there are 16 official cabinet positions, including the vice president. As you read earlier, some presidents choose to invite other high-ranking officials to sit on the cabinet, such as the chief of staff.

Recent presidents have varied in how much they relied on their cabinet for advice. President Dwight Eisenhower, for example, made heavy use of his cabinet. Most of his successors, however, have used it less. As you read earlier, the role of other advisory bodies, such as the

Executive Office of the President, has increased.

**READING CHECK** **Identifying the Main Idea** How has the cabinet and the degree to which a president relies on it changed over time?

SECTION

3

ASSESSMENT

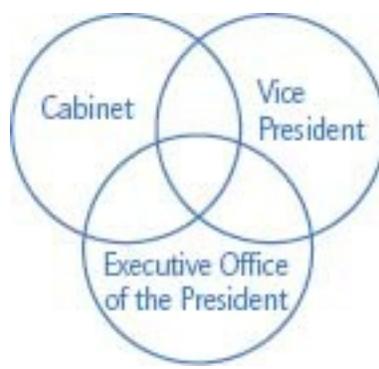
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ONLINE QUIZ

## Reviewing Ideas and Terms

- Define** What is the **Executive Office of the President**?
  - Make Inferences** What has led to the growth of the Executive Office of the President?
  - Evaluate** Why do you think a president might rely more on the White House Office than on the cabinet for counsel?
- Identify** What are the formal duties of the vice president?
  - Summarize** How have presidents traditionally regarded the role of vice president?
  - Elaborate** What qualities do you think a presidential candidate should look for in a vice president?
- Identify** Who makes up the cabinet?
  - Make Generalizations** Besides the job of running the **executive departments**, what have presidents expected their cabinet members to do for them?
  - Rank** What do you think would be the most important quality to have in a cabinet member?

## Critical Thinking

- Compare and Contrast** Copy the Venn diagram below and use information from the section to compare and contrast the roles and functions of the Executive Office of the President, vice president, and the cabinet.



## FOCUS ON WRITING



**5. Narrative** Write a brief narrative explaining the growth of presidential administrations over the years.

### CONNECTING TO THE CONSTITUTION



## Executive Power and the President

**Deciding how to organize the executive branch and check the power of the president was a difficult decision for the Framers. Read to explore the limitations that the Framers placed on the presidency.**

**How did the delegates think about executive power, and what questions did organizing the executive branch raise?** The Articles of Confederation did not provide for an executive branch, but the Confederation Congress had found it necessary to create executive officials for specific purposes, including coordination of foreign affairs and management of the treasury. The Framers wanted to give the executive branch of the new government enough power and independence

to fulfill its responsibilities. In contrast to the deliberative nature of Congress, the executive needed “energy” the capacity to act quickly when necessary for the common defense, to preserve the public peace, and in international relations. However, the delegates did not want to give the executive any power or independence that could be abused.

The Philadelphia Convention did not discuss the executive branch until after it had resolved most issues concerning Congress. No delegate had come with a plan for organizing the executive. The Virginia Plan said only that the national executive should be elected by the national legislature, not what the executive branch should look like, or what its powers should be.

To achieve the balance between an energetic executive and limited government, the delegates had to resolve a number of questions. Each question concerned the best way to establish an executive strong enough to check the power of the legislature but not so powerful that it would endanger republican government. Three key matters needed to be decided.

First, would there be more than one chief executive? Many Framers agreed that there should be a single executive to avoid conflict between two or more leaders of equal power. Some delegates argued also that it would be easier for Congress to keep a watchful eye on a single executive. Others argued for a plural executive, claiming that such an arrangement would be less likely to become tyrannical. The Framers agreed that there would be one president of the United States. They also assumed that there would be an executive branch composed of departments.

Second, how long should the chief executive remain in office? The Committee on Detail recommended a seven-year term for the president, but many delegates thought seven years too long. The Committee on Postponed Matters changed the term to four years, and the convention adopted that proposal.



Third, should the executive be eligible for re-election? Under the Committee on Detail's proposal for a seven-year term of office the president would not have been eligible for re-election. When the term was reduced to four years, the Framers decided to allow the president to serve more than one term. The Constitution originally set no limit on the number of times a president could be re-elected.

**How did the Framers envision the presidency?** The Framers envisioned the president as an official above partisan politics. Publius explained in *Federalist Paper* No. 68 that they wanted the president to be a person who had earned the esteem and confidence of the entire nation, with a character "pre-eminent for ability and virtue." They designed the electoral college to identify people of such character. There was no expectation that candidates would campaign for the office. The Framers thought that the president should remain above partisan politics. But their expectations were unmet even during President Washington's administration, when factions arose that led to the development of political parties.

The Framers did not want the president to have the powers of a monarch. But they did want the president to be "energetic," a quality they contrasted with legislative "deliberation." "Energy" refers to the capacity of one person to act efficiently and vigorously on behalf of the nation. The Framers feared what they called a "feeble executive." As Hamilton argued in *Federalist Paper* No. 70, "A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government."

**How do the president's powers expand in war and emergency?** During wars and emergencies, presidents commonly exercise powers not granted by the Constitution. Grover Cleveland (in office, 1885–1889 and 1893–1897) deployed federal troops without congressional authorization in 1894 to put down a strike among Pullman train car workers. President Franklin Roosevelt transferred destroyers to Great Britain in 1940, a year before the United States entered World War II. Harry Truman (in office, 1945–1953) ordered the secretary of commerce to operate the nation's steel mills during a strike to ensure an adequate supply of steel during the Korean War.

On occasion Congress and the Supreme Court have tried to rein in the president. In 1952 the Supreme Court held that President Truman exceeded his authority in seizing the steel mills. Congress debated withdrawing funding for the Vietnam War when the war began to lose public support in the 1970s. In 2006 the Court held that President George W. Bush's creation of special military commissions to try alleged terrorists violated the Uniform Code of Military Justice passed by Congress in 1950 and the 1949 Geneva Convention, an international treaty that the United States had signed. These examples aside, during wars and national emergencies both Congress and the courts tend to defer to the president.

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## Reviewing Ideas and Terms

- 1. Identify** What issues did the delegates have to decide regarding the organization of the executive branch?
- 2. Make Generalizations** How is the system of checks and balances designed to limit the exercise of presidential power?

## Critical Thinking

- 3. Evaluate** How would you define a “feeble” executive? In what

ways might a feeble executive be as dangerous as an overly “energetic” executive?



## Chapter Review

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# Comprehension and Critical Thinking

## SECTION 1

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: chief executive, commander in chief, diplomacy, foreign policy, succession.
- b. Explain** How has the term of office of the presidency changed over the years?
- c. Evaluate** Do you think presidents should be judged by their personal qualities as shown in their behavior in public?

## SECTION 2

2. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: executive orders, executive privilege, reprieve, pardon, commute.
- b. Make Inferences** What does a president need in order to effectively exercise the informal powers of the presidency?
- c. Predict** What might happen if the president alone did not have the power to negotiate with foreign governments?

## SECTION 3

3. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: Executive Office of the President, chief of staff, National Security Council, Council of Economic Advisers, Office of Management and Budget.
- b. Contrast** How does the cabinet differ from the Executive Office of the President?
- c. Evaluate** How do you think the growth in the size of presidential administrations affects the president's power?

## Critical Reading

*Read the passage in Section 1 that begins with the heading "Election to Office." Then answer the questions that follow.*

4. Which group of people casts the official vote for the candidates

running for president of the United States?

**A** American citizens

**B** electors chosen by each state

**C** the cabinet

**D** members of the Senate

**5.** How do most states today choose their electors to the electoral college?

**A** The governor selects the representatives.

**B** State legislatures appoint representatives.

**C** Representatives are elected by popular vote.

**D** The current vice president chooses representatives.

*Read the passage in Section 2 that begins with the heading “Diplomatic Powers.” Then answer the questions that follow.*

**6.** What is one way that a president can enter into an agreement with a foreign country?

**A** by exercising the right of executive privilege

**B** by issuing executive agreements

**C** by nominating judges and justices to the Supreme Court

**D** through the use of line-item vetoes

**7.** What are the purposes of treaties?

**A** to make agreements between the United States and foreign countries that do not require the advice and consent of the Senate

**B** to ensure the president’s right to declare war on another country

**C** to end conflicts, form alliances, and establish trade relationships

**D** to formally recognize the existence of a foreign government

**8.** Select a president from any time period in U.S. history and conduct research on how that particular president asserted **presidential authority and power**. Consider how that president

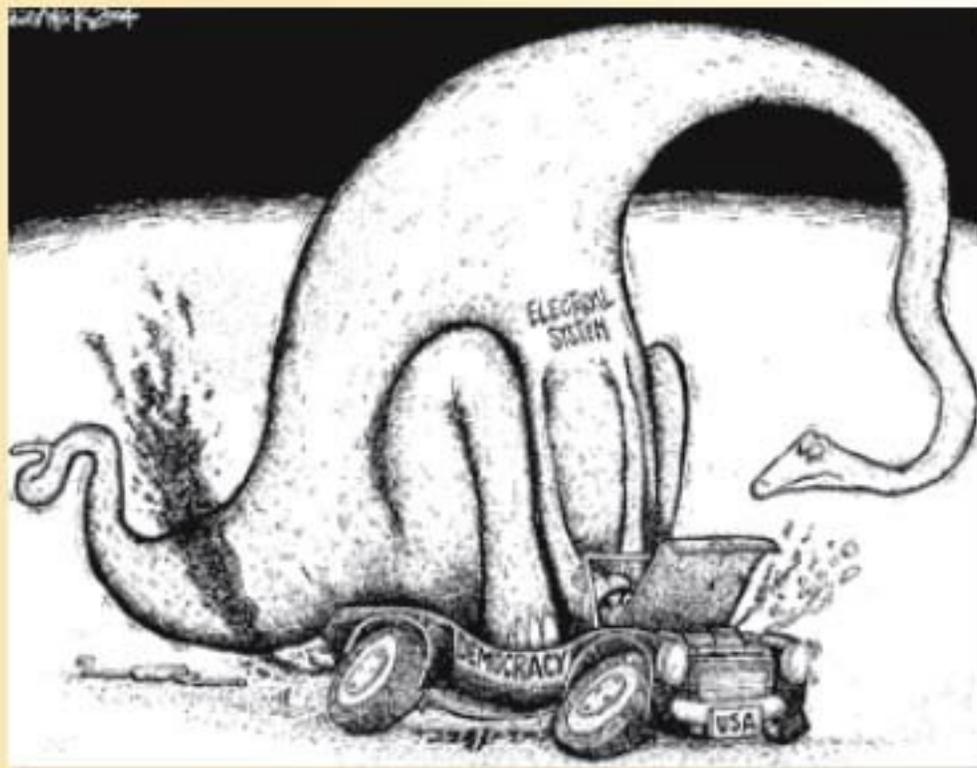
used executive, diplomatic, military, legislative, judicial, and informal powers while in office. Use your research to write a short biography of that president. Be sure to discuss the ways your president exercised each of the powers of the presidency. Then create a bar graph that illustrates the six areas of presidential power. Rate on a scale of 1 to 5 (5 being the highest rating and 1 being the lowest) how you think that particular president executed presidential power in each area. Share your graph results with the class, using examples from your biography. Be prepared to support your conclusions.

### CONNECTING TO THE CONSTITUTION

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9. Go to your school or community library and research some of the suggested alternatives to the present term of office of the president. What advantages and disadvantages do these alternatives have?

**Political Cartoon** *The electoral college is the constitutional framework for electing the president and vice president of the United States. Critics of the electoral college system today are opposed to it because the winner in the electoral vote may not be the winner of the popular vote. Others think that the system provides a more equal voice to less densely populated areas of the country.*



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10. **Analyze** What is happening in this cartoon?
11. **Draw Conclusions** How does the imagery in the cartoon illustrate the cartoonist's opinion of the U.S. electoral system?

## FOCUS ON WRITING

*Think about the following issue:*

**The power and responsibilities of the president have grown and changed a great deal since 1790. Today some people consider the president to be among the most powerful people in the world. This**

**power is not something that should be taken lightly or abused.**

**12. Assignment** Do presidents today have too much power? Should there be greater limitations placed on presidential power? Write a short essay in which you develop your position on this issue. Support your point of view with reasoning and examples from your reading and studies.

## CHAPTER

# 7

# The Executive Branch at Work

**Essential Question** What are the functions of executive departments and independent agencies?



**About the Photo** Workers at the Internal Revenue Service Center in Cincinnati, Ohio, process income tax returns. At this and other centers across the United States, IRS employees process millions of tax returns each year. For instance, in 2009, the IRS processed more than 245 million tax returns. To reduce the paperwork flooding the processing centers each spring, the IRS now encourages taxpayers to file their returns electronically. In addition to processing tax returns, the IRS conducts over a million audits a year.



### **SECTION 1    The Federal Bureaucracy**

- Members of the civil service are responsible for carrying out the work of the federal government.
- Members of the civil service are responsible for carrying out the work of the federal government.
- Jobs in the federal bureaucracy were once filled through the use of the spoils system. Today's civil service system guarantees that qualified people are placed in government jobs.

### **SECTION 2    Executive Departments and Independent Agencies**

- The executive departments, headed by the members of the cabinet, are charged with administering a broad range of government programs and services.
- As the size and power of the United States has grown, so too have the number of executive departments and their responsibilities.
- Independent agencies, outside the executive departments, focus on particular aspects of governing that cannot be attended to by the executive departments.
- Bureaucrats, members of Congress, and outside interest groups sometimes collaborate to protect and advance mutual interests.

### **SECTION 3    Financing Government**

- The government funds its operations through various taxes and loans.
- Government spending is divided into two main types: mandatory spending and discretionary spending.
- The president works with Congress to create a budget to fund the vast number of government programs and activities.
- The government’s fiscal and monetary policies can affect the economy.

CONNECTING TO THE CONSTITUTION



Our nation’s system of government is based on constitutional law established by the United States Constitution. See the “We the People: The Citizen and the Constitution” pages in this chapter for an in-depth exploration of how the Constitution allows for the establishment of departments and agencies in the federal bureaucracy and the bureaucracy’s role in the executive branch.



# The Federal Bureaucracy

**BEFORE YOU READ**

## Main Idea

The federal bureaucracy includes all the

## Reading Focus

1. What is the federal bureaucracy?

## Key Terms

bureaucracy  
bureaucrats  
civil service

organizations and agencies of the executive branch. The civil service system is used to place qualified civilians into positions within the agencies of the federal bureaucracy.

2. What is the civil spoils system service, and how has it changed over the years?



Use the graphic organizer online to take notes on the duties and qualifications of the president.

## The Nation's Largest Employer



### Working for the Federal Government

The federal government is the largest employer in the United States. More than 2.7 million people work for the government, excluding military personnel. That number translates into 1 out of every 50 nonmilitary workers in the United States. The vast majority of these workers are members of the executive branch.

Only a fraction of this gigantic workforce is located in the nation's capital. In fact, about 300,000 federal employees actually work in the Washington, D.C., area. Because different jobs require employees to work in different areas, this vast enterprise is spread across all 50 states and in more than 200 countries. It is divided into hundreds of different organizations, each devoted to a specific task. Taken together, this collection of agencies, bureaus, commissions, and departments is known

as the federal bureaucracy. ■



## What Is the Federal Bureaucracy?

A **bureaucracy** is any organization, either in government or the private sector, having the following features: a clear formal structure, a division of labor, and a set of rules and procedures by which it operates. The bureaucracy associated with the U.S. executive branch is called the federal bureaucracy.

The federal bureaucracy contains all the agencies and departments of the executive branch, including the office of the vice president, the Executive Office of the President, the executive departments, and the independent agencies. As the chart on the next page shows, there are three types of independent agencies: independent executive agencies, independent regulatory commissions, and government corporations. You will read more about each type in Section 2.

The federal bureaucracy is large and has grown throughout U.S. history—although it is actually smaller today than it was a few decades ago. In the late 1960s it employed about 2.9 million people. By the early 1990s it had topped 3 million. Today about 2.7 million people work for the federal bureaucracy.

Some of this recent reduction is due to an increase in the federal government's use of outside contractors. Contractors are private businesses who are paid to perform specific jobs. However, numerous

state and local government employees have jobs that are paid for largely, if not entirely, through federal funds. Taking these people into account adds additional millions to the total number of government employees.

# The Executive Branch

The executive branch, led by the president, consists of hundreds of departments and agencies whose employees make up the federal bureaucracy.

## PRESIDENT

### Executive Office of the President



### Executive Departments

The 15 executive departments have broad administrative responsibilities. The Department of State has embassies all over the world, including this one in Santiago, Chile.

### Vice President



### Independent Executive Agencies

Independent executive agencies manage particular aspects of the federal government. For example, the Environmental Protection Agency works to safeguard the environment, which this EPA worker demonstrates by collecting water samples.



### Independent Regulatory Commissions

Independent regulatory commissions regulate specific areas of the economy. The Nuclear Regulatory Commission, for example, is responsible for regulating all nuclear facilities and materials.



### Government Corporations

Government corporations, which are run like businesses, provide Americans with a variety of services. Amtrak provides passenger rail service to all areas of the continental United States.



### INTERPRETING CHARTS

What are the three types of independent agencies and their primary functions?

In the federal bureaucracy, the top administrators are political appointees. That is, they are nominated by the president and approved by the Senate, or they are directly appointed by the president. These direct appointees most often leave office when a president's term ends. However, most of the **bureaucrats**—the administrators and skilled, expert workers who carry out many specific tasks of the federal bureaucracy—are career employees. These people are hired through a competitive process, and they stay in their jobs as presidents come and go. By having so many career employees, the bureaucracy is able to build expertise so it can implement legislation and executive orders.

## ACADEMIC VOCABULARY

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**implement** to fulfill or carry out

**READING CHECK Summarizing** How many people work for the federal bureaucracy today?

### The Civil Service

The **civil service** is made up of the civilians who carry out the work of the federal government. Unlike the few top-level policy makers—such as the heads of the executive departments and independent agencies—who are appointed by the president, civil service workers are hired through competitive processes. This hiring system, however, was not always in place in the United States.



What are the advantages and disadvantages of the spoils system? of civil service?

**The Spoils System** In the nation's early years, government jobs were given out by the president, usually as political rewards to people who supported the president's policies or the president's election campaign. This practice is known as the **spoils system**.

Both George Washington and John Adams selected federal workers from the Federalist Party. When Thomas Jefferson took office, he replaced many Federalists with people from his own party, the Democratic-Republicans, which set a precedent for using the spoils system. This system remained in place through many early presidencies.

In 1829 Andrew Jackson took office and replaced more than 2,200 federal employees with Jacksonian Democrats. In 1832 Senator William L. Marcy defended Jackson's actions when he said, "To the victor belong the spoils of the enemy." Marcy implied that Jackson was justified in his appointments because, as the victorious candidate, he had a right to the spoils, or rewards, of his election victory.

In time, the spoils system began to come under scrutiny. Critics believed that it led to government corruption, with political appointees rewarding an administration's supporters with contracts for work on federal projects. Additionally, with so much turnover in government jobs as presidents came and went, the federal bureaucracy remained inexperienced and inefficient.

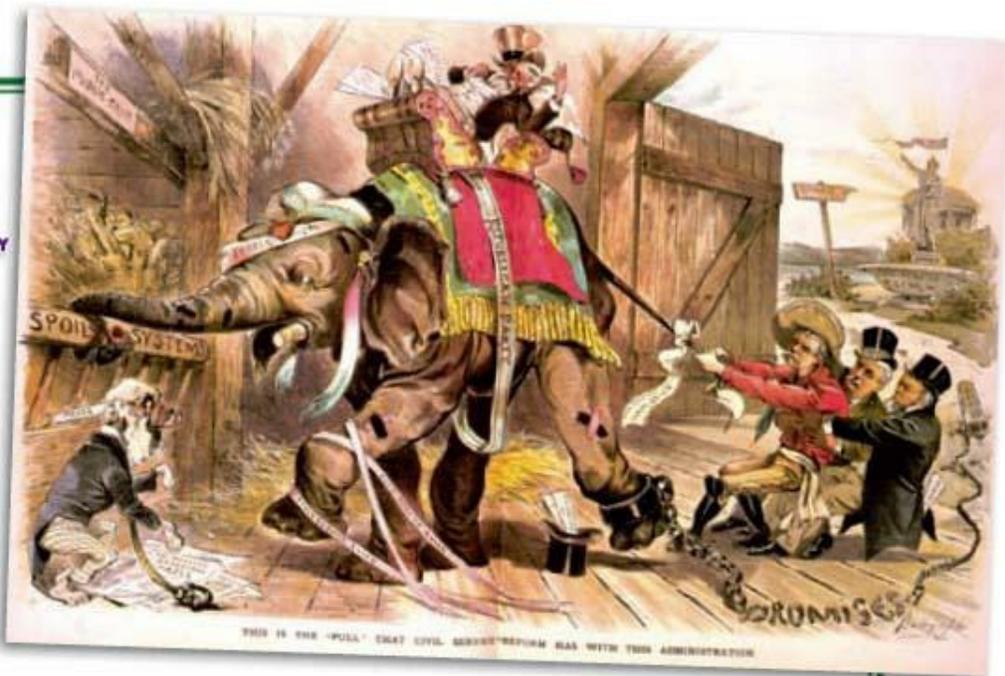
**Changes in the Spoils System** In the late 1800s, reformers began to push for changes in government appointments. In 1871 Congress created a Civil Service Advisory Board to write new rules governing federal hiring. Inadequately funded, it accomplished little in its three years and was disbanded.

## PRIMARY SOURCES

# The Spoils System

For most of its first 100 years, the United States relied on the spoils system as the primary method for choosing federal workers. This system, however, often led to corruption and the appointment of people who were not qualified to perform their duties. The Pendleton Civil Service Act of 1883 began a process of reform. However, the spoils system remained difficult to kill: Too many political figures still benefited from it. This cartoon from 1889 illustrates the struggle between the old system and the forces of reform.

21<sup>ST</sup>  
CENTURY



Benjamin Harrison sits atop the Republican Party elephant, whose trunk holds tight to the spoils system, as Civil Service Commissioners Theodore Roosevelt, Hugh S. Thompson, and C. Lyman pull the elephant back toward civil service reform.

Skills  
FOCUS

## INTERPRETING PRIMARY SOURCES

**Making Inferences** Why might some politicians push for others to follow civil service-reform legislation?

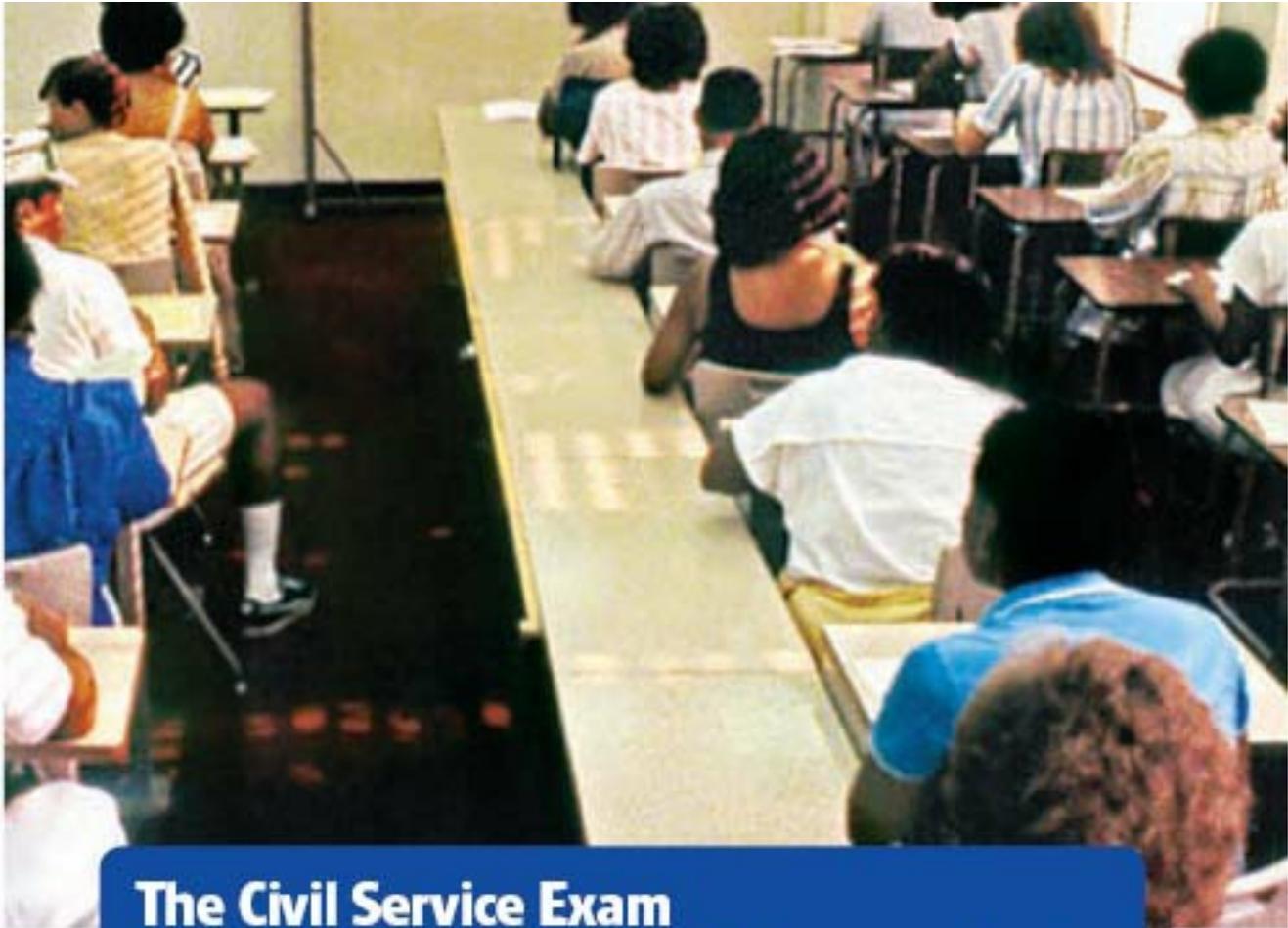
A tragedy spurred new reform efforts. In 1881 Charles Guiteau, a disappointed office seeker, assassinated President James Garfield. Garfield's successor, Chester A. Arthur, used the assassination to convince Congress to pass civil service—reform legislation.

In 1883 Arthur signed the Pendleton Civil Service Act into law. This law was the first in a series of laws that would eventually put an end to the spoils system. The Pendleton Act based hiring and promotions for certain government jobs on merit and not on a person's party affiliation. The act created a Civil Service Commission to administer exams as an objective assessment of a person's qualifications and to grant jobs only to qualified applicants.

**The Civil Service Today** The Pendleton Civil Service Act initially applied to only 10 percent of positions within the federal bureaucracy. With subsequent presidents, however, Congress broadened the scope of the act to include other jobs. Today more than 90 percent of federal government jobs are protected by civil service legislation.

The Civil Service Reform Act of 1978 created the agencies that

manage today's civil service. The Office of Personnel Management (OPM) conducts competitive exams, places applicants in jobs, and maintains the administrative functions of the civil service. The Federal Labor Relations Authority handles federal employees' complaints regarding unfair labor practices and works to resolve employee concerns. The U.S. Merit Systems Protection Board protects civil service employees and the system of hiring them from partisan practices and abuses by the executive branch.



### **The Civil Service Exam**

For many years, in order to get a job with the government, people had to pass a civil service exam. Today, however, the majority of people obtain federal jobs through an interview process.

Many civil service jobs today require specialized technical or professional qualifications not covered by a standardized examination. For this reason, Congress has allowed a number of agencies to devise their own hiring criteria with OPM approval.

**READING CHECK** Identifying Problems and Solutions What

were the problems with the spoils system, and how did civil service reform help solve them?

## Reviewing Ideas, Terms, and Places

- Define** What is the federal bureaucracy?
  - Explain** How has the size of the federal bureaucracy changed over time?
  - Evaluate** Why do you think the bureaucracy has shrunk in recent years?
  
- Describe** What is the spoils system, and what is its relationship to the civil service?
  - Summarize** How did the spoils system for selecting government workers benefit presidents?
  - Rate** How important do you think the civil service system is to the overall organization and operation of the federal bureaucracy?

## Critical Thinking

- Analyze** Copy the graphic organizer below and use it to record the causes and effects of civil service reform. In what ways did civil service reform change the federal bureaucracy?



## FOCUS ON WRITING



- Expository** Write a brief lecture that describes the major features of the federal bureaucracy.

SECTION  
**2**

# Executive Departments and Independent Agencies

**BEFORE YOU READ**

**Main Idea**

Executive departments and independent agencies provide key services and regulate important industries for the American people.

**Reading Focus**

1. What is the purpose of the executive departments?
2. What are the primary functions of executive departments today?
3. What are independent agencies?
4. What are some issues regarding power and accountability in the federal bureaucracy?

**Key Terms**

independent agencies  
independent executive agencies  
independent regulatory commissions  
bipartisan government corporations



Use the graphic organizer online to take notes on the executive departments and independent agencies.

**WHY IT MATTERS**

**The Organizations of the Federal Government** The federal bureaucracy is made up of hundreds of individual departments and agencies—both large and small, well-

known and obscure. Some, such as the U.S. Postal Service, employ hundreds of thousands of people and are visible parts of Americans' everyday lives. Others—such as the Federal Communications Commission, which licenses and monitors the content of TV and radio stations—employ far fewer people but play no less a part in our everyday lives. You may not know it, but you regularly interact with the federal bureaucracy, whether you are mailing a letter or sitting down to watch your favorite television show.

The federal bureaucracy was not always as extensive as it is today. But as Americans' ideas about the proper role and responsibility of government changed, particularly since the 1930s, the bureaucracy grew to meet the changing demands. The primary organizations of the federal government are the executive departments and independent agencies. ■

## GOVERNMENT IN Our Daily Lives

# Lives



## Executive Departments

The executive departments are the major units of administration and policy making in the executive branch. Because the heads, or secretaries, of these departments make up the cabinet, the executive departments are sometimes called cabinet-level departments. In the U.S. government today, there are 15 executive departments, and they employ about 60 percent of all federal government employees.

Each executive department oversees a broad area of government responsibility. Within each department, there are often smaller, more narrowly focused agencies. The Federal Highway Administration, for example, is an agency within the Department of Transportation.

Congress and the president share responsibility for the executive departments. When establishing a new executive department, Congress spells out the department's general duties and powers. Congress must also approve the budgets and expenditures for each executive department. The president nominates the secretaries, top officials, and heads of the smaller agencies of each department, but the Senate must give advice and consent on these selections.

**Early Departments** George Washington established the first executive departments in 1789 when he created the Departments of State, Treasury, and War. Although the post of attorney general was also established at this time, the Department of Justice was not officially created until 1870.

In the 1800s and 1900s, Congress created new executive departments to meet new needs. In 1849, for example, the new lands and responsibilities that the nation acquired as a result of the Mexican-American War led Congress to create the Department of the Interior. Its purpose was to manage the country's public lands, its resources, and its relationships with Native American groups.

Congress also created new departments to show the federal government's changing priorities. For example, the Department of Labor was created in 1913, which reflected the increased power and importance of organized labor.

**New Departments since 1950** In the post—World War II era, Congress

created seven executive departments. The new departments reflected the expanded role government now played in Americans' lives. Increasingly, Americans expected the federal government to take action when a problem confronted society. Congress created the Department of Housing and Urban Development in 1965, for example, shortly after riots in the Watts section of Los Angeles and in other cities dramatized how economic decline and racial unrest had begun to undermine U.S. cities. Likewise, Congress created the Department of Energy in response to the 1973 Arab oil embargo, which led to gasoline shortages and skyrocketing prices.

**READING CHECK** **Identifying Supporting Details** What were the first three executive departments established by Congress?

## **The Departments Today**

The table on pages 198 and 199 lists each of the executive departments and its goals and functions. Below, we will take a closer look at three of these departments: the Department of Health and Human Services, which oversees a number of health-related agencies; the Department of Defense, which has the largest budget of any government agency; and the most recently created department, the Department of Homeland Security.

**Health and Human Services** It is the job of the Department of Health and Human Services (HHS) to protect the health of the American people. It is also the main federal provider of social services. Originally a part of the Department of Health, Education, and Welfare (HEW), the Department of Health and Human Services was restyled into its present state in 1980, when Congress created a separate Department of Education.

HHS employs more than 65,000 people. Key HHS programs include Social Security, Medicare, and Medicaid. Medicare provides medical insurance to people age 65 and older, while Medicaid provides medical insurance to low-income people of all ages. Together these programs help supplement health care for about one-fourth of the U.S. population.

supplement supply what is missing from

## THE EXECUTIVE DEPARTMENTS

DEPARTMENT (YEAR CREATED)	GOALS AND FUNCTIONS
<b>Department of State (1789)</b>	<ul style="list-style-type: none"> <li>• Protect and assist U.S. citizens living and traveling abroad</li> <li>• Help advance the global interests of the United States</li> <li>• Coordinate and provide support for American international activities</li> </ul>
<b>Department of Defense* (1789)</b>	<ul style="list-style-type: none"> <li>• Provide military forces and domestic security</li> <li>• Deliver humanitarian aid and disaster relief and provide peacekeeping forces</li> </ul>
<b>Department of the Treasury (1789)</b>	<ul style="list-style-type: none"> <li>• Manage federal finances and supervise national banks</li> <li>• Print and coin U.S. currency</li> <li>• Collect money due to the United States and pay the bills of the United States</li> <li>• Develop domestic and international financial policy</li> </ul>
<b>Department of the Interior (1849)</b>	<ul style="list-style-type: none"> <li>• Protect the nation's resources—both natural and cultural</li> <li>• Manage resource use</li> <li>• Provide recreation opportunities</li> </ul>
<b>Department of Agriculture (1862)</b>	<ul style="list-style-type: none"> <li>• Protect farmland by promoting sustainable development</li> <li>• Work to end hunger and improve health in the United States</li> <li>• Keep food safe for the consumer</li> </ul>
<b>Department of Justice (1870)</b>	<ul style="list-style-type: none"> <li>• Represent the United States in the Supreme Court and other courts</li> <li>• Control federal law enforcement</li> <li>• Manage the legal affairs of the United States</li> </ul>
<b>Department of Commerce (1903)</b>	<ul style="list-style-type: none"> <li>• Promote international trade</li> <li>• Ensure effective use of American technological and scientific resources by U.S. citizens</li> <li>• Assist states, groups, and individuals through economic progress</li> </ul>
<b>Department of Labor (1913)</b>	<ul style="list-style-type: none"> <li>• Work to improve working conditions; set standards for wages and overtime pay</li> <li>• Protect retirement and health care benefits</li> <li>• Protect employees from discrimination</li> </ul>

*\*When established in 1789, the Department of Defense was known as the War Department. In 1947 an act of Congress created the National Military Establishment, which established the Department of Defense and the cabinet-level position of secretary of defense.*

Similar to other executive departments, HHS has many smaller agencies that work within the larger department. The Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration

(FDA), for example, are divisions of HHS.

The CDC monitors health trends and helps prevent disease outbreaks. It also warns the nation of influenza outbreaks and plans for possible bioterrorism attacks. The FDA inspects and sets safety standards for food, food additives, and medicinal drugs. It also approves new drug and food products and makes sure that they are safe for the public.

**Department of Defense** The Department of Defense (DOD) oversees U.S. military forces charged with protecting the nation. First known as the Department of War, it was one of three departments created by Congress in 1789. In the nation's early years, the Department of War housed several smaller departments, each responsible for managing a specific branch of the armed services, such as the army or the navy.

During World War II, however, a new defense strategy emerged: Officials believed that military operations would be more successful if the various branches of the military served under a unified command. As a result, in 1947 Congress created the DOD, which brought all branches of the military under a single secretary of defense.

**DEPARTMENT  
(YEAR CREATED)****GOALS/FUNCTIONS****Department of Health and  
Human Services  
(1953)**

- Conduct and fund health-related research; responsible for food and drug safety
- Monitor and prevent disease outbreaks
- Provide health care to low-income citizens (Medicaid) and senior citizens (Medicare)

**Department of Housing  
and Urban Development  
(1965)**

- Work to increase access to affordable housing
- Ensure fair housing laws are followed
- Assist in developing public-housing programs for low-income citizens

**Department of  
Transportation  
(1966)**

- Form national transportation policy and oversee safety of air and rail travel
- Assist states in building new highway systems
- Develop programs for improvement of public transportation systems

**Department of Energy  
(1977)**

- Promote reliable, clean, and affordable energy sources and assist in environmental protection
- Develop nuclear weapons and energy technologies
- Ensure the safety of the nation's nuclear weapons
- Promote scientific discovery and improve the quality of life through technological innovations

**Department of Education  
(1980)**

- Establish policies for federal financial aid for educational purposes
- Collect data and research on American schools
- Focus national attention on major educational issues
- Enforce laws that ban discrimination in educational programs that receive federal funding

**Department of Veterans  
Affairs  
(1989)**

- Assist disabled veterans
- Help veterans returning from military service to transition back into civilian life
- Honor veterans in life and memorialize them in death

**Department of Homeland  
Security  
(2003)**

- Identify and assess threats to the safety of the United States
- Coordinate the national response to and lead recovery efforts after acts of terrorism, natural disasters, and other emergencies
- Work to prevent possible attacks to the United States

**Skills  
FOCUS****INTERPRETING CHARTS**

Why do you think Congress created so many executive departments following World War II?

The DOD is a massive enterprise. It employs more than 1.3 million men and women on active duty in the armed forces and another 1.1 million in the National Guard and Reserve. These armed forces are supported by another 670,000 civilian employees. The DOD has a larger budget than any other department. The proposed 2008 DOD budget was \$480 billion. Salary and housing make up about a third of this amount. Procurement of equipment and supplies costs about \$100 billion, and about \$75 billion is spent on research and testing.

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**procurement** the act of getting something through special means

**Homeland Security** The Department of Homeland Security is a prime example of how the changing world can bring about changes in, or additions to, the executive departments. In 2003 Congress created the Department of Homeland Security, two years after the attacks of September 11, 2001. This department differs from some of the others in that it was not an entirely new organization but, rather, a reorganization of several agencies that were already in place.

The purpose of this reorganization was to refocus government efforts involving law enforcement, border security, transportation, immigration, emergency preparedness, and other issues, in order to prevent further attacks on U.S. soil. The Secret Service—the organization charged with protecting the president and other high government officials—and the U.S. Coast Guard are also under the jurisdiction of the Department of Homeland Security.

**READING CHECK** **Identifying Cause and Effect** Why was the Department of Homeland Security established?

### ACADEMIC VOCABULARY

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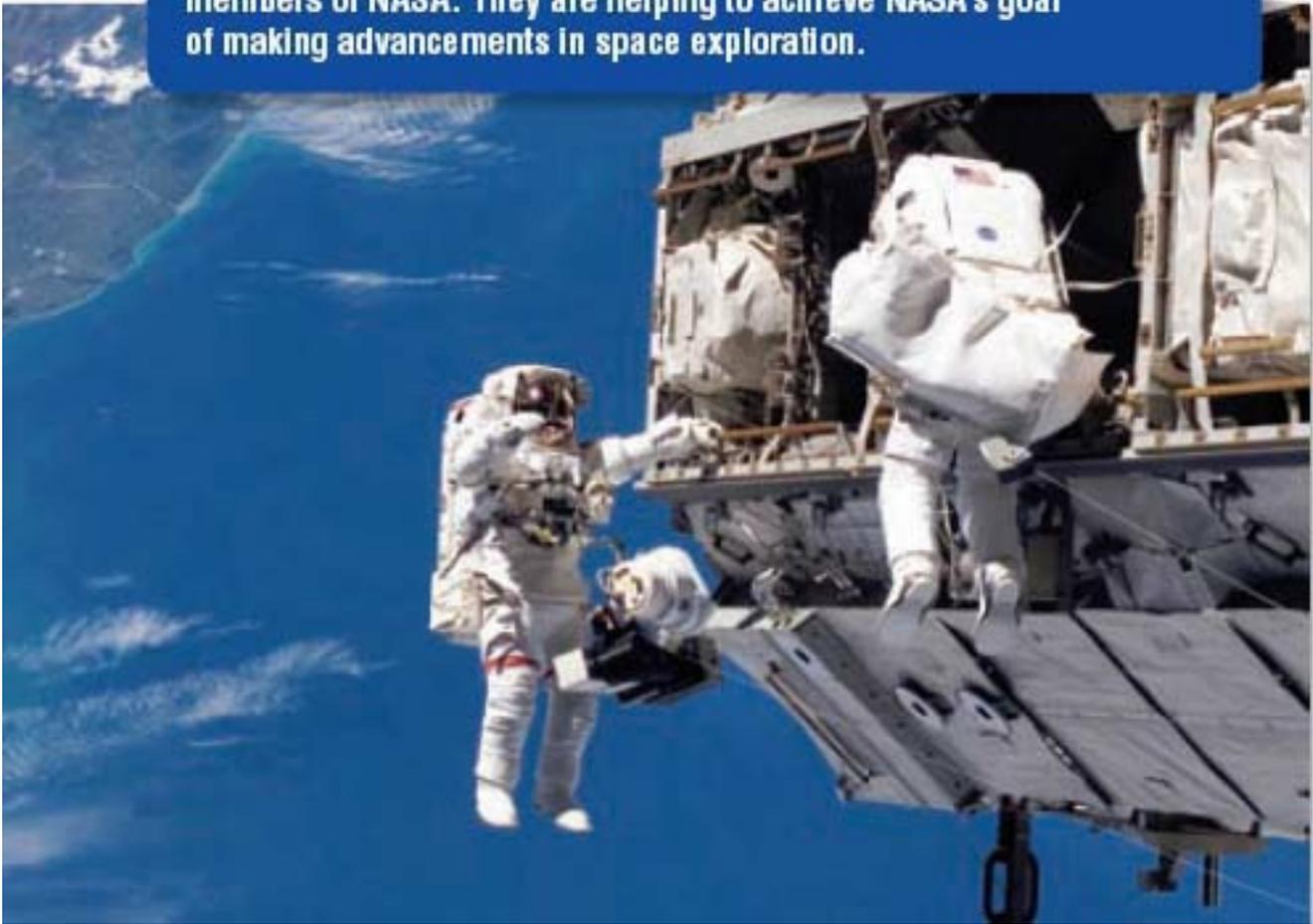
**quasi** resembling in some degree

### Independent Agencies

In addition to the executive departments and their many smaller offices and agencies, the federal bureaucracy includes about 140 **independent agencies**—government agencies that operate separately from the executive departments. Creating an independent agency requires an act of Congress. For the most part, Congress establishes independent agencies to address certain issues that have become too complicated or require too much specialized knowledge to handle through regular legislation.

## NASA: An Independent Executive Agency

These astronauts work on the International Space Station as members of NASA. They are helping to achieve NASA's goal of making advancements in space exploration.



For example, Congress established the Environmental Protection Agency, or EPA, in 1970 to address the issue of protecting the environment. The EPA is in charge of all government programs that are related to safeguarding the environment, such as the Energy Star program, which promotes the reduction of energy consumption and greenhouse gases.

Congress retains power over independent agencies. It must approve the funding that allows the agencies to operate. Congress can also pass laws to direct an agency to do something and can change the scope of an agency's authority whenever it wishes.

Congress grants certain independent agencies powers that go beyond the scope of executive functions. In doing so, Congress gives these agencies quasi-legislative and quasi-judicial powers, which means these agencies have not only the power to make regulations that have the force of law but also the authority to decide disputes over their regulations.

While these agencies have the power to enforce the laws that they have created, Congress maintains the authority to override any of those laws.

Independent agencies vary greatly in size. On one hand, the U.S. Postal Service, which has more employees than any of the executive departments, employs more than 700,000 people. On the other hand, some of the smaller agencies, such as the Defense Nuclear Facilities Safety Board, have fewer than 100 full-time employees.

There are three main types of independent agencies: independent executive agencies, independent regulatory commissions, and government corporations. We will examine each in closer detail below.

**Independent Executive Agencies** The purpose of **independent executive agencies** is to oversee and manage a specific aspect of the federal government. These agencies are given executive powers similar to those of the executive departments. However, the heads of independent executive agencies are not cabinet members.

Although Congress establishes these agencies and retains ultimate authority over them, the president exercises much of the control over their operation. For example, the president nominates the top officials of independent executive agencies. These nominees must be confirmed by the Senate, but they report directly to the president.

The structure of the National Aeronautics and Space Administration (NASA) is typical of that of the larger independent executive agencies. Like many such agencies, NASA has one head administrator who oversees the entire agency. This person is nominated by the president and confirmed by the Senate. In addition, NASA is divided into program offices that are responsible for particular parts of the agency. These smaller offices are in charge of all the various aspects of space exploration—from research into the origins of the universe to continuing human exploration of space.

Presidents may push for the creation of certain independent executive agencies to help fulfill their particular vision. An example of such an agency is the Peace Corps, which was created in 1961 at the

urging of President John F. Kennedy. In his inaugural address, Kennedy encouraged Americans to fulfill their civic duties and to “ask not what your country can do for you—ask what you can do for your country.”

This historic speech laid the foundation for a change in people’s ideas about political involvement and gave individuals a new role to play in world affairs. People could fulfill this new role through federal agencies like the Peace Corps, which places American volunteers in developing nations in order to help those nations address their economic and social problems.

Other independent executive agencies include the General Services Administration (GSA) and the National Archives and Records Administration (NARA). The GSA helps other government agencies buy goods and services, while the NARA organizes and maintains government records.

**Independent Regulatory Commissions** The purpose of **independent regulatory commissions** is to regulate some aspect of the economy. These commissions are, in a sense, separate from the branches of government. Their job is to set and enforce rules that have the force of law, and most have quasi-judicial powers to settle disputes arising from their rules. They are led by a three- to seven- person board, whose members are nominated by the president and confirmed by the Senate. In most such commissions, the members of the board serve fixed terms and cannot be removed by the president. By law, this board must be **bipartisan**, or include members from both major political parties. For example, on a five-person board, only three members can be from the same party.



## The SEC: An Independent Regulatory Commission

The Securities and Exchange Commission (SEC) protects investors and maintains fair markets for trading. These traders at American Stock Exchange are regulated by SEC laws.

Why would Congress want to create such powerful agencies independent of the three branches of government? The answer can be found by looking at the first independent regulatory commission Congress created—the Interstate Commerce Commission (ICC).

Congress created the ICC in 1887 for three main reasons. Many in Congress believed that (1) a group of specialists was better equipped than Congress to regulate the railroads; (2) there could be more continuity in legislation if a permanent commission, rather than an elective legislative body, oversaw regulation of certain aspects of the economy; and (3) an independent body would be free of undue political influence. Although abolished in 1995, the ICC set the template for later independent

regulatory commissions.

An example of an independent regulatory commission that is still active is the Federal Communications Commission, or the FCC. Congress created the FCC in 1934. The commission now regulates radio, television, wire, satellite, and cable communications.

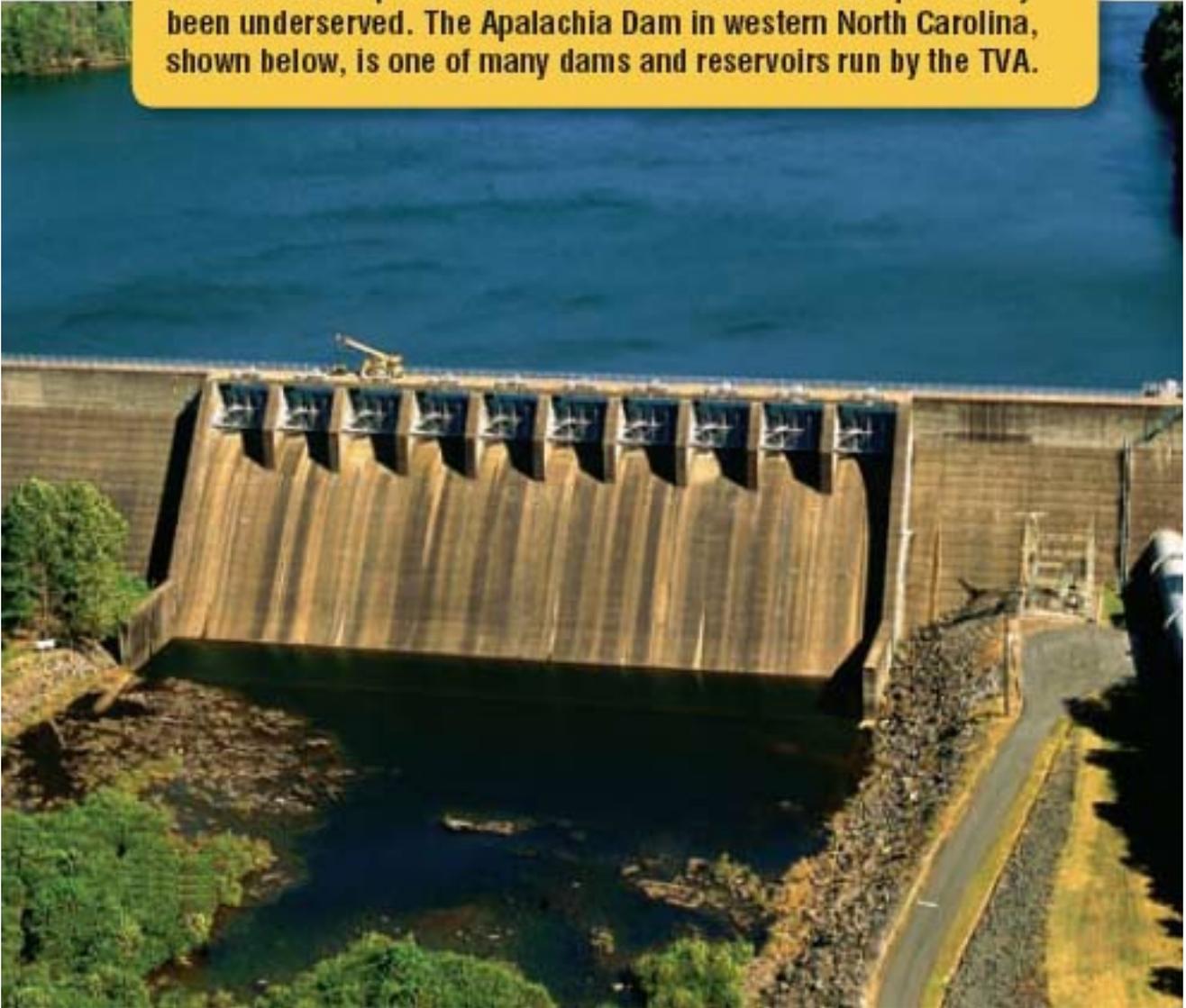
The FCC gives licenses to broadcasters and sets and enforces broadcast rules. One of its primary responsibilities is to limit the use of obscene or offensive language on television and radio. Violations of FCC rules can lead to fines and even a loss of license.

As with all independent regulatory commissions, Congress can override FCC rules. In 1996, for example, Congress passed legislation that lifted many FCC restrictions on the ownership of media outlets, such as TV and radio stations. The new law allows any business to enter the communications industry. The goal is to increase competition and thus encourage the development of new TV and radio services. By passing this new law, Congress asserted its role as the primary communications policy maker.

The powers of regulatory commissions have at times proved controversial. For example, during the 1930s, issues arose over the constitutionality of some of the new regulatory agencies. One such controversy involved the Schechter Poultry Corporation and the National Recovery Administration (NRA), an independent agency created by the National Industrial Recovery Act (NIRA). The purpose of the NIRA was to help regulate economic activity and foster economic growth. The Schechter Poultry Corporation was found in violation of NRA regulations, and the case eventually went to the Supreme Court.

## The TVA: A Government Corporation

The Tennessee Valley Authority (TVA) provides electric power and flood control to parts of seven southern states that had previously been underserved. The Apalachia Dam in western North Carolina, shown below, is one of many dams and reservoirs run by the TVA.



**Government Corporations** The third type of independent agency is a government corporation. **Government corporations** are organized and run like businesses but are owned in whole or in part by the federal government.

In general, Congress creates a government corporation to achieve a public goal that private business may not be able to address for a sufficient profit. An example of a government corporation is the U.S. Postal Service (USPS). Through the USPS, anyone can send a letter anywhere in the United States for a fixed price. The USPS follows the principles of a business in order to operate as efficiently as possible. The USPS is not expected to make a profit, although it is supposed to break even.

Unlike a private business, however, the USPS does not focus on the most profitable areas of business. As an agent of the federal government, the USPS has a responsibility to see that all areas of the country, no matter how remote, have affordable and equitable mail services.

Another government corporation is the National Railroad Passenger Corporation, or Amtrak. Amtrak is a government-run passenger rail service. It was formed in 1971 when the growth of air and auto travel made it less profitable for private companies to provide rail service in most parts of the country.

Amtrak has come under criticism in recent years for its significant financial losses. To compensate for these losses, Amtrak has had to rely on government subsidies, which are government payments aimed at achieving a public benefit. Today Amtrak continues to struggle just to break even.

**READING CHECK** Identifying the Main Idea What is the purpose of independent agencies?



The banner features a blue background with a white image of the Supreme Court building on the left. The text 'LANDMARK SUPREME COURT CASES' is written in large, bold, yellow letters. Below it, 'Constitutional Issue: Powers of the President' is written in white. On the right side, there is a logo for the 'DIVISION FOR PUBLIC EDUCATION' and 'AMERICAN BAR ASSOCIATION' with a magnifying glass icon.

***Schechter Poultry Corporation v. United States (1935)***

**In Schechter, the Court examined whether the federal government overstepped its authority in regulating commerce and business practices, giving the president an unconstitutional extension of power.**

## **Background**

During the Great Depression, Congress and President Franklin D. Roosevelt worked together to pass various reform bills intended to pull the nation out of its economic slump. At the heart of Roosevelt's New Deal legislation was the National Industrial Recovery Act of 1933 (NIRA), which aimed to stimulate the economy and reduce unemployment. The act set up the National Recovery Administration (NRA), which in turn created industry-specific boards whose purpose was to enforce codes for production, prices, wages, and working hours. The NIRA allowed these boards to draft the codes that the president would then sign into law. The goal of these boards was to create jobs for many unemployed Americans and to promote fair production and competition among industries and businesses.

The Schechter Poultry Corporation sold chickens at wholesale prices and fell under the jurisdiction of the Live Poultry Code, which was part of the NIRA. In addition to convictions against Schechter for the sale of unfit and uninspected chickens, among other charges, a federal district court found the company guilty of violating the minimum wage and maximum hours specifications set forth by the NRA for the live poultry industry. Schechter appealed the ruling and lost. The "Sick Chicken" case eventually came before the Supreme Court in 1935.

## **Arguments for Schechter**

Schechter argued that Congress had acted unconstitutionally by relinquishing too much legislative authority to independent regulatory commissions like the NRA. The defendants also argued that because they were local operators who sold their product only locally, their employees' wages and hours did not affect interstate commerce. The defendants held

that their business should be free from federal regulations. Schechter also argued that since it operated within New York State boundaries, the commerce clause was not implicated and federal jurisdiction was not created.

## Arguments for United States

The government argued that Schechter Poultry Corporation broke federal regulations and violated the poultry code. The government argued that the NIRA, and by extension the poultry code, was constitutional and necessary for the good of the nation. The government maintained further that Congress could delegate lawmaking power to the executive branch under the NIRA because the NIRA only dealt with businesses and industries that participated in interstate commerce.

 In a unanimous decision, the Court ruled that the NIRA was an unconstitutional delegation of Congress's legislative powers to the executive branch. Later decisions by the Court, however, reversed this holding, paving the way for the many independent agencies of the executive branch that regulate various aspects of business and industry, including minimum wage standards.

### CRITICAL THINKING

**What Do You Think?** Congress creates regulatory agencies that have control over some areas of the economy. At what point is it necessary for Congress to overrule these agencies? When might it be appropriate for Congress to take some power away from these agencies? Explain your answer.

## Power and Accountability in the Federal Bureaucracy

The Constitution provides a number of tools for ensuring the accountability of the federal bureaucracy. Presidents, for example, can shape the direction of the bureaucracy through their appointment powers and by issuing executive orders. Likewise, congressional oversight

committees and subcommittees routinely demand answers from federal agencies. By boosting or cutting funds to a federal department or agency, congressional appropriations committees can affect its operations.

Over the years Congress has taken some additional steps to ensure that agencies remain accountable. In 1946, for example, it passed the Administrative Procedure Act. This law and its various revisions set clear guidelines for agency rule making, including a lengthy period for public comment and participation. In addition, the Freedom of Information Act, passed by Congress in 1965 and later strengthened, allows citizens access to written records kept by federal agencies. Presidents can exempt certain information in the interest of national security or for other reasons. Together, these measures place a check on an agency's freedom of action.

One danger these measures do not address is what happens when bureaucratic agencies, congressional oversight committees, and outside interest groups form an unofficial alliance. An interest group will support members of Congress who support legislation that the group wants. The bureaucrats, hoping to obtain the necessary funding from Congress, may in turn shape their policy recommendations to Congress in ways that favor the interest group. Thus, each group benefits from the actions of the others.

Political scientists label this three-sided relationship an *iron triangle*. The triangle is "iron" because outsiders, including the president, cannot seem to penetrate or disrupt it. The danger is that policy making becomes a closed loop, for and in the interests of specific interest groups.

Iron triangles may not be as prominent as they once were. Issues are so complex that multiple congressional committees and federal agencies, each with a different agenda, have a hand in making policy. In addition, interest groups on both sides of an issue compete vigorously for influence, canceling each other out.

**READING CHECK** **Summarizing** What are some of the ways the federal bureaucracy is held accountable?

## Reviewing Ideas, Terms, and Places

1. **a. Recall** How many executive departments are there today?  
**b. Elaborate** What possible reasons explain the growth in the number of executive departments that occurred in the 1900s?
  
2. **a. Identify** In 1980 what change took place within the Department of Health, Education, and Welfare?  
**b. Develop** What do you think about the Department of Defense's having the largest budget of all the executive departments? Explain your answer.
  
3. **a. Define** Define What are **independent executive agencies, independent regulatory commissions, and government corporations**?  
**b. Make Generalizations** How are independent agencies beneficial to the federal bureaucracy as a whole?
  
4. **a. Define** What is an *iron triangle*?  
**b. Explain** Do you think it was necessary for Congress to step in and further regulate independent agencies?

## Critical Thinking

5. **Elaborate** Using a graphic organizer like the one below, identify the main features of the executive departments and independent agencies. What functions do the executive departments and independent agencies serve as a part of the federal bureaucracy?

**6. Persuasive** Write an editorial in which you analyze the consequences of the political decisions made by different independent agencies and the effect of these decisions on society.

## DEBATING THE ISSUE

# The Size of the Federal Bureaucracy

**Is the federal bureaucracy too large?**

## THE ISSUE

The federal bureaucracy is made up of numerous agencies and departments. More than 2.7 million employees work in these various organizations, and many people feel that the bureaucracy has grown too large. Supporters of the bureaucracy, on one hand, claim that a large bureaucracy is necessary because as a major world leader, the United States needs all of these agencies and departments to successfully run the country. Opponents, on the other hand, feel that a large bureaucracy impedes the efficiency of the federal government.

## DUNAGIN'S PEOPLE



"Gentlemen, we must streamline the bureaucracy . . . I don't care how many people it takes."

This cartoon comments on the size of the federal bureaucracy and the challenge of shrinking it.

© Tribune Media Services. Reprinted with permission.

## VIEWPOINTS

**The federal bureaucracy is the right size for accomplishing the many tasks that are set before it.** A large bureaucracy does not impede government actions; it helps government function better. Our nation needs a large bureaucracy to run all of the programs that benefit the American people. Having agencies that specialize in very specific aspects of the federal government is in the greatest interest of U.S. citizens, as Congress—the main overseer of all government actions—does not have the management capacity or expertise that the federal bureaucracy does. Furthermore, while the bureaucracy does spend a lot of money, U.S.

government spending is not high compared to government spending in other economically developed countries. Most of the money that the bureaucracy spends goes back into the economy in the form of salaries for employees. This funding also makes it possible for certain businesses to run.

**The federal bureaucracy has grown too large and needs to be downsized considerably.** The term *bureaucracy* is just another word for *waste* and *inefficiency*. The chain of command is so complicated, with larger agencies overseeing so many smaller agencies, that it takes a long time to get anything accomplished. Even when an agency succeeds in implementing a program, the time when that program was needed may have already passed, making the program obsolete. There are too many people working for the bureaucracy to make it an efficient body. A smaller bureaucracy would allow the various agencies to function at a higher level because there would be fewer channels to go through. With fewer channels, work would get done faster and programs would reach more people. The government would also have more money to spend on other aspects of government that are in need, such as Social Security.

## What Is Your Opinion?



1. Is a large bureaucracy beneficial to a powerful nation like the United States? Defend your position.
2. Should the federal bureaucracy be decreased to help it run more efficiently? Explain your reasoning.



# Financing Government

**Main Idea**

By collecting taxes and borrowing money, the federal government is able to generate the funds it needs to run the nation. The government then assigns these funds to create a federal budget for the upcoming year.

**Reading Focus**

1. How does the federal government pay for its operations?
2. What are the two types of government spending?
3. How does the federal budget process work?
4. How do fiscal and monetary policy affect the nation's economy?

**Key Terms**

income tax  
 progressive tax  
 payroll tax  
 regressive tax  
 proportional tax  
 bond  
 federal debt  
 mandatory spending  
 discretionary spending  
 fiscal policy  
 monetary policy



Use the graphic organizer online to take notes on financing the federal government.

**WHY IT MATTERS**

**The Federal Budget** In February 2007 President George W. Bush presented his proposed budget for the upcoming fiscal year. This proposed budget called for \$2.9 trillion to spend on government programs.

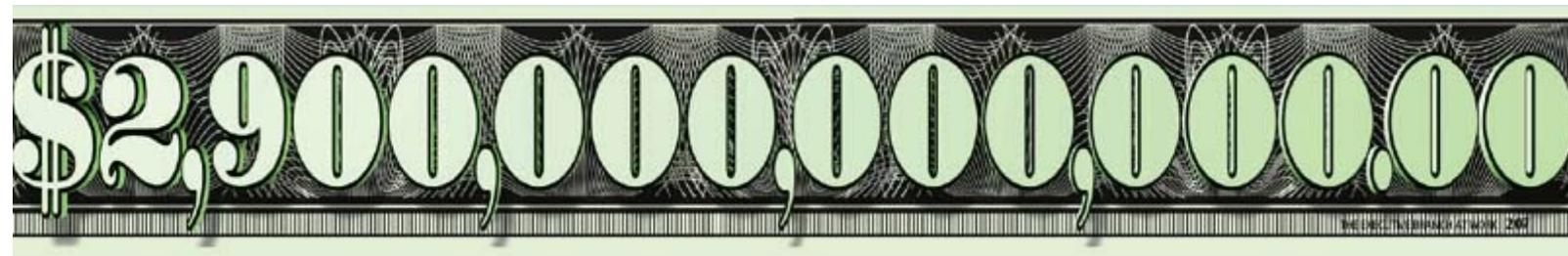
How can we make sense of a number that large? To put it another way, take the average U.S. Navy aircraft carrier. The total unit cost for just one of these massive ships is about \$4.5 billion. In order to equal the \$2.9 trillion proposed in the president's 2008 budget, you would need a fleet of more than 644 of these ships.

The federal budget represents approximately one-fifth of the country's overall gross domestic product—the total market value of all the goods and services produced within a country in a given year. This number translates to more than \$9,300 for every single man, woman, and child living in the United States.

The proposed budget also reveals how much the federal government plans to receive in revenue. The 2008 budget projected that the government would receive about \$240 billion less than it planned to spend. That is also a big number. It represents a debt of about \$800 for each person in the country.

The budget, in part, tells the story of the bureaucracy—what the different agencies and departments will receive and how they plan to spend the money. In effect, the budget is a story about our government and the way it works. ■

## BIG NUMBERS



**The number below illustrates what \$2.9 trillion looks like when it is written out. Including the decimal places, there are 13 zeros in 2.9 trillion.**

### Paying for Government

To pay for its operations—the programs and services it provides—the federal government relies on collecting revenue, or income, and borrowing. The revenue comes in the form of taxes, fees, and other

nontax sources.

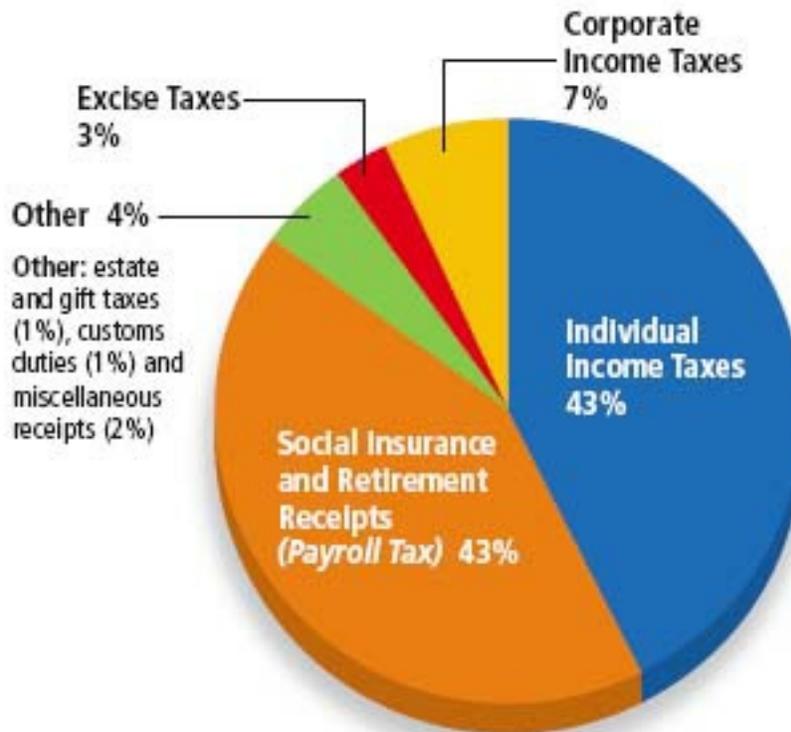
**Income Taxes** The Constitution grants Congress the power to “lay and collect” taxes. However, this power was limited to excise taxes, or taxes on the sale of a specific item. In 1913 the Sixteenth Amendment gave Congress the power to levy an **income tax**, which is a tax on a person’s or corporation’s income. Most people’s income consists almost entirely of wages or a salary from a job and people are obligated to pay income taxes each year.

Today the income tax brings in the largest share of the federal government’s revenue. Individual income taxes account for about 47 percent of federal revenue. Corporate income taxes make up another 12 percent.

The income tax is a **progressive tax**—a tax whose rates increase as the amount that is subject to taxation increases. Therefore, the income tax rates are higher for those who earn more. The federal individual income tax rates range from 10 percent for very low-income earners to 35 percent for high-income earners.

**Payroll Taxes** Another big source of federal revenue is payroll taxes, which are collected to help pay for Social Security, Medicare, and other forms of social insurance. A **payroll tax**, which makes up about 34 percent of federal revenues, is money that is withheld from a person’s paycheck by his or her employer. The payroll tax is a regressive tax, or a tax that has a greater impact on lower-income earners than on upper-income earners. The Social Security tax is a good example of a regressive tax because it applies to income only up to a certain amount. In 2007 this amount was \$97,500. As a result, people who earned more than that sum paid a lower share of their income for the tax than did people who earned less. For example, a person who earned \$200,000 per year paid the same Social Security tax as someone earning \$97,500. In effect, the higher earner paid the tax at about half the rate of the lower earner.

## FEDERAL REVENUES FOR 2009



Source: Office of Management and Budget

**Skills  
FOCUS**

### INTERPRETING GRAPHS

Where does the third-largest share of the government's revenue come from?

The Medicare tax is a **proportional tax**, or a tax that is applied at the same rate against all income. Since this rate does not change according to the amount earned, the Medicare tax is also a regressive tax.

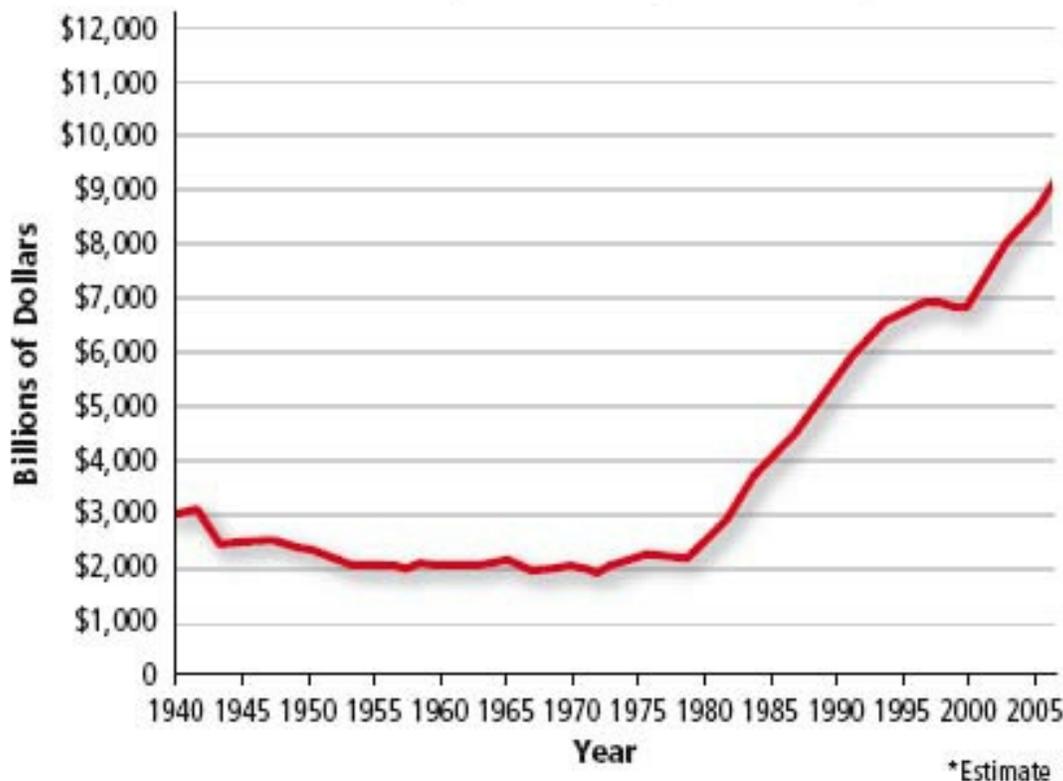
**Other Sources of Revenue** The federal government collects several other taxes and nontax revenues. Together, these revenues make up 6 percent of all federal funds.

# THE FEDERAL DEFICIT AND DEBT

Federal Deficits and Surpluses, 1940–2008\* (in 2007 dollars)



Gross Federal Debt, 1940–2008\* (in 2007 dollars)



\*Estimate

Source: Office of Management and Budget

**Skills  
FOCUS**

## INTERPRETING GRAPHS

Why does the gross federal debt graph dip slightly when the federal deficits and surpluses peaks in 2000?

Other taxes include excise taxes and tariffs. Tariffs are taxes on imported goods. They are also referred to as customs duties. Customs duties were once a major part of federal revenues, but the government has been trying to move toward “free trade”—trade without tariffs or with reduced tariffs.

Another federal tax is the estate tax. This tax is placed on money and property that is passed on to the heirs of someone who dies. In 2007 the government taxed estates valued at more than \$2 million. Like estate taxes, gift taxes are placed on property that is given from one person to another. The difference between gift taxes and estate taxes is that gift taxes are placed on items that are passed on by a living person. Gift taxes exist so that people will not avoid paying estate taxes by giving property away before they die.

The federal government also collects nontax revenue from several sources, such as entrance fees at national parks. The largest source, however, is earnings by the Federal Reserve System. This system loans money to banks and charges interest. You will read more about this system later in the section.

**Borrowing Money** The federal government does not always cover its expenses by collect-ing revenue. When it does not, it borrows money. The Constitution gives Congress the power to borrow money, and the federal government does so by selling bonds. A **bond** is a financial instrument by which a borrower agrees to pay back borrowed money, plus interest, at a future date. Thus, a person may buy a \$50 bond based on the promise of getting \$100 back at some later date.

Historically, the government borrowed money only in emergencies. A war, for example, could place heavy financial strains on the government. Economic depressions could also cause a steep drop in government revenues, leading to budget deficits. A deficit occurs when government revenues are lower than expenses. In such cases, the government might borrow money until the emergency has passed.

In recent decades, the federal government has been running a deficit

as a matter of course. Since 1970 the country has only had a surplus—more revenue than spending—from 1998 to 2001.

The total sum of money that the federal government has borrowed and not yet repaid is known as the **federal debt**. Today the federal debt has surpassed \$9 trillion. In years of deficit, the government pays only the interest on the federal debt. The interest alone, however, amounts to hundreds of billions of dollars a year—now about 9 percent of the total annual budget.

The federal debt and interest expenses are growing sharply just as the demands on Social Security and Medicare are increasing because of the aging of the baby boomer generation—those people born between 1946 and 1960. This situation presents major difficulties for government officials:

### Primary Source

“One such challenge is putting the federal budget on a [path] that will be sustainable as our society ages. Under current law, federal spending for retirement and health programs will grow substantially in coming decades.”

—Ben Bernanke, speech, 2006

Some observers fear that unless the debt is reduced, there will not be enough money to pay benefits to this aging population.

**READING CHECK** Summarizing What are the main sources of government revenue?

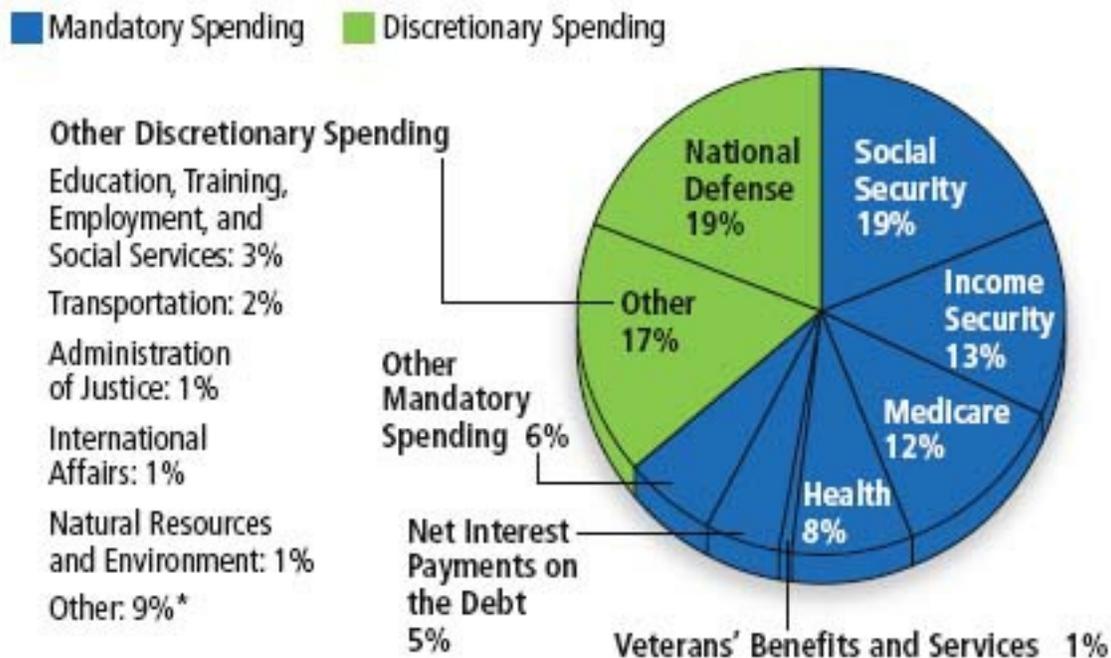
### Government Spending

Each year, Congress creates a budget that tells how much the government will spend to fund its various programs. The two types of spending are mandatory and discretionary.

**Mandatory Spending** The first type of federal spending is known as mandatory spending. **Mandatory spending** is spending required by laws and not subject to the annual budget process. A large percentage of mandatory spending goes to entitlement programs, or government programs that people are entitled to by law, such as Social Security. Government cannot deny funding to such programs without changing the law.

The part of the budget used for mandatory spending has risen steadily in recent decades. In 1962 the government spent 26 percent of the budget on mandatory programs. Today the number is about 69 percent.

### FEDERAL SPENDING 2009 (PROPOSED)



\* Other includes general science, space and technology, energy, agriculture, commerce and housing credit, community and regional development, general government, allowances.

Source: Office of Management and Budget

**Skills  
FOCUS**

#### INTERPRETING GRAPHS

1. What percentage of the budget is spent on mandatory programs?
2. What does this graph tell you about how discretionary funds are spent?

**Discretionary Spending** The second type of federal spending is discretionary spending. **Discretionary spending** is spending subject to the annual budget process. Congress is able to use its own judgment when deciding how to allocate discretionary funds. It is from this pool of funds that the government must pay for any optional program or activity. Discretionary spending today makes up about 31 percent of the entire budget.

## ACADEMIC VOCABULARY

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**allocate** to set aside for a particular purpose

The budget process deals with how to allocate the discretionary funds. Recall that once the president proposes the budget, it must still be passed by Congress. Creating the budget, therefore, is a collaborative effort between the legislative and the executive branches. The pool of discretionary money is limited, though, and disputes often arise between Congress and the president. When the president's plan for the discretionary funds does not match that of Congress, approving the budget becomes a long and often laborious process.

**READING CHECK** **Contrasting** What is the difference between mandatory and discretionary spending?

## The Budget Process

More than a plan for bringing in and spending money, the federal budget is a reflection of the nation's priorities. It also illustrates how the branches of government compromise. The president and Congress must decide which programs receive funds and how much funds they should receive.

The federal budget lasts for one fiscal year. The term *fiscal* means "financial" or "having to do with money." The government's fiscal year begins on October 1 and runs to September 30 of the next calendar year. A fiscal year is given the number of the calendar year in which it

ends. So, fiscal year 2008, or FY2008, would go from October 1, 2007, to September 30, 2008.

**The President's Budget** The creation of the federal budget begins with the president. In 1921 an act of Congress formally gave the president the job of preparing and presenting a budget. This proposed budget reflects the president's legislative priorities, highlighting the areas of the federal government that he or she feels are most in need of funding.

As discussed in Chapter 6, the Office of Management and Budget (OMB) assists the president in creating the budget. Once the president sets broad budget and policy guidelines, the OMB director works over a period of about four months with the various government departments and agencies. Each department and agency submits its budget requests to the OMB, which reviews them and makes adjustments according to presidential priorities. A department or agency can make a case for its funding requests, but the OMB has the final word on which requests make it into the president's budget proposal.

By the January prior to the start of the fiscal year, in time for the State of the Union address, the president's budget is complete. In addition to offering spending proposals, the massive document estimates revenues and spending several years into the future. These estimates show the long-term effects of all the president's recommendations.

**The Budget in Congress** The president must present the budget to Congress by the first Monday in February. From that point on, budget work takes place in Congress. Congress uses the president's proposed budget as a guide for its discussions. Congress reviews the president's proposal and makes any changes that it deems necessary.

The Congressional Budget Office (CBO) assists Congress in this work. The nonpartisan CBO was created to provide expert economic analysis to Congress. Congress can then make its own judgments about the economic effects of various proposals and ideas.

Congress's first steps are to agree on the grand totals for revenue and spending and to pass a concurrent resolution, which will guide its future budget work. The resolution is not signed by the president and does not have the force of law. In order to write this resolution, the House and Senate Budget Committees hold hearings to gather input on the budget from the members of Congress.



Congress then deals with the hundreds of individual funding and revenue resolutions contained in the budget. This work takes place in the House and Senate Appropriations Committees. The Appropriations Committees are committees that have authority over the discretionary spending of the budget.

The difference between the Appropriations Committees and the Budget Committees is that the Appropriations Committees actually write the budget legislation. Whereas the Budget Committees devise the concurrent resolution, which does not have the force of law, the Appropriations Committees have the power to determine precisely how the discretionary funds are to be spent.

The final product of the entire effort by the Appropriations Committees is a series of appropriations bills. Together, these bills formalize the spending decisions of the federal budget. These bills are then sent to the president.

Congress is supposed to complete its budget work by the beginning of the fiscal year. In recent years, Congress has often failed to meet this deadline. In such cases, Congress passes a continuing resolution for the president's approval to allow temporary funding of the government. Congress and the president have occasionally quarreled over such continuing resolutions. This quarreling has

sometimes led to the shutdown of government programs while Congress and the president worked out a solution.

**READING CHECK Sequencing** What are the steps, in order, for creating the federal budget?

## **Fiscal and Monetary Policy**

Each year the government takes in an amount of money equal to about 20 percent of the gross domestic product. It also spends and borrows a similar amount. Government spending and borrowing have a huge effect—both positive and negative—on the economy. Increasing taxes, increasing government spending, and borrowing money can all cause the economy to shift.

By creating the federal budget and tax laws, Congress and the president are making a **fiscal policy** for the United States. When the government alters the amount of money in circulation and the interest rates at which money is borrowed, it is creating a **monetary policy** for the United States. Together, fiscal and monetary policies help the federal government work toward a four-part economic goal, which includes economic growth, low unemployment, stable prices for goods and services, and a balanced budget.

**Fiscal Policy** The goal of fiscal policy is to provide adequate funds for government without adversely affecting the overall economy. In some circumstances, fiscal policy can even be used to boost the economy.

When the economy is growing slowly or shrinking, the government can do one of two things: spend more money or cut taxes. Through targeted government spending, sectors of the economy can be stimulated to produce more goods and hire more workers. By cutting taxes, though, the government can leave more money in taxpayers' pockets. This action spurs consumer spending and business investment. In either case, the goal is to stimulate the economy by increasing the public demand for goods and services and by promoting long-term

economic growth.

## FISCAL POLICY AND THE ECONOMY

QUICK  
FACTS

To counteract a slowing economy, the government can adjust fiscal policy by:

- 1. Cutting Taxes** Consumers have more money to buy goods and services.
- 2. Increasing Government Spending** The government buys more goods and services.
- 3. Cutting Taxes and Increasing Government Spending**



Such government actions can cause one of two scenarios:

**IF** the economy grows so much that tax revenue increases

**THEN**

- The deficit closes
- Government borrowing decreases
- Interest rates drop
- Businesses can afford to expand

**AND** the economy continues to grow



**IF** the economy fails to grow enough to increase tax revenues

**THEN**

- The deficit does not close
- Government continues to borrow money
- Interest rates rise
- Businesses can not afford to expand

**AND** the economy begins to decline



**Skills  
FOCUS**

### INTERPRETING CHARTS

What are some of the effects that fiscal policy can have on the economy?

However, increasing government spending while cutting taxes can sometimes create large budget deficits, which the government must then cover by borrowing money. As you read earlier, the government borrows money by selling bonds to investors.

As the government borrows more, it must often pay higher interest on government bonds to continue to attract investors. This action triggers a rise in the rates at which businesses borrow money. With borrowing more expensive, businesses borrow less, build less, and expand more slowly. As a result, the economy itself begins to

slow.

Too much government spending can, under certain conditions, trigger inflation—a rise in prices for goods and services. Inflation cuts into the purchasing power of people and businesses. People must buy less with the same amount of money, which reduces their standard of living. Government can combat inflation by reducing spending, raising taxes, or raising interest rates.

**Monetary Policy** The federal government can also influence the economy through its monetary policy, which controls the amount of money in circulation and the interest rates at which money is borrowed. This policy is set and carried out by the Federal Reserve System, or the Fed.

Created in 1913, the Fed is an independent regulatory commission that acts as the nation's central banking system. It has a seven-person board with one member acting as chairperson. The Fed Board is nominated by the president and confirmed by the Senate. The Fed chairperson holds a powerful position, as his or her decisions have a great impact on the U.S. economy.

#### RESPONSIBILITIES OF LEADERSHIP

The Federal Reserve uses all the information it can to try to set interest rates at a level that will best serve the American economy, businesses, and consumers.

The Fed carries out the monetary policy of the federal government in several ways. First, it sets rules for how much money banks must have in reserve. If it raises the reserve requirement, the Fed keeps more money out of circulation. If the Fed lowers the reserve requirement, it increases the amount of money in circulation.

The Fed also carries out monetary policy by adjusting the interest rates it charges its customers—the nation's other banks. These banks borrow money from the Fed at rates set by the Fed. Raising the rate discourages borrowing and reduces the amount of money in

circulation. Lowering interest rates has the opposite effect.

Finally, the Fed can affect the money supply by buying or selling government bonds. When the Fed buys bonds, it puts money in circulation. When the Fed sells bonds, it reduces the amount of money in circulation.

Creating a successful monetary policy is a balancing act. In general, more money in circulation will foster economic growth, but it can also trigger inflation. Less money in circulation may reduce inflation, but it can also slow economic growth.

There are limits to what government can achieve with its fiscal policy and monetary policy. For example, any change in policy takes time to put in place. As a result, the effect of the change may not begin for months. By then, the nature of the problem itself may have changed—requiring yet another change in policy. This cycle could continue while the economy slows and becomes unstable.

## PROFILES IN GOVERNMENT

### Ben BERNANKE

1953-



Ben Shalom Bernanke, whose middle name literally means "peace," has an affinity for diplomacy. Paired with his diplomatic nature, Bernanke's strong

academic background prepared him well for his current role as the Federal Reserve chairman, a position he has held since February 2006. After graduating with a B.A. in economics from Harvard in 1975 and a Ph.D. in economics from the Massachusetts Institute of Technology in 1979, Bernanke went on to teach at several universities, including Stanford and Princeton. He has published numerous articles and books on economic theory and policy. Much of his scholarly work has also focused on the political and economic causes of the Great Depression.

**Infer** How do you think Bernanke's background helps him perform his duties as America's leading economist?

**READING CHECK** Identifying Supporting Details Why is inflation bad for the economy?

SECTION

3

ASSESSMENT

 [hmhsocialstudies.com](http://hmhsocialstudies.com)  
ONLINE QUIZ

### Reviewing Ideas, Terms, and Places

- Define** What is a **bond**?
  - Develop** Defend the current practice of the federal government's methods of obtaining revenue by taxing the American people and borrowing money.
- Define** What is meant by the terms **mandatory spending** and **discretionary spending**?

**b. Make Generalizations** How do discretionary spending choices affect the budget process?

**3. a. Recall** How often must the federal government prepare a budget?

**b. Contrast** How do the roles of the president and Congress differ with regard to the budget process?

**4. a. Identify** What are the main goals of the federal government's **fiscal policy** and **monetary policy**?

**b. Elaborate** Do you think it is accurate to label maintaining a successful monetary policy a “balancing act”?

## Critical Thinking

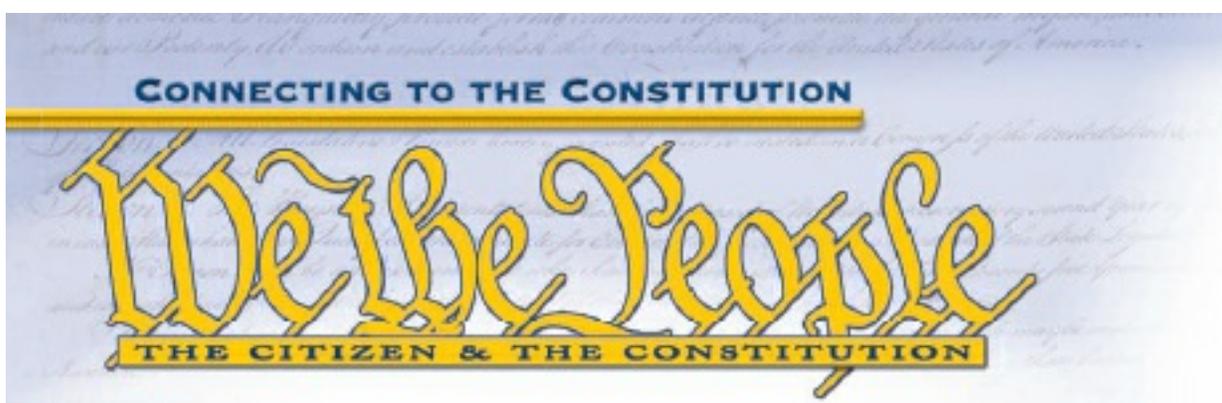
**5. Compare and Contrast** Copy the chart below and record key information about monetary policy and fiscal policy. In what ways are monetary policy and fiscal policy similar? In what ways are they different?

Monetary Policy	Fiscal Policy

## FOCUS ON WRITING



**6. Narrative** Imagine you are trying to explain to a visitor from another country the government's budget process. Write a brief narrative explanation of the process.



## **The Federal Bureaucracy**

**The First Congress set up executive departments and agencies to carry out the business of the executive branch. Learn why Congress creates executive departments and agencies and identify some of the checks on the exercise of administrative power.**

**Why does Congress create administrative organizations, and what powers do they exercise?** Laws usually are written in general terms. Congress cannot anticipate and does not have the expertise to resolve problems that arise when general laws are applied to specific circumstances. Almost from the beginning Congress has had to delegate some of its lawmaking powers to those who administer the laws. Administrative units exercise quasi-legislative powers by adopting rules to implement broad congressional mandates. Rules are published in the *Federal Register*. Many administrative units also exercise quasi-judicial powers by holding hearings to resolve disputes that involve parties claiming to have been injured by administrative policies or procedures.

The Internal Revenue Service (IRS) provides an example. The Sixteenth Amendment gives Congress the power to “lay” (establish) and collect taxes on income. Congress enacts general income tax laws. It has delegated to the IRS the responsibility to make and enforce rules about tax collection, including income tax forms, deadlines, and penalties for late filing. The IRS holds quasi-judicial proceedings, including hearings and opportunities to present evidence to a neutral hearing officer, for taxpayers who are accused of violating tax rules. In 1946 Congress adopted the Administrative Procedure Act that

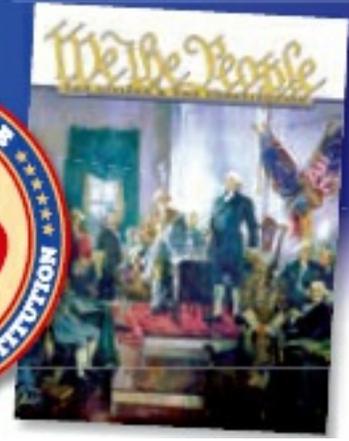
established guidelines for administrative units to follow when they make rules to implement laws. Among other things the act requires public notice and an opportunity for the public to be heard before a rule goes into effect. The act also permits judicial review of the decisions of administrative units in federal court after someone has gone through, or exhausted, all quasi-judicial proceedings within the administrative unit.

### **How do checks and balances affect administrative agencies?**

Administrative agencies are subject to many checks on the exercise of their powers. Those who exercise checks include the following:

**The president** Presidents use their appointment power to reward political loyalists and advance their policy agendas. Presidential appointees usually are required to pursue the president's policies in administering government programs, thereby checking the power of civil service career employees.

Presidents also check the exercise of administrative power through the use of executive orders, which direct agency heads and cabinet members to take particular actions. Executive orders have become more common in recent years as a means of forcing agencies to adjust administrative policies and procedures. For example, soon after he took office President George W. Bush issued executive orders creating Faith-Based and Community Initiatives offices in several departments and agencies to help ensure that faith-based groups would receive government contracts to provide social services.



**Congress** Congress can control the bureaucracy in many ways. It is responsible for the creation, consolidation, and elimination of administrative agencies. The Senate must confirm high-level presidential appointees. Many statutes direct agencies to undertake certain actions and refrain from others. Congress also must appropriate the money required for agencies to operate. Congressional committees are responsible for overseeing the actions of administrative agencies. They review agency budgets, require administrators to justify expenditures, hold investigative hearings about agency activities, and require agencies to submit their proposed rules, which Congress has the power to “veto.” The Supreme Court declared the congressional veto unconstitutional in 1983, but Congress has continued to use it and has found other ways, including joint resolutions, to prohibit agencies from implementing rules with which Congress disagrees.

**Courts** Courts decide whether agency operations follow the Fourteenth Amendment requirements of due process and equal protection. Courts also determine whether Congress has delegated too much legislative authority to administrative agencies. The Supreme Court has never questioned Congress’s power to permit administrative agencies to “fill in the details” of statutes, but the Court has insisted that Congress clearly identify the standards that agencies must meet.

**Federalism** If a state policy differs from a national policy—as has occurred in areas such as education, welfare, and environmental protection—then national bureaucrats can encounter resistance or

refusal to comply with the national standards. Sometimes acting alone, and almost always when acting with others, states can have a significant effect on the national bureaucracy.

**Citizens, interest groups and the media** Those who are directly affected by administrative policies or who are interested in particular areas of public policy also check the exercise of administrative power. Many Social Security recipients, for example, monitor actions of the Social Security Administration and report complaints to the agency or to members of Congress. Environmental activists, welfare recipients, and many other individuals and groups keep a close watch over various administrative agencies. Media investigations also can alert the public and elected officials to problems and miscarriages of justice in the bureaucracy.

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### **Reviewing Ideas and Terms**

- 1. Describe** What are the limits on the exercise of administrative power?
- 2. Explain** How do both Congress and the president rely on administrative agencies?

### **Research Activity**

- 3. Develop** Find an example of how the media or a citizens' group in the United States or in your community has brought to light a problem in the bureaucracy.

CHAPTER

7

# Chapter Review

## Connecting Online

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Go online for review and enrichment activities related to this chapter.



### Quiz and Review

#### **GOV 101**

Examine key concepts in this chapter.

#### **ONLINE QUIZZES**

Take a practice quiz for each section in this chapter.

### Activities

#### **eActivities**

Complete Webquests and Internet research activities.

#### **INTERACTIVE FEATURES**

Explore interactive versions of maps and charts.

#### **KEEP IT CURRENT**

Link to current events in U.S. government.

### Partners

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#### **Center for Civic Education**

Promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy.

 **Online Textbook**

#### **ONLINE SIMULATIONS**

Learn about U.S. government through simulations you can complete online.

# Comprehension and Critical Thinking

## SECTION 1

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: bureaucracy, bureaucrats, civil service, spoils system.
- b. Draw Conclusions** Why do you think the federal bureaucracy today is so large?
- c. Evaluate** What do you think about the end of the spoils system and the implementation of a civil service?

## SECTION 2

2. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: independent executive agencies, independent regulatory commissions, bipartisan, government corporations.
- b. Summarize** In what ways have the executive departments changed since 1789?
- c. Analyze** What is your opinion about the legislative and judicial powers given to certain independent agencies? Should they be allowed to have such powers? Explain your answer.

## SECTION 3

3. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: progressive tax, regressive tax, proportional tax, bond, federal debt.
- b. Contrast** What is the difference between fiscal policy and monetary policy?
- c. Predict** What might happen if current budget patterns continue as they have over the past 50 years?

## Critical Reading

*Read the passage in Section 2 that begins with the heading “Independent Regulatory Commissions.” Then answer the questions that follow.*

4. What is the primary purpose of the Federal Communications Commission (FCC)?
- A to regulate passenger trains
  - B to regulate radio, television, wire, satellite, and cable communication
  - C to regulate print media
  - D to regulate communication with foreign countries
5. What is distinctive about independent regulatory commissions?
- A They are not a part of the federal bureaucracy.
  - B They only regulate commerce.
  - C They all have a bipartisan board of directors.
  - D They have only executive functions.

*Read the passage in Section 3 that begins with the heading “The Budget in Congress.” Then answer the questions that follow.*

6. What is Congress’s role in the budget process?
- A Congress is legally bound to follow the president’s proposed budget.
  - B Congress is able to change nearly any aspect of the president’s proposed budget.
  - C Congress is required to produce an entirely different budget.
  - D Congress is bound by the advice of the Congressional Budget Office.
7. What is the main role of the Budget Committees in the House and the Senate?

- A** to approve the president's proposed budget
- B** to debate the concurrent resolution
- C** to cut the budget
- D** to establish spending and revenue guidelines

#### RESPONSIBILITIES OF LEADERSHIP

8. How much do you know about the **purpose and function of independent agencies**? Select an independent agency and research its purpose and function. Use your research to write an editorial on whether this agency is an important part of the federal bureaucracy today. Use persuasive arguments and language in order to convey your point.
9. The federal government takes an active role in many public health issues. The National Institute on Alcohol Abuse and Alcoholism, for example, is an agency that works to reduce alcohol-related problems in the United States. Using the library and the Internet, research examples of how **federal, state, and local governments take a role in substance abuse programs**. Write a report detailing the agency and explain why this agency is important to the prevention of substance abuse.

#### CONNECTING TO THE CONSTITUTION

10. Go to the periodicals section of your library and select articles from newspapers or magazines that show examples of actions taken by the executive departments and agencies. Use these articles to explain how the actions of these organizations relate to the purposes of republican government.

**Political Cartoon** *The federal budget determines the levels of funding that the agencies and organizations of the federal bureaucracy will receive each year. With every new fiscal year, the budget continues to grow. As budgets become bigger, the amount of tax revenue and additional government borrowing increases, which creates a strain on Americans and also increases the size of the federal debt.*



By permission of Bob Correll and Creators Syndicate, Inc.

**11. Analyze** What is the message of this cartoon?

**12. Make Inferences** How does the cartoon use the notion of weight loss to illustrate the size of the federal budget?

## FOCUS ON WRITING

**Expository Writing** Expository writing gives information, explains why or how, or defines a process. To practice expository writing, complete the assignment below.

**Writing Topic: The Executive Departments**

**13. Assignment** How has the increasing number of executive departments affected the bureaucracy? Write a short essay in

which you develop your position on this issue. Support your point of view with reasoning and examples from your reading and studies.

# The Federal Courts and the Judicial Branch

**Essential Question** How does the Supreme Court function as the final word on questions of federal law and the Constitution?

## CHAPTER AT A GLANCE

### SECTION 1 The Federal Court System

- The United States has a dual court system.
- The Judiciary Act of 1789 organized the federal courts into three tiers. Today these tiers consist of the district courts, the courts of appeals, and the Supreme Court.
- Through its powers of judicial review, the judicial branch plays a critical role in the system of checks and balances.

### SECTION 2 Lower Federal Courts

- The courts in the 94 federal judicial districts have original jurisdiction over most federal and civil cases. They handle more than 500,000 cases a year.
- The 12 federal courts of appeals have appellate jurisdiction only.
- Under its Article I powers, Congress has established a number of specialized lower courts to hear cases of limited subject-matter jurisdiction.

### SECTION 3 The Supreme Court

- The importance of the Supreme Court has grown since the Court's early days. As it gained stature, the Court also tended to experience political shifts mirroring those in society at large.
- Supreme Court justices are nominated by the president and must undergo a lengthy Senate confirmation process.
- The Supreme Court meets from October to June or July, studying briefs, hearing oral arguments, discussing cases in conference, and issuing opinions on about 100 cases a year.

## CONNECTING TO THE CONSTITUTION



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of the importance of judicial review and the checks on the Supreme Court's power.



### About the Photo

For most of its history, the Supreme Court did not have a building of its own. For 135 years the Court was housed in various spaces in the Capitol building and elsewhere. In 1929, Chief Justice William Howard Taft was able to persuade Congress to authorize the construction of a separate building for the Court. Construction of the Supreme Court building, which was designed in the classical style, was completed in 1935. The front portico features sixteen marble Corinthian-style columns (shown in picture).



## SECTION

# 1

# The Federal Court System

## BEFORE YOU READ

### Main Idea

The Framers created an independent judicial branch

### Reading Focus

1. How is jurisdiction determined in the American court system?
2. How is the federal court

### Key

### Terms

jurisdiction  
exclusive  
jurisdiction

<p>as part of the separation of powers of the national government. At the federal level, the judicial branch consists of three tiers of courts, each performing a different function.</p>	<p>system structured?</p> <p>3. How are federal judges appointed?</p> <p>4. What is the judicial branch's role in the system of checks and balances?</p>	<p>concurrent jurisdiction plaintiff defendant original jurisdiction appellate jurisdiction judicial restraint judicial activism precedent senatorial courtesy</p>
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Use the graphic organizer online to take notes on the purposes of government.

## A Dramatic CONFRONTATION



**Judicial Independence** The Constitution makes the Supreme Court the ultimate interpreter of the law. The Constitution also gives Congress the power to impeach Supreme Court justices. Are these two powers compatible? If Congress can remove a Supreme Court justice for his or her opinions, how can the Supreme Court be free to rule on cases before it? Does the threat of impeachment undermine judicial independence?

That very question was at stake in a dramatic confrontation that shook Washington, D.C., in 1805. The majority party in Congress, the Democratic-Republicans, tried to impeach a sitting Supreme Court justice, Samuel Chase. Chase was a committed Federalist with a habit of speaking out on political issues and involving himself in party politics. That behavior prompted Democratic-Republicans to question his fairness. The House of Representatives, which was controlled by the Democratic-Republicans, brought impeachment charges against Chase, alleging judicial misconduct. John Randolph, leader of the Democratic-Republicans in the House, was appointed manager of the subsequent trial in the Senate.

Randolph presented an unconvincing case for conviction. Justice Chase mustered an impressive array of legal talent in his defense. Even better for Chase, some of Randolph's allies began to wonder if impeachment would set a dangerous precedent. In the end, too few senators voted to convict Chase, and the justice managed to save his job.

Historians count Chase's acquittal as a victory for judicial independence. Judges today rule without fear of politically motivated impeachment charges. There is a consensus that judges can only be removed for serious misconduct. Judicial independence remains the cornerstone of our federal court system. ■



**Supreme Court justice Samuel Chase**

## **The American Court System**

Judicial independence is a cornerstone of our judicial system because it helps to safeguard the rule of law—the belief that no person is above the law and all persons are entitled to equal justice under the law. If people are to have confidence in the law's impartiality, they must know that judges cannot be unduly influenced by those in power.

The courts are where people go to settle disputes according to the law. In fulfilling this function, courts perform three basic tasks. They determine whether a law has been broken and what penalties can be applied. They decide how to provide relief for those who have been harmed by the actions of another. If necessary, they determine the meaning of a particular law or of the Constitution itself.

## ARTICLE III, SECTIONS 2 AND 3: EXCLUSIVE JURISDICTION OF FEDERAL COURTS

QUICK  
FACTS

### SUBJECT MATTER

- Interpretation or applications of the Constitution, federal laws, or treaties
- Admiralty and maritime law (law pertaining to maritime activities)

### PARTIES INVOLVED

- The United States or one of its agencies
- A representative, such as an ambassador, of a foreign country
- A state government suing another state government, one of its residents, a foreign government, or one of its subjects
- Citizens from the same state who claim lands in another state

**A Dual Court System** Before the Constitution was written, there were no national courts. State courts decided how to interpret laws passed by Congress. Frequently, the decisions of the state courts contradicted each other, leaving people uncertain about what the law really was. The Framers sought to clarify the situation by creating a federal court system and defining what types of cases would be handled by it.

The Constitution created a dual court system: Alongside each state's court system, there is a national court system. It is important to note that state courts hear the vast majority of cases in the United States. Their powers flow from state constitutions and state laws. In contrast, the powers of the federal court system flow directly from the U.S. Constitution and federal laws.

**Jurisdiction** There are clear, if complicated, rules outlining which has **jurisdiction** over what types of cases. Jurisdiction means the authority to hear and decide a case. In general, state courts hear matters of state law and federal courts hear cases that involve the Constitution or other federal laws.

The Constitution gives federal courts **exclusive jurisdiction**—the

sole right to hear a case—over certain types of cases, depending either on the subject matter of a case or the parties involved. Look at the chart on this page for the types of cases in which the federal courts have exclusive jurisdiction.

**Concurrent jurisdiction** refers to cases that fall under both state and federal jurisdiction. Concurrent jurisdiction applies when cases involve residents of different states and the amount of money involved exceeds \$75,000. The **plaintiff**, or person making the legal complaint, can file his or her case in federal or state court. Under certain circumstances, the **defendant**, the person against whom the complaint is filed, can insist that the case be tried in federal court.

Whether a case is heard in state or federal court, the court that first hears it is said to have **original jurisdiction**. If the case is appealed to a higher court, it then moves to the court that has **appellate jurisdiction**.

**READING CHECK** **Making Inferences** Why is jurisdiction complicated by the nation’s dual court system?

## Structure of the Federal Court System

The Constitution does not go into great detail about the judicial branch or its structure. Article III, Section 1, states simply that “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 Framers’ brevity was partly strategic. Since the proper power of federal courts was a matter of debate and controversy, it made sense to be vague. Providing too many details might trigger opposition, which could delay or even prevent ratification. The Framers, therefore, left it to Congress to decide what kinds of courts were needed.

### RESPONSIBILITIES OF LEADERSHIP

**In organizing the federal courts in a three-tiered structure, the Framers ensured that legal disputes would get a thorough, if time-**

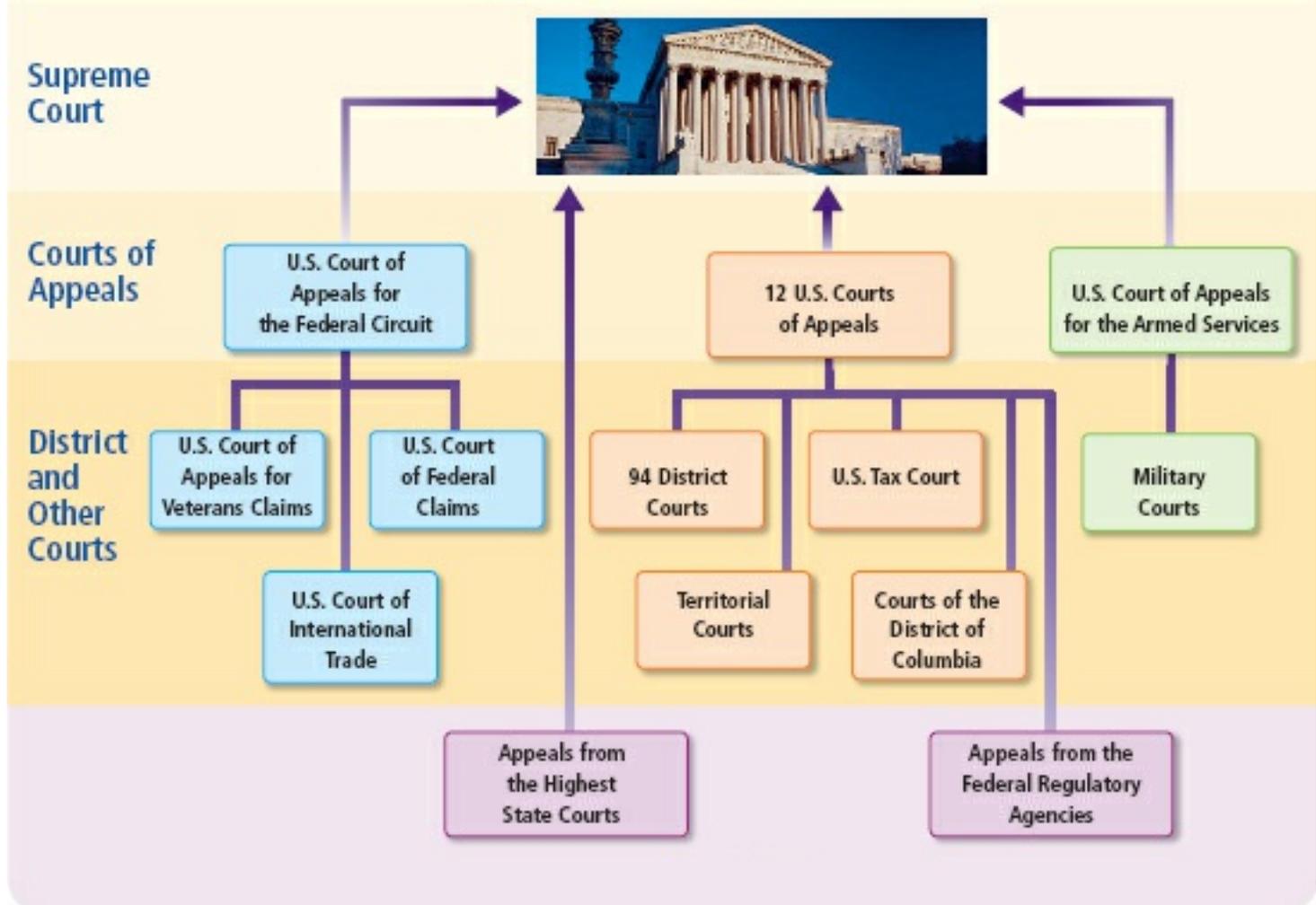
**consuming, hearing. However, when disputes involve government actions or policies, the uncertainty produced by pending legal cases can impede the functioning of government.**

**Judiciary Act of 1789** In its first session, Congress passed the Judiciary Act of 1789. This act fleshed out the details of the Supreme Court. It also proposed a three-tiered structure for the federal courts. The three tiers were the district courts, circuit courts, and the Supreme Court. While the federal judicial system has been altered in various ways over the years, the basic three-tiered structure laid out in the Judiciary Act of 1789 has remained intact.

**District Courts** District courts are spread throughout the country and serve as the trial courts of the federal system. That means they have original jurisdiction over nearly all the criminal and civil cases heard in the federal system. Criminal cases involve violations of criminal laws, such as those against murder or kidnapping. Civil cases involve disputes between private individuals or groups, such as over money or property.

There are 94 federal judicial districts—89 in the 50 states and one each in Washington, D.C.; Puerto Rico; Guam; the Virgin Islands; and the Northern Mariana Islands. There must be at least one court in every state.

THE FEDERAL COURT SYSTEM



# INTERPRETING CHARTS

The U.S. Supreme Court sits atop the federal court system. How do appeals of decisions by federal regulatory agencies reach the U.S. Supreme Court?

**Courts of Appeals** The Judiciary Act of 1789 established a layer of courts above the district courts called circuit courts. The term *circuit* referred to the fact that the courts originally had no fixed location. Judges would literally travel through the circuit, or designated region, going from district to district to hear cases.

When they were created, the circuit courts had original jurisdiction over some types of federal cases. They also heard appeals from cases from the district courts. The Judiciary Act of 1891 transformed the circuit

courts into strictly appellate courts. Hence, their current name: the courts of appeals.

Courts of appeals hear appeals from district courts and also from those federal agencies that have rule-making and rule-enforcement powers. The United States is currently divided into 12 different circuits. Within each circuit is a court of appeals. In addition, there is now a Court of Appeals for the Federal Circuit. This court has nationwide appellate jurisdiction over certain types of cases decided by one of the specialized courts you will read about below.

**The Supreme Court** The U.S. Supreme Court occupies the top tier of the federal court system. The Supreme Court is mainly an appellate court—the ultimate appellate court, as a matter of fact. Article III, Section 2, of the Constitution does list a few instances in which the Supreme Court has original jurisdiction: “Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party.”

The Judiciary Act of 1789 and later acts of Congress formalized details of the Court’s organization. Originally, the Court had one chief justice and five associate justices. Since 1869, the Court has had a chief justice and eight associate justices. Congress has also passed legislation that has altered the Court’s appellate jurisdiction.

The Court receives some 8,000 petitions, or requests to review a case, each year. The Court chooses which cases it wants to hear. The cases usually involve major questions about the meaning of the Constitution or about federal law. On average, the Court hears and issues full opinions on about 100 cases a year.

**Other Courts** Over the years, Congress has created a number of other courts. Since the power to create these courts is outlined in Article I of the Constitution, these courts are often referred to as “Article I courts.” The jurisdiction of these courts is limited to certain types of cases specified by Congress.

Because the jurisdiction of Article I courts is limited, their judges

are not subject to the provisions regarding appointment, pay, and term length outlined in Article III. In other words, they are not appointed for life, and their pay is not guaranteed from reduction during their terms. You will read more about these courts in Section 2.

**READING CHECK** **Summarizing** What are the three tiers of the federal court system?

## **Appointing Federal Judges**

The Constitution gives the president the power to nominate all federal judges, whom the Senate must then approve. Presidents typically take four factors into consideration when making nominations: legal expertise, party affiliation, a judge's judicial philosophy, and the approval of the Senate.

**Legal Expertise** Though the Constitution does not require it, most federal judges have been trained lawyers. Since 1952, the American Bar Association (ABA), a leading professional organization for the legal community, has issued reports on the integrity and professional competence of federal judicial nominees. The reports refrain evaluating a nominee's judicial philosophy or party affiliation. Presidents, senators, the media, and the public have often used these reports to assess a nominee's legal expertise.

**Party Affiliation** Presidents usually nominate judges with whom they share a party affiliation. Not only is it good politics—rewarding one's supporters with judges of like mind—it also satisfies a president's urge to leave a stamp on the nation. Judges will serve long after a president has left office. Justice William O. Douglas, for example, served 36 years. Appointed by President Roosevelt, he retired when President Ford was in office.

**Judicial Philosophy** Presidents also want to appoint judges who share their judicial philosophy. Definitions of judicial philosophy often come

down to where a judge lands on a spectrum with **judicial restraint** on one end and **judicial activism** on the other end. Judicial restraint is the concept that a judge should interpret the Constitution according to the Framers' original intention. According to this view, laws should be overturned only when the violation of the Constitution's original meaning is absolutely clear.

The concept of judicial activism holds that judges can adapt the meaning of the Constitution to meet the demands of contemporary realities. According to this view, the Constitution should be interpreted more broadly, as an evolving document, something that subsequent generations can interpret consistent with changing values and circumstances.

**FEDERAL JUDICIARY: TERMS OF OFFICE AND SALARY** 

COURT AND YEAR CREATED	JUDGES	TERMS	PAY
Supreme Court (1789)	9	Life	\$203,000- \$212,100
District courts (1789)	677	Life	\$165,200
Courts of Appeals (1891)	179	Life	\$175,100
Trade Court (1926)	9	Life	\$165,200
Court of Appeals for the Armed Forces (1950)	5	15 years	\$175,100
Tax Court (1969)	19	15 years	\$165,200
Court of Appeals for the Federal Circuit (1982)	12	Life	\$175,100
Court of Federal Claims (1982)	16	15 years	\$165,200
Court of Appeals for the Veterans Claims (1988)	7	15 years	\$165,200

Respect for **precedent**, or previous court rulings on a given legal question, can limit a judge's ability to interpret laws in innovative ways. A judge who respects precedent subscribes to the idea of *stare decisis*, which means "let the decision stand" in Latin. That is, the judge is likely to rule based on precedent rather than overturn earlier decisions. Virtually all judges agree to respect precedent to some degree. The question is how much and over which issues. Moreover, not all precedents are consistent with one another, and different precedents can be cited to support opposing interpretations of a law.

**Opinions of the Senate** The Senate must approve any nominee to the federal courts. For nominations to the federal district courts, the tradition of **senatorial courtesy** plays a large role. According to this tradition, a senator from the same state as the nominee and the same political party as the president can block a nomination for virtually any reason. The other senators simply respect his or her opposition to the nomination and refuse to support it. For this reason, presidents either consult with senators before making a nomination to the district courts or simply nominate candidates whom senators suggest.

Senatorial courtesy plays no role in nominations to courts of appeals or to the Supreme Court. Those courts hear cases originating in more than one state. Giving a single senator veto power over such nominations would unduly restrict the process.

Still, most presidents consult with senators, particularly those from their own party, when making nominations to the courts of appeals and to the Supreme Court. It is usually in a president's interest to avoid long, drawn-out confirmation battles in the Senate. Presidents know that senators can resort to filibusters and other tactics to block a nomination. Then again, sometimes presidents decide that a high-profile battle over a judicial nomination translates into good politics: It can stir up members of the president's party.

**READING CHECK** **Drawing Conclusions** How does the

appointment process ensure that voters have some input on the selection of judges and justices?

## Checks and Balances

The judicial branch plays a key role in the constitutional system of checks and balances. It both checks and is checked by the legislative and executive branches.

**Judicial Review** The primary judicial check on the legislative and executive branches is the power of judicial review. As discussed in Chapter 3, judicial review was established in 1803 by *Marbury v. Madison*. Because of *Marbury*, the Supreme Court has the power to rule on whether laws or executive actions violate the Constitution.

**Checks on the Judiciary** The appointment process—involving both the executive and legislative branches—is an important check on the judiciary, giving the people a say, through their elected representatives, on who will be their judges. But what happens once judges are in office? Can they be removed?

Congress has the power to impeach and remove judges from office, but it is not easy. The Constitution says that “Judges, both of the supreme and inferior courts, shall hold their terms of office during good behavior” (Article III, Section 1). Article III judges have no set terms and may serve for life.

The Framers thought that making judgeships permanent would help ensure judicial independence. It would free judges from being bullied by other branches of government or by the public. Even when it has set term limits for Article I courts, Congress has been careful to make the terms outlast any president’s term of office.

Since the failure to impeach Samuel Chase, discussed earlier in this section, it has been understood that political views are not sufficient grounds for removing a judge from office. Seven judges have been removed, all for serious misdeeds such as taking bribes.

The Constitution further protects judicial independence by saying that judges' pay cannot be reduced during their term. This helps to protect the judiciary from undue political pressure or influence.

## ACADEMIC VOCABULARY

**sufficient** enough to meet the needs of a situation

The amendment power offers another way for Congress and the states to check the judiciary. An amendment can make a formerly unconstitutional act constitutional. Both impeachment and the amendment power are difficult processes. The Framers made them that way to build a strong barrier protecting judicial independence.

**READING CHECK Summarizing** What is the judiciary's primary check on the other two branches?



What are the advantages and disadvantages of having federal judges appointed, not elected, to serve “during good behavior”?

SECTION

1

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- Describe** What is the purpose of courts?
  - Elaborate** How is the dual court system consistent with the principles of federalism?
- Identify** What is the only court specifically established in the Constitution?
  - Elaborate** How does the structure of the federal court system ensure that Americans have ample opportunities to seek justice?

**3. a. Compare** What are judicial restraint and judicial activism

**b. Rank** What do you think is the most important quality a president can consider in choosing a judge?

**4. a. Describe** What are two ways the Constitution helps ensure judicial independence?

**b. Predict** How might the judiciary be different if judges served only limited terms?

## Critical Thinking

**5. Analyze** Copy the graphic organizer below, and complete it using details from the section. Using the completed graphic organizer, analyze how the organization and processes of the judicial branch are or are not suitable for meeting its purposes.

Main Idea	Supporting Details
The American Court System	
Structure of the Federal Courts	
Appointment of Judges	
Checks and Balances in the Judiciary	

## FOCUS ON WRITING



**6. Persuasive** Imagine what life would be like if you lived in the “state of nature” described by Thomas Hobbes. Write a speech to convince others to join with you and form a government.

## DEBATING THE ISSUE

# Judicial Activism or Judicial Restraint?

*Should judges be guided by a philosophy of judicial activism or judicial restraint?*

## THE ISSUE

The question of how much power the judiciary should have in interpreting the Constitution is not one that is likely to have a final answer anytime soon. Most judges declare their belief in judicial restraint. But the power of judicial review, the fundamental power of the judiciary, demands that judges be willing to overturn the acts of the legislative and executive branches—in other words, that they be judicial activists. The tension between judicial restraint and judicial activism is built in to the fabric of judicial decision-making.



**Critics saw judicial activism behind a 2005 ruling by a federal district court judge that said requiring public school students to recite the phrase “under God” was an unconstitutional endorsement of religion.**

## **VIEWPOINTS**

**Judges should interpret the Constitution to address changing realities.** Judicial activists argue that the Constitution should be seen as a living document, without fixed interpretation, in order to best meet the needs of the present day. Relying on the Framers’ original intent, they argue, is unrealistic. Original intent is

difficult, if not impossible, to determine: Different Framers had different intentions, and the Constitution reflected the political compromises needed at the time, not some fixed position for all time. Besides, the Framers never imagined the things we live with today—from electronic surveillance to the Internet. Moreover, it is through the intervention of activist judges that key rights have been secured and the interests of all Americans protected. If it had been left to democratically elected legislatures, segregation, for example, might still exist.

**Judges should interpret the Constitution according to the Framers’ original intentions.** Those who favor judicial restraint are not opposed to innovations to meet new situations, but they believe that legislatures are the proper forum to pursue such changes. Indeed, proponents of judicial restraint show great deference to the acts of legislatures and believe a law should be overturned only when it is clearly unconstitutional according to the Framers’ original intent. They acknowledge the difficulty in determining original intent but believe that other criteria are too subjective. They argue that abandoning the Constitution—or creatively interpreting it—allows judges to place their personal views and opinions before sound legal reasoning and the actions of the legislative branch, violating the principle of separation of powers.

## What Is Your Opinion?



1. Current Chief Justice John Roberts has said, “Judges are like umpires. Umpires don’t make the rules; they apply them.” In your own words, explain what you think he meant.

2. Do you think judges or justices should take a more restrained or a more activist approach? Are there situations in which your opinion might change? Explain your reasoning.



## Lower Federal Courts

### BEFORE YOU READ

#### Main Idea

Congress has created a system of lower courts for the federal judicial system. Each court has a specific role to play in the judicial branch.

#### Reading Focus

1. What are the roles, jurisdiction, and officers of the federal district courts?
2. What are the roles, jurisdiction, and procedures of the federal courts of appeals?
3. What are the functions of some of the other federal courts?

#### Key Terms

grand juries  
bankruptcy  
magistrate  
judges  
misdemeanor  
public  
defenders  
marshals  
appellant  
briefs  
sovereign  
immunity  
courts-  
martial



Use the graphic organizer online to take notes on the purposes of government.

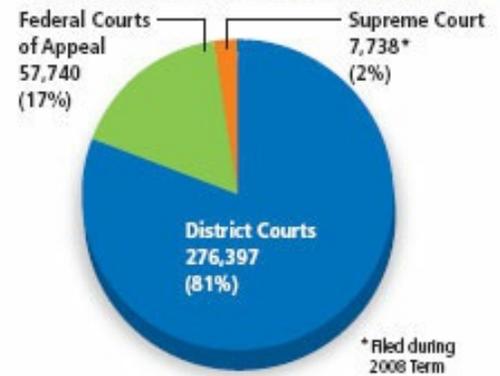


**The Importance of the Lower Federal Courts** The lower federal courts may not get the attention that the Supreme Court does, but they are equally as important. In any one year, for example, the lower federal courts handle about 99 percent of all federal cases. From bankruptcy to taxes, from kidnapping to terrorism, the lower federal courts have literally heard it all.

Their importance is told by more than numbers alone. In the absence of a Supreme Court ruling to the contrary, the lower federal courts determine what the law is. Their rulings set precedents to which other courts refer. Also, over the years, the lower courts, especially the district courts, have been the scene of some dramatic—and historic—cases, including the treason trials of former vice president Aaron Burr (1807) and the Communist spy trials of Julius and Ethel Rosenberg (1951). These and many other moments of courtroom drama, as well as countless more routine cases, help illustrate the role of the lower courts in our federal judicial system. ■

## **Foundation of Justice**

## FEDERAL COURTS CASELOAD, 2009



Source: 2009 Year-End Report on the Federal Judiciary

**Skills  
FOCUS**

### INTERPRETING CHARTS

About what percentage of federal district court decisions get appealed?

**Most federal trials take place in district court buildings like the Richard Sheppard Arnold U.S. Courthouse in Little Rock, Arkansas.**

## Federal District Courts

As discussed in Section 1, the federal court system consists of three basic tiers. The district courts occupy the lowest tier. As the trial courts of the federal system, with original jurisdiction for most federal cases, district courts are the workhorses of the federal court system, handling over 300,000 cases a year.

There are 94 federal court districts. Each judicial district has at least two judges, though some districts have many more. The U.S. Judicial District for Southern New York, which includes New York City, is the most active federal court district in the country. To handle its large caseload, it has 44 judges, the most of any federal district.

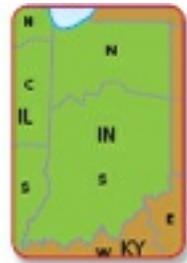
**The Jurisdiction of District Courts** What sorts of cases are tried before federal courts? The Constitution explicitly assigns some types of cases to the federal courts, such as those involving residents of different states or the United States and a foreign government. In addition, Congress has classified a number of offenses as violations of federal law. Civil offenses include violations of civil rights statutes and employment laws. Criminal offenses range from the destruction of aircraft to making false statements in a legal proceeding to murder. All told, district courts handle about 215,000 civil cases and 70,000 criminal cases each year.

In serious criminal cases, district courts convene panels of citizens known as **grand juries** to hear evidence of a possible crime and to recommend whether the evidence is sufficient to file criminal charges. Grand juries consist of 16 to 23 people. Grand juries are not used in civil cases.

**U.S. Federal Court Circuits and Districts**

- 1st Circuit
- 2nd Circuit
- 3rd Circuit
- 4th Circuit
- 5th Circuit
- 6th Circuit
- 7th Circuit
- 8th Circuit
- 9th Circuit
- 10th Circuit
- 11th Circuit
- Washington, D.C. (D.C. Circuit and Federal Circuit)
- District court boundaries
- District identifier

There are currently 94 federal judicial districts in the 50 states, Washington, D.C., Puerto Rico (which is under U.S. control), and the U.S. territories. Each state has between one and four districts, depending on the state's population and the number of cases filed there.



Indiana has a northern and southern district within the Seventh Circuit Court.



**Skills FOCUS** INTERPRETING MAPS  
 Twenty-six states have a single federal judicial district. Why would a state need only a single district?

**Bankruptcy** cases fall under federal jurisdiction as well. Bankruptcy is a legal process by which persons who cannot pay money they owe others can receive court protection and assistance in settling their financial problems. Each district court includes a separate bankruptcy court with its own judges and procedures that handles only bankruptcy cases. The Bankruptcy Court for the Southern District of New York has 11 bankruptcy judges.

**Court Officials** Judges are the primary official in any court. The judge's main job is to preside over trials. He or she makes sure trials follow proper legal procedures to ensure fair outcomes. The judge also instructs juries about the matters of law they are to decide. In some cases, the participants in a trial may agree not to have a jury. In such cases, the judge decides the case.

As you read in Section 1, district court judges are nominated by the

president and must be approved by the Senate. As Article III judges, they have no set term and can serve until they die or retire. Bankruptcy judges, however, are named by the courts of appeals for the circuit in which the district court is located. As Article I judges, bankruptcy judges serve 14-year terms.

District courts also have officials who are known as **magistrate judges**. These officials are responsible for overseeing some of the early hearings of a criminal trial when routine matters are carried out. They may also hear **misdemeanor**—minor criminal cases punishable by one year or less of prison time—and certain civil cases. Magistrate judges are appointed by the district court judges to terms of eight years.

Each district court has a clerk of the court. This person performs such nonjudicial jobs as maintaining court records, handling money received in fines and fees, and overseeing the jury recruitment process.



Known as a strong defender of civil liberties, Judge Marilyn Hall Patel has served on the U.S. District Court of Northern California since her appointment in 1980 by President Carter. From 1997 to 2004, she was chief district judge, the first woman to hold the position in that district. During her career, Patel has presided over several high-profile cases. In *A&M Records, Inc. v. Napster, Inc.* (2001), she ruled that the music file-sharing service violated copyright protections. In 1984 she overturned the conviction of Fred Korematsu, a Japanese American sentenced for refusing to enter an internment camp during World War II, on the grounds that facts had been withheld in the original trial. More information about the original case, *Korematsu v. United States* (1944), appears in Chapter 11.

**Identifying the Main Idea and Details** What are some of the high-

profile cases that Judge Patel has been involved in?

**Other Courtroom Officials** Each judicial district has a number of other officials who are not employees of the court but who are vital to its operations. The most prominent of these is the U.S. attorney.

Each judicial district has one U.S. attorney. The U.S. attorney's job is to represent the United States government in federal court. When a person is charged with a federal crime, for example, the U.S. attorney, or an assistant, acts as prosecutor. That is, he or she tries to win a guilty verdict. If the United States is involved in a civil suit, U.S. attorneys represent the government.

## ACADEMIC VOCABULARY

**preside** to hold or exercise authority

U.S. attorneys oversee an office with numerous assistant U.S. attorneys and other staff. For the Southern District of New York, for example, there are more than 220 assistant U.S. attorneys. U.S. attorneys and their assistants are employees of the U.S. Department of Justice, making them part of the executive branch. U.S. attorneys are appointed by the president, subject to Senate approval, and serve a four-year term—though a president has the power to replace them before their term's end.

In criminal cases, the federal courts provide lawyers to defendants who cannot afford to hire one. Such lawyers are known as **public defenders**. Public defenders are appointed by the panel of the judges who make up the court of appeals.

Each judicial district is also home to an office of the United States Marshals Service. Among other duties, U.S. **marshals** provide security and police protection at federal courthouses. Marshals also transport prisoners, help track down and arrest people accused of crimes, and provide protection to witnesses in federal cases. The head of each U.S. Marshals office is appointed to a four-year term by the president, with the advice and consent of the Senate. These appointees are employees of the

**READING CHECK** Identifying Supporting Details Aside from district court judges, who are some of the other officials who make up a district court?

## Federal Courts of Appeals

The middle tier of the federal court system is made up of the courts of appeals. Today there are 13 of these courts. Twelve are scattered among the 12 regional circuits into which the country is divided. Washington, D.C., is both a judicial district and a circuit. In other words, it has a district court and a court of appeals. One court of appeals—the Court of Appeals for the Federal Circuit—has nationwide jurisdiction to hear certain types of cases.

**Purpose of the Courts of Appeals** The courts of appeals are, as their name suggests, appellate courts. They hear cases on appeal from the district courts within their circuit. They also hear appeals from various administrative agencies of the federal government. For example, people dissatisfied by a ruling by the Social Security Administration about retirement benefits may appeal to a court of appeals.

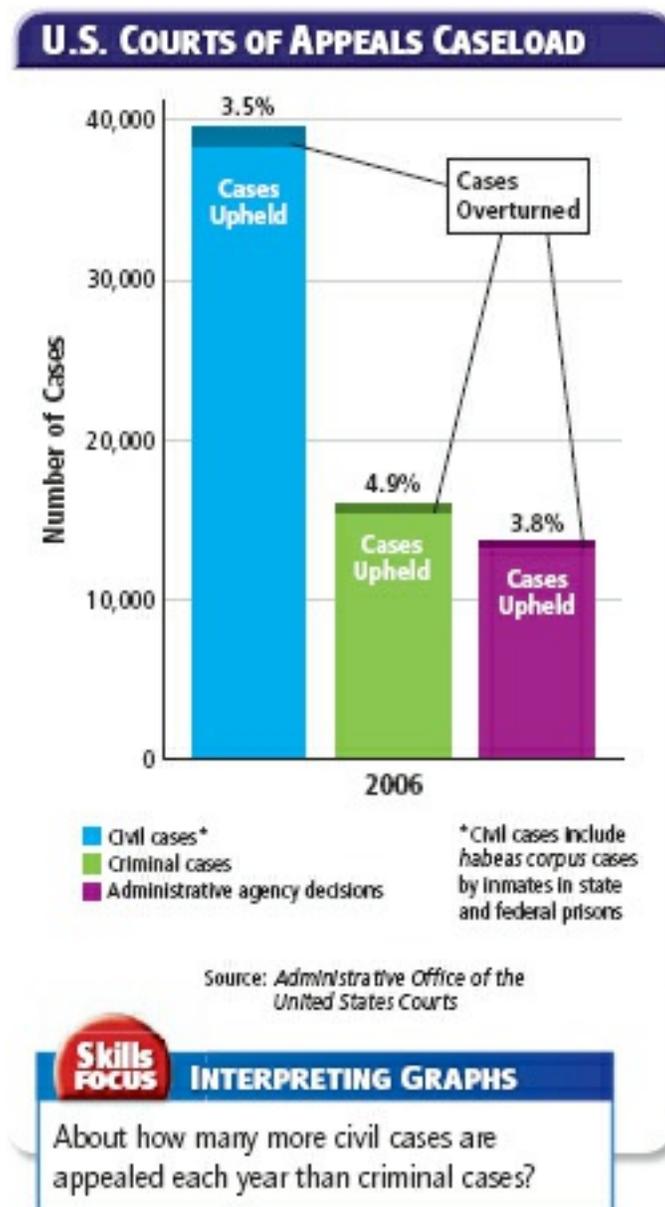
Each year, the courts of appeal hear about 65,000 cases. The vast majority—about three of four—are criminal and civil cases. In criminal cases, the appeal will be filed by a defendant who was found guilty. The federal government cannot appeal a verdict of “not guilty.” In civil cases, either side can appeal.

Regardless of who files the appeal, few appeals are successful. In 2009, for example, fewer than 9 percent of filed cases were successfully appealed.

**Appeals Court Procedure** A person who files an appeal—the **appellant**—usually has to show that the original ruling was based on a legal mistake. In almost all cases, the court of appeals will overturn a case only if the original court or agency followed an improper procedure.

Courts of appeals do not retry cases. They do not permit new evidence to be introduced or hear testimony from witnesses. Instead, they rely on the factual record as established by the trial court. Only in rare instances will an appeals court rule that the original court or agency misconstrued or drew a wrong conclusion from the evidence.

Most appeals are heard by a randomly chosen panel of three circuit judges. Usually the panel reviews the trial court record and reads written arguments, or **briefs**, from both sides in the case. In some cases, the court may listen to oral arguments from each side as well. When that happens, the government's side of the case is presented by the U.S. attorney who originally tried the case.



In reaching a decision, the panel of judges is guided both by Supreme Court precedent and precedents set by previous rulings within

its own circuit. Decisions of one circuit court are not binding on other circuit courts.

**After the Ruling** The ruling of a court of appeals is usually the final word on a particular case. In some cases, though, the court might send the case back to the district court for additional hearings. If the panel finds in favor of a criminal defendant, the prosecutor may decide to retry the case, though that is rare.

The case may on occasion get further review from a larger panel of judges. This type of review is called an *en banc* review, and it often involves all the judges of a specific court of appeals.

In a small number of cases, the ruling of the court of appeals may undergo review by the U.S. Supreme Court. You will read more about this process in Section 3.

**The Federal Circuit** In 1982 Congress created the Court of Appeals for the Federal Circuit. This court has nationwide appellate jurisdiction for cases involving certain areas of law, such as international trade, government contracts, patents, and trademarks. Appeals come to the court from the federal district courts, from government agencies, and from some specialized federal courts that you will read about below.

**READING CHECK Sequencing** What is the path by which a case travels through a court of appeals?

## Other Federal Courts

In addition to the district and circuit courts, Congress has created other Article III and Article I courts. These courts generally have a very limited jurisdiction to deal only with certain types of cases.

**U.S. Court of International Trade** This court hears cases involving disputes over laws and rules governing international trade. For example, an importer who believes he or she has been wrongly denied the right to bring a product into the country may seek relief from this court.

Because it is an Article III court, its judges, nominated by the president and approved by the Senate, can serve for life. The cases from this court can be appealed to the Court of Appeals for the Federal Circuit.



**The U.S. Court of International Trade is located in New York City because the city has traditionally been the nation's most active port for international trade.**

**U.S. Tax Court** The U.S. Tax Court hears disputes over federal taxes. If a citizen disagrees with a judgment by the Internal Revenue Service, he or she can seek redress in this court. Tax court decisions can be appealed in a federal court of appeals.

**U.S. Court of Appeals for Veterans Claims** Congress created the Department of Veterans Affairs to administer programs for the men and women who served in the military. Sometimes, disputes arise over a veteran's benefits, disability payments, or some other matter. The Court of Appeals for Veterans Claims hears these cases. It is located in Washington, D.C.

**U.S. Court of Federal Claims** In general, a sovereign nation is immune from being sued unless it agrees to be sued. This general principle is

known as **sovereign immunity**. Congress, however, has identified circumstances in which parties can bring complaints against the U.S. government. To hear cases in which money claims are more than \$10,000, Congress established the U.S. Court of Federal Claims, located in Washington, D.C., across from the White House. Rulings of this court can be appealed to the Court of Appeals for the Federal Circuit.

**U.S. Court of Appeals for the Armed Forces** Members of the military are subject to the Uniform Code of Military Justice. This code addresses the special and unusual need for order and discipline in the military. In cases of violation of the code, the military holds hearings called **courts-martial** to decide the cases. Congress has created a court to hear appeals from these courts-martial. The five judges of this court are civilian, not military, personnel. They serve fifteen-year terms. As civilians, they are not subject to the military command structure.

**National Security Courts** Congress has created two special courts charged with balancing the demands of national security with the rights of U.S. residents. The Foreign Intelligence Surveillance Court was established in 1978. Its job is to review and authorize requests by the government to conduct spying operations on American soil if it determines that the target of the investigation is an “agent of a foreign power.” The court is made up of 11 district court judges appointed by the chief justice of the United States. They serve for seven-year terms.

The Alien Terrorist Removal Court, which Congress created in 1996, reviews requests by the U.S. attorney general to remove from the country an individual suspected of being a terrorist. Judges are appointed to this court by the Chief Justice of the Supreme Court and serve five-year terms.

**Military Commissions** During combat operations in Afghanistan following the terrorist attacks of September 11, 2001, U.S. military forces captured many individuals whom they classified as “enemy combatants.” President George W. Bush created special military commissions to try

these individuals. Modeled on U.S. military tribunals set up during World War II to try war criminals from Nazi Germany and Japan, the commissions were outside the normal judicial system. Their legality was challenged in federal court. In *Hamdan v. Rumsfeld* (2006), the Supreme Court struck down the procedures, methods, and powers under which these military commissions operated, forcing Congress and the president to draft new rules. These new rules were themselves challenged in later Supreme Court cases.

**Washington, D.C., and Territorial Courts** Congress has governing responsibility for Washington, D.C., and the U.S. Territories of Guam, the Virgin Islands, and the Northern Mariana Islands. Accordingly, Congress has authorized the creation of local trial and appellate courts in each of these places to try local cases. These courts are distinct from the federal district court and the federal court of appeals in these jurisdictions, which hear federal cases.

**READING CHECK Summarizing** What are some of the reasons why Congress created additional courts?

SECTION

2

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

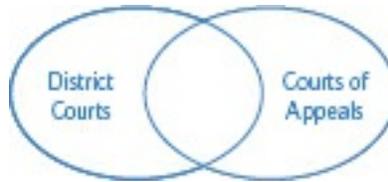
- Describe** What kinds of cases are heard in federal district courts?
  - Elaborate** How does membership of U.S. attorneys in the executive branch allow voters to have a voice in the judicial process?
- Identify** What is an appellant?
  - Evaluate** Why do you think courts of appeals generally limit their review of cases to questions of the law rather than to matters of fact?
- Describe** What is the purpose of the Court of Appeals for the

Armed Forces?

**b. Evaluate** How do the national security courts created by Congress balance individual rights and national security?

## Critical Thinking

**4. Compare and Contrast** Copy and fill in the graphic organizer below. Then use it to compare and contrast the main features of the federal district courts and courts of appeals.



## FOCUS ON WRITING



**5. Descriptive** Prepare a brief job description for each of the courtroom officers, including the judges, who staff the federal district courts.



# The Supreme Court

## BEFORE YOU READ

### Main Idea

The Supreme Court is the highest court in the nation and the most important component of the judicial

### Reading Focus

1. What are some of the highlights of Supreme Court history?
2. How are Supreme Court justices chosen?
3. What are the typical procedures of the Supreme Court?

### Key

#### Terms

writ of certiorari  
docket  
majority opinion  
concurring opinions

branch. It serves as the final word on questions of federal law and the Constitution.

dissenting  
opinions



Use the graphic organizer online to take notes on the Supreme Court.

**WHY IT MATTERS** **Interpreters of the Constitution** They command no police force or army. Their budget is miniscule compared to the budgets of the other two branches of government. What they get they must petition Congress for, like any other government agency. Yet the nine justices of the U.S. Supreme Court have extraordinary power. They have the last word, the final word, about what the Constitution means.

The significance of that power was clear even 175 years ago, when French political observer Alexis de Tocqueville noted in his book *Democracy in America* that “a more imposing judicial power was never constituted by any people.” The Constitution is the supreme law of the land, and the authority to interpret it gives the Supreme Court the final say over what is legal and illegal, what can be done and what cannot. In a nation in which, as de Tocqueville noted, “scarcely any political question arises ... which is not resolved, sooner or later, into a judicial question,” this power—the power of the final word—puts the Court’s efforts at the very heart of our government. It is a power that the Court must strive to exercise for the common good. ■

## THE Final Word



**Supreme Court Justices**

## Supreme Court Milestones

Key rulings in Supreme Court history have defined the powers of the federal government and the rights of Americans.

	<i>Marbury v. Madison</i> (1803)	<i>Worcester v. Georgia</i> (1832)	<i>Scott v. Sandford</i> (1857)	<i>Plessy v. Ferguson</i> (1896)
<b>Decision</b>	Declares parts of Judiciary Act of 1789 unconstitutional; denies Marbury's claim to government post	Upholds Cherokee lands ownership against claims by the state of Georgia	Rules Dred Scott still a slave and Missouri Compromise unconstitutional	Rules separate facilities for blacks and whites do not imply inequality
<b>Significance</b>	Established the Court's power of judicial review	President Andrew Jackson's refusal to enforce ruling demonstrated limits of the Court's authority.	Furthered tensions that led to the Civil War	Led to an expansion of Jim Crow segregation
	 <p>Justice John Marshall</p>		 <p>Dred Scott</p>	

## Highlights of Supreme Court History

The Supreme Court was not always the powerful institution it is today. In its early years, it was held in low esteem, and a number of prominent figures turned down the job of chief justice as unworthy of their interest.

Over time, however, the Supreme Court gained in prestige and authority.

Even as it gained in prestige, the Court also underwent political shifts that mirrored—slowly and often belatedly—the shifts in society at large. This process of evolution continues today.

**Early Visions** The Constitution says little about the Supreme Court, leaving even its structure for Congress to define. But Alexander Hamilton, writing in *The Federalist* No. 78–83, gave a lengthy explanation of the federal judiciary and the powers of the Supreme Court. His writings have become a touchstone for constitutional scholars and Supreme Court justices trying to determine the intent of the Framers.

Hamilton began by reassuring those suspicious of a newly created federal judiciary that the judicial branch was “the weakest of the three departments of power.” At the same time, Hamilton foresaw the critical role the Supreme Court had to play in providing judicial review of the acts of Congress and the executive branch.

## PRIMARY SOURCE

**“Limitations [on the powers of government] ... can be preserved in practice no other way than through ... courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor [obvious meaning] of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.”**

—Alexander Hamilton, *The Federalist* No. 78

**The Marshall Court** It took a few years after the founding of the new government for the Supreme Court to fulfill Hamilton’s vision. The change began with the 1801 appointment of John Marshall as chief justice. Marshall was a Federalist and as such took an expansive view of

the power of both the Supreme Court and the national government in general. By the end of his 34 years on the Court, the judiciary had become an equal partner and a full participant in the system of checks and balances.

In the landmark case *Marbury v. Madison* (1803), Marshall cleverly negotiated perilous political waters to arrive at a decision that asserted the Court's power of judicial review. William Marbury had received a last-minute appointment as justice of the peace by outgoing President John Adams, a Federalist. Incoming President Thomas Jefferson, a Democratic-Republican, ordered his Secretary of State James Madison not to deliver Marbury's commission. Marbury sued under provisions of the Judiciary Act of 1789. Marshall's decision denied Marbury's suit, giving a victory to Jefferson. But in doing so, Marshall had also declared part of the Judiciary Act of 1789 unconstitutional. In other words, Marshall had asserted the Court's right to review—and strike down—acts of the legislature. For Jefferson, who thought the legislature should be supreme, the *Marbury* decision amounted to winning the battle but losing the war.

Other key Marshall Court decisions helped shape the basic structure of the federal government and the economy. For example, in *McCulloch v. Maryland* (1819), the Court's decision made the necessary and proper clause a powerful mechanism to expand the implied powers of Congress. *Gibbons v. Ogden* (1824) helped assert the federal government's power to regulate interstate commerce. The Marshall Court also upheld the contracts clause (Article I, Section 10), laying the legal groundwork for the rapid growth of the nation's economy.

**Court Packing Scheme (1937)**

**Decision** Not a case, but FDR's plan to expand the Court in order to get support for New Deal programs

**Significance** Integrity of Court protected, even as Court begins approving FDR's New Deal laws



FDR "packs" the Court.

**Brown v. Board of Education of Topeka, Kansas (1954)**

Rules separate educational facilities for blacks and whites are inherently unequal

Led to the end of de jure segregation in public schools

**Miranda v. Arizona (1966)**

Rules law enforcement must inform criminal suspects of their rights before questioning

Expanded defendants' rights and restricted law enforcement's actions

**Hamdan v. Rumsfeld (2006)**

Rules military commissions to try "enemy combatants" illegal

In 2006 President George W. Bush and Congress passed new legislation clarifying military commission procedures. These procedures have been challenged in court.

Detainee at U.S. base at Guantanamo Bay, Cuba



**Dred Scott** Democrats dominated the presidency and the Senate for much of the first half of the 1800s. Not surprisingly, the Supreme Court under Chief Justice Roger Taney began to reflect that party's concern for states' rights and protection of slavery.

The Taney Court's most famous decision came in *Dred Scott v. Sandford* (1857). Scott, an enslaved African American, sued for his freedom. Scott's slaveholder had taken him and his wife to live in the free state of Illinois and the free territory of Wisconsin, where Congress had outlawed slavery by the Missouri Compromise of 1820. Scott argued that because he and his wife had lived in free areas, they were free. The Supreme Court declared Scott was still a slave. Moreover, it argued that while blacks might be citizens of a particular state, the Constitution never envisioned that they could become U.S. citizens. Finally, the Court declared that Congress lacked the power to outlaw slavery in the territories, thus striking down the Missouri Compromise as unconstitutional.

The *Scott* decision set off violent partisan reaction, contributing to

the atmosphere that led to the Civil War. One later scholar summed up its impact by labeling the decision as “the greatest disaster the Supreme Court has ever inflicted on the nation.”

**From Reconstruction to *Plessy*** Following the Civil War, Republicans became the leading political party for the next 60 years, and their appointees dominated the Court. Two issues preoccupied the Court in this period: the civil rights of the newly freed African Americans and economic regulation.

The Republican-controlled Congress passed and the states ratified—in the case of the southern states, reluctantly ratified—a series of constitutional amendments. The Thirteenth, Fourteenth, and Fifteenth amendments outlawed slavery, established citizenship and equal protection of the law for African Americans, and guaranteed voting rights for African American males.

The Court, however, narrowly interpreted these amendments as they related to civil rights. In the *Civil Rights Cases* (1883), the Court struck down the Civil Rights Act of 1875, which had sought to give blacks federal protection from discrimination. The Court held that African Americans should look to state legislatures or courts for redress. The problem was that state legislatures in the South were passing discriminatory laws, and southern courts showed little interest in upholding the rights of African Americans. The Supreme Court’s hands-off approach to discrimination came to a head in *Plessy v. Ferguson* (1896). You can read more about that case on the next page.

At the same time, the Court interpreted these Civil War amendments in a way that made much regulation of the economy unconstitutional. In the *Slaughterhouse Cases* (1873), for example, the Court struck down a state law regulating the sanitary slaughtering of livestock. It ruled that such regulations violated the Fourteenth Amendment’s prohibition against state laws infringing federal rights—in this case, the property rights of slaughterhouse operators.

**The Court and the New Deal** The Court's tendency to view economic regulation as an assault on property rights persisted into the twentieth century. From 1899 to 1937, the Court struck down state laws in 184 cases, most of them involving efforts at economic regulation. In *Lochner v. New York* (1905), for example, the Court struck down a law limiting bakers to a 10-hour workday.

In the 1930s the Court clashed with President Franklin Roosevelt over an ambitious set of programs to help fight the Great Depression. The Court found that some of these New Deal programs violated the Constitution. In response, Roosevelt proposed a law that would let him add six new justices to the Court. Roosevelt clearly wanted to “pack the Court” with justices who would support his programs.

Roosevelt's plan sparked sharp criticism, but it also may have convinced the Court to defer to legislatures on matters of economic regulation. Roosevelt withdrew his plan. By then the Court had begun to reject challenges to New Deal legislation. In the years to come, moreover, because of his lengthy tenure as president, Roosevelt reshaped the Court through his many appointments. A liberal era on the Court had begun.

**From the 1950s to the Present** The liberal era on the Court reached its height during the chief justiceship of Earl Warren, former governor of California named to the Court by President Dwight D. Eisenhower in 1953. For the next 16 years, the Warren Court produced some of the most dramatic and controversial decisions in U.S. history.

In 1954 the Warren Court issued the unanimous decision of *Brown v. Board of Education of Topeka, Kansas*. This landmark ruling called for the desegregation of public schools. In *Gideon v. Wainwright* (1963) and *Miranda v. Arizona* (1966), the Warren Court expanded the rights of people accused of crimes. In *Tinker v. Ohio* (1969), the Court held that schools could not prevent students from protesting the Vietnam War. The Warren Court also halted religious prayer in public schools. Critics of the Warren Court accused it of overzealous judicial activism.

Since 1953, Republican presidents have appointed 16 of the last 22

Supreme Court justices. Over time, these appointments have resulted in a more conservative Court. The Court's 5–4 decision in *Bush v. Gore* (2000), assuring the presidency for George W. Bush, was along partisan lines, reflecting the deep ideological divide on the Court.

**READING CHECK** Making Generalizations How has the Supreme Court been shaped by politics?



## *Plessy v. Ferguson* (1896)

**WHY IT MATTERS** *In Plessy v. Ferguson, the Supreme Court examined a Louisiana state law requiring racial segregation on public transportation and determined whether it violated the equal protection clause of the Fourteenth Amendment.*

### Background

By the early 1870s, support for Reconstruction was waning. Following the disputed presidential election of 1876, the federal troops that had been enforcing the Reconstruction laws in the South were withdrawn. Soon, many southern states began to pass laws that restricted the rights of African Americans, requiring that blacks use separate facilities, such as schools or public transportation, from whites.

Homer Adolph Plessy was active in a small group of African American and creole professionals seeking to overturn Louisiana's Separate Car Act of 1890. The law required nonwhites to sit in a separate

train compartment and required that railroad companies “provide equal but separate accommodations for the white, and colored races.”

The group chose Plessy, who was one-eighth African, to see if he could board the whites-only compartment on the East Louisiana Railway. The group wanted to challenge the act and used Plessy’s light skin color to illustrate their belief that the law was subjective and unconstitutional. Railway officials also objected to the law. It meant an extra expense for their companies, so they agreed to cooperate with the group and arranged for Plessy to be arrested safely before the train left New Orleans. The case eventually came before the Supreme Court.

## Arguments for Plessy

Plessy argued that the Separate Car Act violated the Thirteenth and Fourteenth Amendments. Plessy claimed that the Separate Car Act was unconstitutional because it imposed on him a “badge of servitude” (a reference to the Thirteenth Amendment) and deprived him of his right to equal protection as a citizen of the United States. Plessy lost his case and appealed to the Louisiana State Supreme Court. The state supreme court upheld the lower court’s ruling, and Plessy took his case to the Supreme Court.

## Arguments for Ferguson

Judge John Howard Ferguson presided over Plessy’s original trial. At that trial, he ruled that Louisiana could regulate its railways as it saw fit within its borders and that, therefore, the Separate Car Act was constitutional. Because he was considered black under the law, Plessy was required to sit in the specified compartment, and when he refused to do so, he had committed a crime.



The Supreme Court ruled against Plessy. Separation of the races, the Court ruled, did not imply inequality. This separate-but-equal doctrine helped perpetuate segregation until it was overturned by *Brown v. Board of Education of Topeka, Kansas* (1954). Plessy’s greatest impact

today might lie in the inspiration provided by the stinging dissent of Justice John Marshall Harlan. “Constitution,” Harlan wrote, “is color-blind, and neither knows nor tolerates classes among citizens.”

## CRITICAL THINKING

**What Do You Think?** Are there some instances in which distinctions between classes, or groups, of citizens are legitimate? Support your reasoning with examples.

## Choosing Supreme Court Justices

Choosing a Supreme Court justice is one of the most significant decisions a president and the Senate can make. Because they have such a long tenure in office, justices can profoundly affect the nation for many years. Not surprisingly, the process of choosing a Supreme Court justice can become a high-stakes political battle.

**Choosing a Nominee** Presidents use the same basic criteria in choosing a Supreme Court nominee as they do in choosing any federal judge—legal expertise, party affiliation, judicial philosophy, and a sense of the nominee’s acceptability to the Senate. But under the intense scrutiny of the media and interest-groups, presidents act cautiously.

The Constitution gives no formal requirements for the job of Supreme Court justice. Throughout history, however, all Supreme Court justices have had a background in law. Most have served as federal judges. A few have served as state governors, as judges on state courts, or in various other government posts. One, William Howard Taft, was president of the United States before serving on the Supreme Court as chief justice from 1921 to 1930.

Presidents typically nominate individuals who are affiliated with their own political party. Sometimes, however, party membership is not enough. Party activists may impose a so-called “litmus test” on a candidate to ensure that he or she holds their position on some key issue,

such as abortion. (The term refers to a scientific test that clearly shows the presence of acid in a solution.) Those who fail the test are rejected regardless of their other qualifications.

Presidents also seek to choose justices whose share their own judicial philosophy. This is not always as easy as it sounds. President Eisenhower, for example, once remarked that nominating Earl Warren was the biggest mistake of his presidency. Eisenhower expected Warren to be more conservative than he turned out to be.

No president wants to fight a losing battle with the Senate. So presidents often try to assess the level of Senate support or opposition to a nominee before making a public announcement. Presidents facing a Senate controlled by the opposition party are less likely to nominate a candidate whose beliefs reflect the extremes of their own party.

**Confirmation Hearings** The confirmation process begins with hearings in front of the Senate Judiciary Committee. The hearings are usually televised. The nominee often faces intense direct questioning, especially from senators who may oppose the nomination. Nominees have their judicial beliefs and record inspected in great detail. Senators may consult a report on the nominee's qualifications issued by the American Bar Association. Opponents bring up past writings or decisions, called the paper trail, to hint at how the nominee may rule on the Supreme Court. If the nominee lacks a record, that fact will be explored, too.

Sometimes senators raise issues aside from a nominee's legal background. For example, Douglas Ginsburg's admission at his hearings that he once used illegal drugs helped end his nomination in 1987.



While growing up in the Bronx

neighborhood of New York City, Sonia Sotomayor always knew she wanted to be a judge. She studied hard, graduating high school as class valedictorian. She went on to graduate with high honors from Princeton University and obtain a law degree from Yale University. In 1992, after work as an assistant district attorney in New York City and as a corporate lawyer, President George H.W. Bush nominated her to a federal judgeship. Six years later, President Clinton nominated her for the Court of Appeals where she served for 11 years. During this time, she also taught law classes at New York University and Columbia University. In 2009, President Obama nominated Sotomayor to fill the vacancy on the Supreme Court, which was left by retiring Justice David Souter. After less than a month of confirmation hearings, the U.S. Senate confirmed Sotomayor as an associate justice. On August 8, 2009, she was sworn in by Chief Justice John Roberts. The Supreme Court's first Hispanic justice, Sotomayor is also the Court's third female justice, following Sandra Day O'Connor and Ruth Bader Ginsburg.

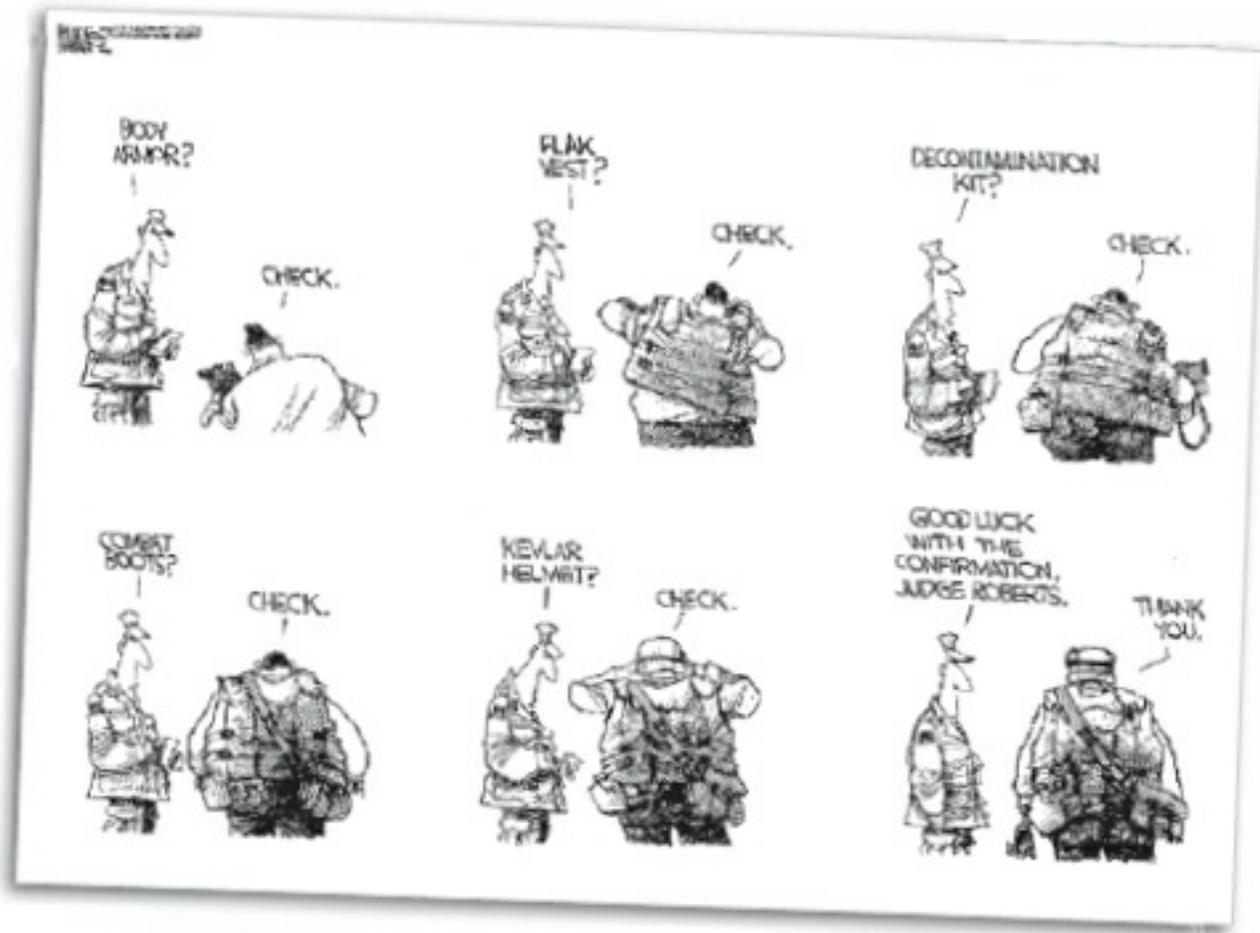
**Drawing Conclusions** How do Sotomayor's accomplishments show her determination to succeed and serve people?

## PRIMARY SOURCES

# Confirmation Hearings



Over the last 20 years, Senate confirmation hearings for Supreme Court justices have become highly charged events. Opponents of Robert Bork's nomination in 1987 placed ads on TV denouncing what they saw as Bork's extreme conservative views. The hearings for Clarence Thomas in 1991 were dominated by accusations of sexual harassment. More recent nominees, such as John Roberts, have prepared for hearings by trying to make themselves invulnerable to political attack.



**Skills  
FOCUS**

## INTERPRETING PRIMARY SOURCES

**Making Inferences** What is the confirmation process for Supreme Court nominations being compared to? Do you think the cartoonist approves of this situation?

See **Skills Handbook**, p. H9.

Often, however, hearings prove uneventful. Recent nominees generally say little about how they might rule on controversial issues—to the frustration of some senators. Moreover, presidents are careful to nominate candidates with a minimal paper trail.

When the Senate Judiciary Committee has completed its work, it votes on the nomination. The outcome of this vote nearly always guides the vote in the full Senate and predicts its outcome. While the full Senate may debate the nomination, little new ground is broken in most cases. Only rarely do problems arise at this point.

Most nominees are confirmed, but confirmation is no certainty. The Senate has rejected, put off, or forced the removal of 28 nominations since 1789.

**READING CHECK Sequencing** What is the process a nominee undergoes to join the Supreme Court?

## Supreme Court Procedures

Once they are on the Supreme Court, what do the justices do? What are the processes and procedures they follow? How do justices go about their jobs?

**The Term Begins** The Supreme Court term begins each year on the first Monday in October. The Court remains in session until June or July. During this time, the Court hears cases, writes opinions, and carries out other duties.

In general, the Court session is divided into blocks of about two weeks. During one block, the justices sit on the bench, listening to lawyers present their cases. This period is followed by another block in which the justices work behind closed doors to make rulings, decide what cases they will hear in the future, and issue orders on minor cases.

Helping the justices in their work are several dozen clerks. These are recent law-school graduates who help do research, evaluate requests to have cases heard, and write drafts of opinions. Today, each justice typically has four clerks to assist him or her.

**Selecting Cases** A key task facing the Supreme Court is deciding which cases it will consider. In general, the Court chooses which cases it wants to hear. These cases come from three categories.

The Court typically hears only a few cases each year in which it has original jurisdiction. Such cases are those involving foreign ambassadors or the U.S. government, disputes between states, and disputes between

one state and citizens of another state or country.

The most common way for a case to come to the Supreme Court is on appeal from a federal court of appeals. When a party is unhappy with an appeals court ruling, it asks the Supreme Court to issue a **writ of certiorari** (suh-shuh-RAR-ee), an order seeking review of the lower court case. If the Court grants certiorari, it agrees to hear the case. If the Court denies certiorari, the ruling of the lower court stands.

A less common route to the Supreme Court is through the highest state courts. If a state case has exhausted all appeals and involves a question about the Constitution or federal law, the Supreme Court may grant certiorari. Otherwise, the ruling of the state court stands.

Today, the Court chooses about 100 or so cases to hear each term. Four justices have to vote in favor of hearing a case on appeal before it is placed on the Court's **docket**, or list of cases to be heard. Cases are selected from what are now about 8,000 requests for certiorari. Usually, cases are chosen because they represent major questions about the Constitution or federal law.

## **How Supreme Court Decisions Get Made**

**A Supreme Court case typically follows a three-step process. Selecting and hearing cases proceeds according to a relatively fixed calendar. The drafting of final opinions, however, usually takes longer.***Why do you think the opinions stage often takes longer?*

## Selecting Cases

**Petition for a Writ of Certiorari** One party to a dispute requests a review of a ruling made by either a federal appeals court or a state supreme court.

**Granting Certiorari** During conference, justices review petitions. If four of nine judges agree to review a case, certiorari is granted.

## Briefs and Arguments

**Briefs** Parties file briefs explaining their side of the case. Outside parties may file additional briefs known as *amicus curiae*, or “friend of the court,” briefs.

**Oral Arguments** Justices may decide to hear oral arguments. Each side is limited to 30 minutes to present its case. Justices usually vigorously question counsel.

## Opinions

**Conference** Justices meet to discuss and decide the case by a vote. The most senior judge voting in the majority assigns the writing of the majority opinion to another judge in the majority. Majority opinion sets out the legal reasoning behind the decision. Individual justices may write concurring opinions or dissenting opinions.

**Opinions Drafted** With the assistance of their law clerks, justices draft written opinions and circulate them to other justices. Opinions sometimes change votes.

**Opinions Announced** Opinions are published by the Court. Opinions can include the following:

- majority opinion
- concurring opinion
- dissenting opinion

**Briefs and Oral Arguments** What is involved in the Court “hearing” a case? The first step is reading briefs—the written arguments prepared and submitted by each side in the case. A good brief identifies past cases that support a particular point of view. It lays out a clear and convincing legal argument in favor of a specific judgment.

Justices may also consider so-called *amicus*, or “friend of the court,” briefs. These are legal briefs prepared by outside parties that have an interest in a case.

After studying briefs, the justices listen to oral arguments. Oral argument takes place before the seated, robed panel of nine Supreme Court justices. The chief justice presides. During oral arguments, lawyers representing each side have precisely 30 minutes to present their case. This sometimes dramatic presentation usually involves sharp questioning from the justices, who probe for weaknesses in each side's argument.

**Opinions** After reading briefs and hearing oral arguments, the justices meet privately in conference to discuss the case. The chief justice leads these discussions, but all justices have the chance to speak. Based on these discussions and on the justices' own study, the Supreme Court eventually produces a formal, written opinion. Opinions are issued throughout the session but often come in a flurry near the end, in May or June, when the more difficult and divisive cases finally get resolved.

A Supreme Court opinion is a long, carefully worded exploration of the major issues, judicial precedents, and legal reasoning behind a decision. It explains in detail why the Court has overturned or supported a lower court's decision. The opinion serves as the formal judgment of the Supreme Court.

Court opinions take several forms. A **majority opinion** is one that is signed by at least five of the nine members of the Court. The majority opinion represents the Court's actual ruling in the case.

Majority opinions are sometimes accompanied by **concurring opinions**. These agree with the overall conclusion in the case but stress some different or additional legal reasoning. **Dissenting opinions** are those held by the minority of the justices who do not agree with the ruling in the case. Dissenting opinions do not have a direct legal impact on the case. They can, however, influence future judgments.

**Court Orders** The Court's full review of cases, complete with briefs, oral arguments, and written decisions, is called plenary review. In addition to the 100 or so cases that the Court gives full plenary review each year, the Court also disposes of some 50 to 60 cases with brief,

unsigned court orders. For example, a court order may direct a lower court to reconsider a certain case in light of a specific Court decision. In these instances, the Court does not read briefs, hear oral arguments, or issue a written opinion explaining its reasoning.

**READING CHECK** **Identifying Supporting Details** What are the three main stages that cases before the Supreme Court typically must go through?

### **Influences on Judicial Decisions**

Ultimately, judges and justices must be guided by the facts of a case and by the law. However, other considerations often play a part in their decisions.

- **Public Opinion** Courts take account of changing community standards, such as those related to the role of women or the definition of obscenity.
- **Legislative Opinion** Courts consult the intent of the legislatures as expressed in legislative findings and other documents submitted in support of a law.
- **Executive Opinion** Courts may consult presidential executive orders and signing statements.
- **Desire for Impartiality** Courts strive to be impartial, deciding cases on their merits and not favoring either party.
- **Judicial Ideology** Judges' own political beliefs may influence their decisions.

## **Reviewing Ideas and Terms**

1. a. **Describe** Describe the background and significance of *Plessy v.*

*Ferguson*

**b. Explain** Why is the Marshall Court considered so central to the nation's history?

**2. a. Identify** What are the main factors a president may look for in selecting a Supreme Court nominee?

**b. Evaluate** Do you think the Congress should establish formal qualifications of Supreme Court justices? Why or why not?

**3. a. Define** What is the meaning of the terms majority opinion, concurring opinions, and dissenting opinions?

**b. Elaborate** Why do you think it is important for justices who disagree with a majority opinion to record their opposition and present their arguments?

## Critical Thinking

**4. Design** Copy and fill in the graphic organizer below, then describe an alternate Supreme Court nominating process that would avoid some of the current problems.



## FOCUS ON WRITING



**5. Descriptive** Write a statement that describes the qualities you think would be most important in a Supreme Court justice.

CONNECTING TO THE CONSTITUTION



## The Supreme Court and the System of Checks and Balances

Because its members do not stand for election, the Supreme Court is considered the least democratic of the three branches of government. What is the source of its power, and how does the Constitution place checks on that power?

**What is judicial review?** In 1803, in the case of *Marbury v. Madison*, Chief Justice John Marshall, writing for a unanimous Supreme Court, ruled that judges have the power to decide whether acts of Congress, the executive branch, state laws, and even state constitutions violate the United States Constitution. The justices of the Supreme Court have the final say about the meaning of the Constitution. The power to declare what the Constitution means, and whether the actions of government officials violate the Constitution, is known as the power of judicial review.

The Constitution does not mention the power of judicial review. However, both Federalists and Antifederalists assumed that the Supreme Court would exercise judicial review. The practice traces its roots to the seventeenth-century English system of law. It was well known and used by most state courts before adoption of the Constitution and even by the Supreme Court before being officially acknowledged in *Marbury*. Alexander Hamilton defended the power in *Federalist* No. 78:

*A constitution is, in fact, and must be regarded by*

*the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning.*

Judicial review was neither immediately nor universally accepted. Antifederalists such as Brutus feared that the Court would use judicial review to eliminate the power of state courts. Andrew Jackson argued against it and threatened not to enforce Supreme Court decisions with which he disagreed. Not even all judges accepted the validity of judicial review. In *Eakin v. Raub* (1825), Pennsylvania Supreme Court justice John B. Gibson identified several arguments against it:

- Legislatures are the repository of the people's sovereignty, and the exercise of judicial review is an act of sovereignty, which should reside with the legislatures or the people.
- Judicial review could lead to political turmoil if the other branches of government, or the states, refuse to acquiesce to the Court's interpretation of the Constitution.
- Judicial review makes the judiciary equal or even superior to the legislature, even though judges were not elected.
- All officers of the government take an oath to support the Constitution; therefore, all must consider the constitutionality of their actions.
- The judiciary is not infallible. Judges' errors in interpreting the Constitution cannot be corrected at the ballot box, only by constitutional amendment.

Today, judicial review is accepted almost universally in the United States and increasingly throughout the world. Controversy swirls around how the Court uses the power in particular cases.



**What checks exist on the power of the Supreme Court?** The Supreme Court exercises immense power when it interprets the Constitution. However, there are many checks on the exercise of judicial power, including limitations that the Supreme Court has imposed on itself. Following are checks on the Court's power:

**Self-imposed limits.** The Court avoids partisan politics by refusing to decide “political questions,” or questions that it believes should properly be decided by other branches or levels of government. The Court decides only cases in controversy. The Supreme Court does not issue advisory opinions. That is, the Court will not offer an opinion about how a law should be interpreted unless there is a specific case before the Court where the interpretation of the law is actually in dispute.

**Presidential appointments.** Presidents seek to influence future Supreme Court decisions with their nominees to the Court. By changing Court personnel, presidents seek to change approaches to constitutional interpretation and attitudes about the role of the Court in the constitutional system.

**Executive enforcement.** Presidents and administrative agencies are responsible for enforcing the Court's decisions. Occasionally presidents have threatened to refuse to enforce Supreme Court decisions or have enforced them only reluctantly. For example, in 1974 Americans anxiously waited to see if Richard Nixon would comply with the Supreme Court's order in *United States v. Nixon*. The Court had ordered the president to turn over White House tape recordings to prosecutors. Once revealed, the tapes implicated Nixon and his aides in the Watergate scandal.

**Congressional powers.** Congress determines the Supreme Court's appellate jurisdiction and controls its budget. Congress has threatened to use those powers in response to Supreme Court decisions with which it disagrees. If the Supreme Court declares a congressional statute unconstitutional, Congress may pass the statute in another form to demonstrate its resolve on the issue. Congress also can alter the size of the Court, as it has done several times over the years. It even can determine when the Court meets or suspend a term of the Court, as it did in 1802. Finally, Congress can initiate constitutional amendments in response to unpopular Court decisions, such as a decision in 1895 that struck down an income tax statute. The Sixteenth Amendment, ratified in 1913, subsequently gave Congress the power to lay and collect taxes on income.

**Federalism.** States, like the executive branch, are responsible for implementing Supreme Court decisions. Sometimes state enforcement is lax. For example, 50 years after the Supreme Court ordered public school desegregation, several states still have found ways to evade that ruling.

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## Reviewing Ideas

- 1. Explain** How did the Supreme Court acquire the power of judicial review?
- 2. Draw Conclusions** Why do you think it is in the interests of the Supreme Court to refuse to decide “political questions”?

## Critical Thinking

- 3. Evaluate** What are the advantages and disadvantages in having the Supreme Court make judgments only about specific cases rather than issuing advisory opinions as constitutional questions

arise?

CHAPTER

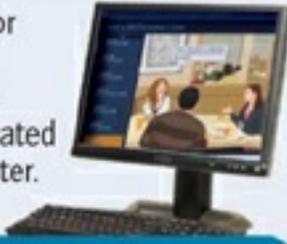
8

# Chapter Review

## Connecting Online

 [hmhsocialstudies.com](http://hmhsocialstudies.com)

Go online for review and enrichment activities related to this chapter.



### Quiz and Review

#### GOV 101

Examine key concepts in this chapter.

#### ONLINE QUIZZES

Take a practice quiz for each section in this chapter.

### Activities

#### eActivities

Complete Webquests and Internet research activities.

#### INTERACTIVE FEATURES

Explore interactive versions of maps and charts.

#### KEEP IT CURRENT

Link to current events in U.S. government.

### Partners

#### American Bar Association Division for Public Education

Learn more about the law, your rights and responsibilities.

#### Center for Civic Education

Promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy.

## Comprehension and Critical Thinking

### SECTION 1

1. a. **Review Key Terms** For each term, write a sentence that

explains its significance or meaning: original jurisdiction, appellate jurisdiction, judicial activism, judicial restraint, precedent.

**b. Explain** What factors made the creation of a federal judiciary controversial in the 1780s?

**c. Evaluate** What are the benefits and drawbacks of the constitutional system for protecting the independence of judges?

## SECTION 2

**2. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: grand juries, bankruptcy, misdemeanor, public defenders, appellant, briefs, sovereign immunity.

**b. Contrast** What is the difference between federal district courts and federal courts of appeals?

**c. Develop** What are the advantages in having specialized courts for certain types of cases?

## SECTION 3

**3. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: writ of certiorari, docket, majority opinion, concurring opinions, dissenting opinions.

**b. Make Generalizations** What is the relationship between the country's political climate and the makeup and rulings of the Supreme Court?

**c. Evaluate** What do you think should be the most important factor a president considers when picking a Supreme Court justice?

## Critical Reading

*Read the passage in Section 2 that begins with the heading "Purpose of the Courts of Appeals." Then answer the questions that follow.*

**4.** In most instances, what must a party order do to bring an appeal to a court of appeals?

**A** have won the case in the lower court

**B** be a U.S. citizen

C be prepared to argue that the lower-court case involved a serious legal error

D have jurisdiction over the case

5. The 12 U.S. circuit courts of appeals hear appeals from what types of courts?

A state supreme courts

B criminal conviction or a civil ruling from a federal district court

C military courts

D U.S. Supreme Court

*Read the first two paragraphs in Section 3 that begin with the heading “Choosing a Nominee.” Then answer the questions that follow.*

6. What previous jobs have most Supreme Court justices had?

A president of the United States

B state governor

C federal court judge

D army general

7. Why do party activists impose so-called “litmus tests” on potential Supreme Court nominees?

A to determine a nominee’s chemical composition

B to determine where the nominee stands on an issue or issues vital to the activists

C to determine if a nominee will support school-testing programs

D none of the above

8. Research cases from the **current or most recent Supreme Court term**. Choose a case that interests you and write an editorial opinion column in support of or against the Court’s decision in the case. Be sure to support your position with facts and logical arguments.

9. Create a political cartoon illustrating your point of view on one of

the issues involving the **judicial branch**, such as judicial activism, a politicized nominating process, national security courts and military commissions, or senatorial courtesy.

## CONNECTING TO THE CONSTITUTION

**10.** Research each of the cases below. Then write a paragraph explaining the Court's decision in each case and the significance of the decision to contemporary events.

***Fletcher v. Peck (1810)***

***Dartmouth College v. Woodward (1819)***

**Political Cartoon** *Decisions of the Supreme Court are binding on the lower federal courts. Sometimes, however, lower federal courts need further clarification. The cartoon depicts what happened in the wake of the Supreme Court's decision in *United States v. Booker* (2005), which made previously mandatory sentencing guidelines discretionary and gave the courts of appeals responsibility for reviewing sentences for "reasonableness."*



Bruce Beattie/CNS/NewsCom

11. **Analyze** What is the judge using to determine a sentence?
12. **Draw Conclusions** What does the cartoonist mean to suggest about the result of the Supreme Court's decision in *United States v. Booker* (2005)?

## FOCUS ON WRITING

Think about the following issue:

**Judicial activism has been a significant issue in recent decades. Some people believe that judges should interpret the Constitution rigidly and resist opportunities to issue rulings that make significant changes to government policy. Others argue that all parties support judicial activism when it promotes a goal they support.**

**13. Assignment** Is judicial activism good or bad? Do we want judges that mainly let the legislature and executive branch determine policy? Write a brief essay in which you develop your position on this issue. Support your view with reasoning and examples from your reading and studies.

# CHAPTER 9

# The Political Process

HISTORY



Becoming a Candidate

hmhsocialstudies.com

VIDEO

## CHAPTER AT A GLANCE

### SECTION 1 Public Opinion

- Public opinion is the collection of views that large numbers of people hold about issues of public concern.
- Public opinion helps direct public policy.
- Individual opinion is influenced by such factors as family, friends, and age.
- The media can help shape public opinion.
- Polls can measure public opinion.

### SECTION 2 Interest Groups

- People who share similar views and goals may form an interest group.
- Interest groups represent a wide variety of attitudes and opinions.
- Interest groups can affect public policy.

### SECTION 3 Political Parties

- Political parties are groups of people organized to elect their members to public office.
- The United States has a two-party system.
- Political parties contribute to the public good by selecting candidates and educating voters.

### SECTION 4 The Electoral Process

- Candidates for public office can be chosen in a variety of ways.
- Political parties and political candidates conduct political campaigns to try to win public office.
- Voters may be influenced by several factors, such as their religion, experiences, and age.

## CONNECTING TO THE CONSTITUTION



Our nation's government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of the origins of American political parties.

**Essential Question** What is the electoral process established by the Constitution, and how can citizens affect it?



**About the Photo** In 2006, Jim Webb narrowly defeated Virginia Senator George Allen, the Republican incumbent whom he had endorsed in 2000. Webb graduated from the U.S. Naval Academy before serving as an officer in the Marine Corps during the Vietnam War. Webb served as an assistant secretary of defense and then secretary of the navy during the Reagan administration. Webb has written six best-selling novels and won an Emmy award for his PBS coverage of American Marines in Beirut.

# SECTION 1

# Public Opinion

## BEFORE YOU READ

### Main Idea

Public opinion is the collection of views that people hold on public issues. Public opinion is important because it often influences

### Reading Focus

1. What is public opinion?
2. How is public opinion formed?
3. How does the media affect public opinion?
4. How is public

### Key Terms

public opinion  
public policy  
political  
socialization  
mass media  
propaganda  
poll  
sample

the political opinion measured? sampling error  
process and affects bias  
the actions the objectivity  
government takes. exit poll



Use the graphic organizer online to take notes on factors that shape public opinion.



**The Living Room War** In the late 1950s and early 1960s in Vietnam, a civil war was raging. On one side were Communist Viet Cong guerrillas and their North Vietnamese supporters. On the other side was the anti-Communist government of South Vietnam, supported by the United States. American public opinion was generally in favor of U.S. efforts in Vietnam, which were seen at the time as a way to stop the spread of communism.

As early as 1963, however, some Americans began to protest U.S. involvement in South Vietnam. In 1965, U.S. military activity in Vietnam increased greatly. By 1968, more than 540,000 U.S. troops were in Southeast Asia, fighting a fierce and bitter war.

As U.S. involvement in Vietnam increased, so did media coverage of the war. For the first time in history, people at home saw scenes of war unfolding as they watched the evening news on television. Many people believe that this nightly living room war coverage was responsible for a change in public opinion. Perhaps influenced by media coverage, the public began to believe that the war's cost in terms of lives, money, and material was greater than its perceived rewards. Public opposition to the war increased. In 1975, after 12 years of direct involvement and faced with mounting public opposition to the war, the United States withdrew its last military forces from Vietnam. Today the Vietnam War is an example of how public opinion may affect public policy.

# The Vietnam War and Public Opinion



**In the late 1960s, reports about the Vietnam War appeared frequently on nightly newscasts.**

## What Is Public Opinion?

The aggregation of views shared by a segment of society on issues of interest or concern is called **public opinion**. These views may focus on foreign policy, such as the Vietnam War, or on domestic or local policy issues, such as reducing health care costs or debating the need for a new high school.

Public opinion is complex. For example, many people believe that human actions lead to global warming. Others disagree: They see global warming as a natural phenomenon. So public opinion on this issue is divided. Also, people who agree on one issue, such as global warming, may differ with each other on another issue, such as gun control.

**Public Opinion and Public Policy** Public opinion helps leaders shape **public policy**—that is, the choices the government makes and the actions it takes in response to a particular issue or problem. Public opinion also

indicates how well the government is responding to the will of the people.

Public opinion can be viewed in two ways. The first is to consider the “public” as a single, centralized body—a large group of people concerned about public issues. In this view, public opinion *may be led*, or formed, by the decisions and actions of important political or social leaders.

For example, in 2002 and early 2003, President George W. Bush stated that intelligence reports indicated Iraqi president Saddam Hussein had weapons of mass destruction, which posed a threat to U.S. national security. Based on those claims, most Americans supported the president’s policy of a U.S.-led invasion of Iraq in 2003. By November 2006, however, public opinion about Iraq had changed enough to negatively affect the president’s party in the midterm congressional elections.

The second view of public opinion is that the public is many separate, individual “publics,” each with its opinion on one or a few issues. Each “issue public” interacts with one or more decision makers. In this view of public opinion, people’s attitudes *lead* public policy and the public agenda. For example, a neighborhood group’s concerns might lead the city council to reduce traffic in the area.

**Expressing Public Opinion** Responsible citizens try to shape public opinion. They may express their opinions by writing Web logs or letters to the mayor or testifying at a public hearing. Active citizens may take part in marches or demonstrations. During the Vietnam War, for example, thousands of antiwar protesters marched in cities and on college campuses.

## ACADEMIC VOCABULARY

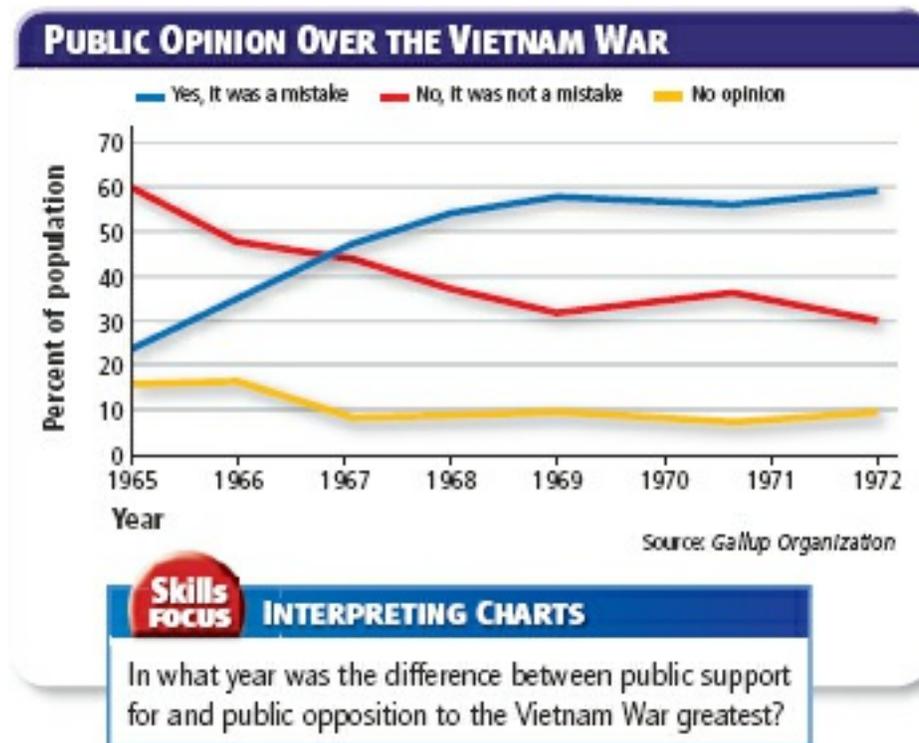
**aggregation** a group, body, or mass composed of many distinct parts or individuals

Many citizens also join and support groups or organizations that represent their views, such as Mothers Against Drunk Driving and

Friends of the Earth. Many of these organizations have committees that donate money to political campaigns or provide information to try to influence local, state, or federal legislation—public policy issues—important to the group.

Finally, responsible citizens express their opinions by voting. The outcome of any election—local, state, or federal—reflects overall public opinion about the candidate or issue being voted on. But voting behavior, whether in a presidential election or a town’s mayoral race, is complex. People may vote for a candidate because he or she agrees with their general views, is the incumbent, shares their view on a single issue—such as cutting taxes—or just seems more friendly or likable than the other candidates.

**READING CHECK** Identifying the Main Idea How is public opinion related to public policy?



## Forming Public Opinion

People’s opinions are influenced by several factors, including their family and friends; school and work experiences; and personal factors such as age, gender, race, and religion. The process by which people acquire political beliefs is called **political socialization**.

**Family** A person's family often has the most direct influence on his or her views. As children, we hear family members talk about political issues and current events. Even if we do not always understand what we hear and even if we disagree with other family members, the conversations help shape our attitudes about race, religion, politics, and other important social issues.

## ACADEMIC VOCABULARY

**enduring** lasting, durable

**School and Work** School is where we formally learn about government, citizenship, and other values. You know from your own experience that peer groups influence opinions about what to wear, what music to listen to, and whether something is fair.

Experiences in the late teens and early twenties also help shape personal opinions. At that stage, people are more independent of family influences. They may also face new influences at their place of employment.

**Other Personal Factors** Age, race, gender, and religion are also factors in shaping opinions. For example, a younger person's opinion about Social Security benefits and retirement plans may differ from the opinions of someone older. In some cases, a person's religious beliefs might influence his or her opinions about marriage, abortion, prayer in school, and other public policy issues.

**READING CHECK** **Summarizing** What personal factors shape a person's political socialization?

## **Media and Public Opinion**

Public opinion and the public agenda may be shaped or determined by the mass media. **Mass media** are means of communication that provide information to a large audience. Your daily routine is probably filled with mass media. Mass media include magazines, television news, news on the Web, and the latest viral video on the Internet.

**Media Impact** The media's effect on public opinion and public policy is most visible in two areas: It monitors, shapes, and determines the public agenda, and it covers electoral politics. The media reports and comments on issues that political leaders and the public consider important. It also reports when officials ignore public opinion. The media does not force people to take sides, but it focuses attention on important issues.

**The Growth of Mass Media** The most enduring form of mass media is print media—newspapers and magazines. In this country, the relationship between the press and public opinion—and politics—goes back to at least 1789. It was then that John Fenno published a Federalist paper, the *Gazette of the United States*. To counter this Federalist paper, Thomas Jefferson and the Whigs supported the *National Gazette*, which began in 1791. Bitter partisan battles to capture public opinion were often waged in the party press. Following are other examples of print media's influence on public opinion:

- The “penny press.” These inexpensive newspapers covered issues of interest to working class people.
- “Yellow journalism.” This type of journalism uses sensationalism, scandals, and appeals to patriotism to attract and influence readers. The height of yellow journalism was from 1895 to 1898.

Although average daily newspaper readership among adults has declined since its peak in the 1960s and 1970s, about 40 percent of American adults 18 years and older report reading a newspaper daily.

Radio was the first form of electronic media. In the 1920s radio stations broadcast news and entertainment to millions of homes. In the 1950s television replaced radio as the most influential form of electronic media. Today, even with the growth of the Internet, political candidates at all levels rely on radio and TV ads to deliver their messages.

The Internet has also changed mass media. In 1996, just 1 in 50 Americans depended on the Internet as a daily source for news. Today, 1 person in 3 regularly gets his or her news online. At the same time, only

two-thirds as many people today watch network TV news as watched it in 1996. However, most print media, such as the *New York Times* and the *Wall Street Journal*, have an online edition, and broadcast and cable TV networks also have online news sites.

**Roles of Media** The media shapes public opinion in several ways, such as by the issues it covers and the ones it ignores. For example, TV newscasts may choose not to cover a particular issue. However, if bloggers talk about the issue, newscasts may then pick it up and the public may start discussing it.

The type of coverage a topic receives is also important. For example, stories that describe a political candidate's experience create a different picture of the candidate than reports that focus on issues that have nothing to do with his or her experience.

**Criticism of the Media** All kinds of mass media—print, broadcast, electronic, and the Internet—are subject to criticism from a variety of sources. The most common criticisms include the following:

- **Bias in reporting.** Reporting may be slanted toward a certain point of view. For example, print and television news media are often described as being mostly liberal, while talk radio shows are described as almost always conservative.
- **Bias in story selection.** A media outlet may focus on one issue and ignore or downplay others. Media defenders say that because the time or space available to cover news is limited, journalists must decide what issues to cover at a particular time.
- **Factual inaccuracy.** Critics warn that news sources, especially non-traditional sources such as blogs or other Internet news sites, may be careless about factual accuracy. For example, standards for and ways to check accuracy on the Internet are still evolving.
- **Media consolidation.** About two dozen companies own most U.S. media outlets today. Critics argue that this media concentration destroys the independent sources of information our democracy

needs.

## Get Your Daily News

Traditional sources for daily news are declining in popularity. At the same time, online sources, such as Web logs (or blogs), are being used by more people for their daily news. The blogger shown below reports from the United Nations



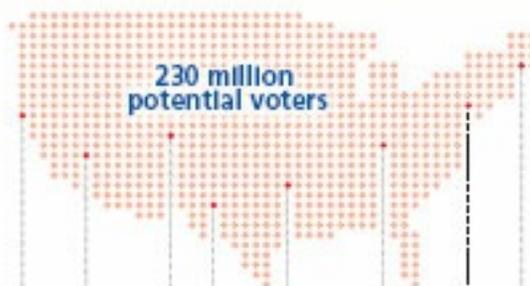
**The Future of the Media** News and information can now be delivered instantly to your cell phone, home computer, or PDA. Many Americans go online everyday to get some or all of their news. Blogs, RSS feeds, and podcasts have grown rapidly as sources of daily news. People—not just journalists—share ideas without the limits of TV or print. However, just because news is more accessible does not mean it is more accurate.

## SCIENTIFIC POLLING

A scientific poll is a tool, based on mathematics, used to learn people's opinions about something, whether it is a new product, a public policy issue, or a political candidate.

### 1. SAMPLE UNIVERSE

"Sample universe" is the set of individuals, items, or data from which a statistical sample is taken.



### 2. RANDOM SAMPLE

To be truly random, each member of the sample universe, and each geographical location, must have an equal chance of being selected for the poll.



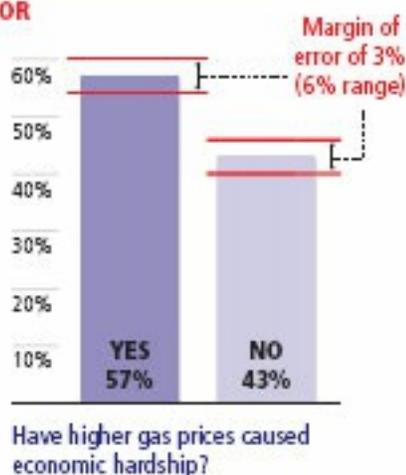
### 3. THE POLL

Accurate poll results also depend on the way questions are worded and the order in which they are asked.



### 4. RESULTS AND MARGIN OF ERROR

The margin of error, expressed in percentage points, is a measure of the poll's accuracy. It gives the range within which the poll's results may vary from the true value in the entire population.



**Skills  
FOCUS**

### INTERPRETING CHARTS

Why is it necessary for a polling sample to be truly random?

## PRIMARY SOURCE

“At its best, the Internet can educate more people faster than any media tool ... At its worst, it can make people dumber faster than any media tool...

**Because the Internet has an aura of “technology” surrounding it, the uneducated believe information from it even more.”**

—Thomas Friedman, *The New York Times* (2002)

Today, even with media consolidation, you have a choice of a wide variety of information sources. It is important not to rely on a single source. Using multiple sources will help you get accurate information and avoid **propaganda**, or statements meant to influence public opinion or promote a cause or viewpoint.

**READING CHECK Summarizing** Why should you consult more than one source for your news?

## **Measuring Public Opinion**

Sooner or later, you may be asked to share your opinions about new products or an upcoming presidential election. You may be part of a public opinion **poll**—a survey of people scientifically selected to provide opinions about something. Scientific polling is a way to determine public attitudes or preferences about consumer products, social issues, and political candidates. Most surveys today are scientific polls.

**The Polling Process** A well-designed poll is an accurate measure of public opinion. The accuracy of a poll depends on the number of people answering the questions, how those people are chosen, how the questions are asked, and the absence of bias.

The first key to a poll’s accuracy is the **sample**, or the group of people who take part in the poll. The size of the sample is important. For example, mathematically, a sample of about 1,500 people is sufficient to reflect the opinions of a sample universe of 230 million potential voters accurately. Second, for poll results to be accurate, the sample must be chosen at random from the sample universe. The sample universe is the total population or market of interest.

Finally, the way questions are worded or the order in which they are asked can affect a poll’s accuracy. For example, “Do you think the

president is doing a good job?” may produce results different from “Is your overall opinion of the president very favorable, somewhat favorable, somewhat unfavorable, or very unfavorable?” Also, asking that question after questions about controversial issues, rather than as the first question, may change how people answer it and, therefore, affect the poll’s accuracy.

A reliable poll states its margin of error, or uncertainty level. The margin of error, or **sampling error**, indicates a poll’s accuracy, and is given as a percentage above and below the poll’s results. For example, a poll with a margin of error of 3 percent may show that 37 percent of the respondents have a certain opinion. In the total population, then, between 34 percent and 40 percent of people are likely to hold that opinion.

**Evaluating Polls** Properly conducted polls produce reliable, accurate, objective, and bias-free results. In polling, **bias** refers to errors introduced by polling methods that lead to one outcome over others.

**Objectivity** is freedom from bias and outside factors, such as timing, that may influence results.

**Polls and Public Opinion** Most major polls are created and conducted scientifically. However, polls are sometimes conducted in ways that produce certain results. For example, asking, “Do you favor or oppose the death penalty for those convicted of murder?” produces a different result than asking, “Which penalty do you prefer for people convicted of murder, the death penalty or life in prison?” Either result might be used to shape public opinion in support of a particular group’s political or social agenda.

**Exit Polls** Another common type of scientific poll is the exit poll. Used on election day, an **exit poll** surveys a randomly selected fraction of voters after they have voted and tells pollsters how people voted before the official vote count. People may use exit poll results to predict the winners of all but very close races. Critics of exit polls argue that these predictions may discourage people from voting and may alter the result of some state and local races. Supporters of exit polls respond that studies show that very few voters are influenced by exit poll results. Today, to be

safe, exit poll results are not usually announced until voting has ended.

**READING CHECK** **Summarizing** What factors can affect the accuracy of poll results?

SECTION

1

ASSESSMENT

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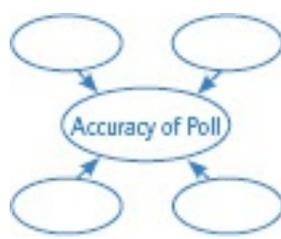
ONLINE QUIZ

## Reviewing Ideas and Terms

1. **a. Define** What is **public policy**?  
**b. Explain** In your own words, explain how public policy and **public opinion** are related.  
**c. Elaborate** What are the two views of public opinion, and what role does each view play in setting public policy?
  
2. **a. Describe** What is **political socialization**?  
**b. Compare** Do you think family and friends are similar in the way they influence a person's opinions? Why or why not?
  
3. **a. Explain** How does the media help determine public policy?  
**b. Predict** Will media consolidation affect public opinion or limit access to a variety of viewpoints? Why or why not?  
**c. Elaborate** What is the meaning and importance of a free and responsible press to our democracy?
  
4. **a. Recall** How is public opinion determined?  
**b. Elaborate** Why do you think it is important to know a poll's **sampling error** when evaluating its results?

## Critical Thinking

5. **Elaborate** Copy and complete the web below. Then use it to explain how each of the four factors contributes to the accuracy of a public opinion poll.



## FOCUS ON WRITING



**6. Persuasive** Write a comment for posting to a Web log in which the following statement appeared: “It is not possible for television media to report the news objectively.” Your comment should explain why you agree or disagree with the blogger.



# Interest Groups

### BEFORE YOU READ

#### Main Idea

Interest groups are private organizations that try to influence public opinion and convince public officials to accept their goals and views. They give political power to segments of

#### Reading Focus

1. What are interest groups, and what role do they play in the political process?
2. What different types of interest groups exist?
3. How do interest groups work?
4. Do interest groups serve the public good?

#### Key

**Terms**  
 special interest group  
 political action committee  
 trade association  
 labor unions  
 endorse  
 lobbying  
 grass roots

society that have similar views.



Use the graphic organizer online to take notes on the different types of interest groups.



**Taking Interest, Taking Action** For almost any significant public policy issue being considered by a legislative body, one or more groups of people are likely trying to convince public officials to support their ideas and policy solutions. Groups may call themselves clubs, associations, or committees. They may represent issues such as animal rights or tax reform, or they may represent groups such as workers or students. Whatever a group calls itself or whoever it represents, its goal is usually to influence public opinion and shape public policy.

For example, in Texas, as in most states, most political office holders are men. In Texas, also as in most states, women have formed groups to elect more women to public office. One of those groups is Annie's List, a group of activists that endorses Democratic Party candidates, makes political campaign contributions, and recruits qualified Democrat women to run for statewide elected offices and the Texas legislature. Another group is the Texas Federation of Republican Women (TFRW), whose purposes are very similar to those of Annie's List, including encouraging Republican women to run for office and supporting Republican Party candidates.

Annie's List and TFRW are interest groups. These two groups are part of a more general category of groups called cause-based interest groups. All interest groups, whatever their label, have one goal in mind: to shape public policy in a way that promotes their particular interests. ■

## **Electing MORE Women**



**Annie's List helped get these women elected to the Texas legislature.**

## **Interest Groups and What They Do**

Annie's List and the TFRW are two of the thousands of interest groups in the United States. A **special interest group** is an association of people who hold similar views or goals. Interest groups, also called advocacy groups, represent those views and goals and try to influence public policy and the public agenda to achieve them. Interest groups are especially important to people who feel their views are overlooked in policy discussions. Interest groups work at every level—local, state, and national—in our representative democracy. These groups give people a way to monitor government actions, express themselves about government policies, and participate in social action. Interest groups

- organize people who share concerns
- provide members with a means of political participation
- supply information to the public and to policy makers

Many interest groups also have political action committees (PACs) that support candidates for political office who agree with the group's position on the issues. A **political action committee** is an organization

created to raise and contribute money legally to the campaigns of political candidates.

**Organizing Interests** Individual citizens can initiate, influence, or change public policy or the public agenda in several ways. In fact, part of the responsibility of being a good citizen is to try to influence public policy. People can write letters to the editor or their state or federal representatives; they can give speeches or testify at legislative hearings; and they can vote. They may also join others and march in demonstrations. Sometimes, however, one person's actions are not enough. Joining an interest group gives each person's opinion more impact than it had when the person acted alone. People join interest groups knowing that working with others strengthens their cause.

People who join groups to promote their common concerns include environmentalists, business owners, musicians, teachers, and members of minority groups. Sometimes interest groups form on different sides of the same issue. For example, the American Immigration Control Foundation is a group that wants to limit immigration; the Coalition for Comprehensive Immigration Reform is a group that supports broad immigration reform. Both groups give their members political impact that the members would not have as individuals.

**Encouraging Participation** People who feel strongly about an issue often want to do more than just vote for candidates who share their views. Being a member of a group gives individuals a way to take part in the political process—at every level of government—and helps the group to influence public policy.

Active membership in interest groups seems to have declined in recent years. According to recent studies, Americans are joining fewer social groups and organizations than in the past, whether because of technological changes or for other reasons. However, although active membership in interest groups may be down, “checkbook memberships”—financial contributions to such groups—have increased.

**Supplying Information** Greater resources, such as more money, have allowed many interest groups to engage in new kinds of activities, such as

lobbying campaigns or creating interactive Web sites to present their views and build a positive image for the group. As a result, many interest groups can now exert influence in ways that exceed the power that results from membership alone.

An interest group's influence often comes more from the information it provides than from the activities of its members. Even a small group, such as the Swift Boat Veterans for Truth in 2004, can be powerful if it effectively delivers its message to policy makers and the public. The 2004 presidential election provided an example of this: The group's television ads attacked Democratic presidential candidate Senator John Kerry and hurt his campaign. Since that election, "swiftboating" has come to mean an attack on a candidate's truthfulness and patriotism.

**READING CHECK** Identifying the Main idea How are interest groups and public opinion related?

#### RESPONSIBILITIES OF LEADERSHIP

By knowing and exercising rights such as voting and influencing public opinion, responsible citizens help government serve the public good. Responsible citizens have other obligations as well, such as treating others with dignity and respecting the law

## Interest Groups

Although there are thousands of interest groups in the United States, they can generally be grouped into six basic categories. Examples of each category are shown below.



Agricultural

**Agricultural groups represent the interests of people and businesses who grow and produce food and other crops.**



**Most business groups follow issues such as taxes, energy prices, and consumer protection laws.**



**Labor unions protect the interests of workers, such as fair wages and salaries, safe workplaces, and a variety of employee benefits.**

## **Types of Interest Groups**

Many of the thousands of interest groups in the United States represent economic interests and issues. Other groups, such as the TFRW, form

around political, social, cultural, or religious issues. Still other interest groups focus on foreign policy issues.

**Agricultural Groups** Many interest groups represent the nation's farmers and agricultural industry. Some, such as the large American Farm Bureau Federation, represent farmers as a whole. Others, such as the much smaller National Potato Council, are commodity groups that represent certain types of farmers or a particular agricultural product. The National Potato Council represents U.S. potato growers on legislative, regulatory, environmental, and trade issues.

**Business Groups** Organizations such as the U.S. Chamber of Commerce and the National Federation of Independent Business (NFIB) are examples of business interest groups. The Chamber of Commerce represents business interests in general, while the NFIB represents the rights of small and independent business owners.

Another type of business group, called a **trade association**, represents certain industries or parts of industries. For example, when you select a bag of pretzels from a vending machine, your choice matters to the Snack Food Association, a trade association that represents the snack food industry. Similarly, the American Wind Energy Association promotes the production of electricity from wind power facilities by supporting tax credits and other pro-growth policies.

In general, trade associations support laws and policies that benefit their industry and oppose laws and policies that harm their interests. Most business groups and trade associations also have their PACs make campaign contributions to political parties and candidates.

**Labor Groups** Most labor interest groups are also **labor unions**—groups of workers who do the same job or work in related industries. For example, the Brotherhood of Locomotive Engineers and Trainmen exists to make sure that train engineers, conductors, and the people who control the brakes and switches work under safe conditions. Another group, the Service Employees International Union (SEIU), represents people who work in health care, building cleaning and security, and public service jobs. Like business and trade association groups, unions and union

members contribute to political campaigns. Many unions have a committee on political education (COPE) that directs the union's political activities, including fund-raising and support for political candidates.



**Cause-based groups usually focus on a particular problem, such as endangered wildlife, children's health, or strengthening the nation's borders.**



**Societal groups, such as the American Muslim Alliance, educate the public about a particular segment of society, their views, and their issues of importance.**



**Professional groups often set the standards for practicing that profession, and they protect the economic interests of their members.**

**Cause-Based Groups** Some groups, including many political interest groups, represent or promote a cause rather than the interests of a segment of society. For example, Mothers Against Drunk Driving (MADD) is a single-issue group devoted to fighting drunk driving and its causes. Another example is Common Cause, a group that works to strengthen public participation and confidence in the institutions of government. Finally, the Center for Civic Education is a national organization dedicated to promoting an enlightened and responsible citizenry.

**Societal Groups** Some groups represent religious, social, racial, ethnic, and other segments of the population, rather than economic or professional interests. Examples of societal groups include the National Organization for Women (NOW), the Eagle Forum, the Mexican American Legal Defense and Education Fund (MALDEF), the American Muslim Alliance, and AARP, which represents older Americans.

**Professional Groups** Some interest groups represent a particular profession, such as the American Medical Association (AMA) and the American Bar Association (ABA), which represent doctors and attorneys, respectively. Such groups establish standards for their profession, influence the licensing and training of those who enter the profession, and educate the public and government about their professional interests and

issues of concern to the profession.

**READING CHECK** **Contrasting** How do cause-based groups differ from other interest groups?

## Functions of Special Interest Groups

Interest groups do not change laws, but they do affect public opinion and public policy at every level of government. A group's success is based on hard work, effective communication, and money. Groups support candidates and engage in lobbying to influence public officials and public policy.

**Endorsing Candidates** One way groups influence public policy and legislation is to help elect candidates who support their views. An interest group may **endorse**—publicly declare its support for—a particular candidate in an election. For example, certain social, religious, or labor groups often endorse Democratic Party candidates, just as other business, social, or religious groups usually endorse Republican Party candidates. Whether a group endorses a particular candidate usually depends on the candidate's position on, and support for, the group's interests.

Interest groups also participate in elections by having their PACs contribute money to the campaigns of candidates. PACs usually contribute to candidates who have supported the group's views in the past. In some cases, PACs give money to both candidates for an office, hoping that whoever wins will support the group's interests. For example, in the 2006 congressional elections, the National Association of Realtors split \$3.7 million in campaign contributions, giving 48 percent to Democrats and 51 percent to Republicans.

**Lobbying** Interest groups participate in government at every level by **lobbying**, or contacting a public official to persuade the official to support the group's interests. Groups lobby decision makers in government agencies as well as legislators.

A lobbyist may visit with city council members about changing the zoning along a city street or talk to state representatives about reducing

taxes. Lobbyists now use technology, such as e-mail campaigns, to inform and influence officials, but their most effective tools are telephone calls and face-to-face conversations.



Fannie Lou Hamer, born in Mississippi, was the granddaughter of slaves and the youngest of 20 children. In the 1950s and 1960s, Hamer was a civil rights activist who worked with the Student Nonviolent Coordinating Committee to register African Americans to vote. In 1971, she ran for the Mississippi state senate, but was unsuccessful.

From the late 1960s until her death in 1977, Hamer devoted much of her energy to developing programs to help needy families in her community. These programs included the Delta Ministry, a community development program that focused on economic aid for poor and minority residents. In 1969 Hamer organized the Freedom Farms Corporation, a nonprofit land cooperative that provided poor and needy families land on which to raise food and livestock—land they could later purchase. Her focus was always on her community, where she fought against school segregation, organized child day care centers, and supported low-income housing projects.

**Make Inferences** Would you describe Fannie Lou Hamer as a “grassroots organizer”? Why or why not?

**Informing Public Opinion** Interest groups often provide someone to testify—whether at a city council meeting, a state agency, or congressional hearing—to express and explain the group’s interests. This public testimony generates support for the group and may influence lawmakers.

Many groups and lobbyists practice grassroots politics. **Grass roots** is the name given to the lowest level of an organization or society. In grassroots politics, a group may organize a demonstration or march or get a large number of individual voters to contact a legislator or other official. The legislator may be influenced by this strong showing of support for a particular position.

**Filing Lawsuits** Another way interest groups influence public policy is through the legal system. Perhaps the best-known lawsuit occurred in the 1950s when a group of parents in Topeka, Kansas, sued to end legal racial segregation in public schools. In 1954, in the landmark case of *Brown v. Board of Education of Topeka, Kansas*, the Supreme Court ruled that racially segregated schools were illegal. The Court also ordered that the African American students be admitted to public schools “with all deliberate speed.”

**READING CHECK Summarizing** What methods do interest groups use to influence public policy?

## **Interest Groups and the Public Good**

American democracy includes both the principle of majority rule and the requirement that minority rights be protected. As you might expect, interest groups that represent majority interests and others that represent minority interests actively try to influence public policy and political issues.

**Benefits of Interest Groups** An important benefit of interest groups is that they give minority interests a voice in the political process. The civil rights movement of the 1950s and 1960s is a good example. Thousands of African Americans and their supporters united to draw society’s attention to segregation’s violence and discrimination against African Americans.

Other political minorities, such as neighborhood associations or hunters, may form their own interest groups. For example, rural landowners may unite to oppose a state’s plan to build a major new highway.

**Criticism of Interest Groups** Some critics believe that interest groups

have too much influence. A well-funded group, such as the Swift Boat group mentioned earlier, can have an impact even with a small membership.

Interest groups are also criticized for focusing on one narrow issue and ignoring broader social needs and policies. Critics also argue that interest groups often use appeals to people's emotions, rather than finding reasoned—and reasonable—solutions to the social problems they are addressing. Finally, critics sometimes argue that, with effective interest groups on all sides of an issue, Congress may decide not to act.

**Limits on Interest Groups** In 2007, in the wake of a number of highly publicized lobbying scandals, Congress passed ethics and lobbying reform legislation. These new rules tightened House and Senate ethics rules for legislators and limited some types of activities by lobbyists.

Although the reforms were extensive, critics note that Congress has, in the past, passed rules and laws that tried to weaken the links between elected officials, interest groups, contributions, and political influence. Many of these reform efforts have only temporary success. Interest groups find ways to use their resources to continue to influence the political process. As a result, citizens should learn what they can about who is supporting or opposing major public issues.

**READING CHECK** Summarizing How do interest groups affect democracy?



# Interest Groups and Their Impact

One goal of most interest groups is to elect candidates who support the group's point of view. *What does this political cartoon say about the relationship between interest groups and elected officials?*

SECTION

2

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- Recall** What is a **special interest group**, and what are its goals?
  - Elaborate** Describe the roles that interest groups play in our representative democratic political system.
- Define** What is a **trade association**?
  - Compare** In what ways are **labor unions** and professional groups alike?
- Describe** How do interest groups influence elections?
  - Elaborate** How do you think interest groups influence public policy at the local level? How would you use these groups to resolve a local issue?
- Explain** How did Congress try to limit the influence of interest groups in 2007? Why did it do so?
  - Elaborate** Do you agree with critics who charge that interest groups are harmful to the public good? Explain.

## Critical Thinking

- Analyze** Copy and complete the web. Then use it to explain why some people believe that interest groups have too much power. Do you agree or disagree with that point of view? Explain.



**6. Expository** Suppose that Congress is considering a ban on all interest group activities. Create a one-page “fact sheet” to be distributed at a rally in support of the role of interest groups in society and government.



# Political Parties

## BEFORE YOU READ

### Main Idea

Political parties are formal organizations that work to elect candidates to public office. Our political system is dominated by two major parties, but other parties are actively involved in the system.

### Reading Focus

1. What are political parties, and what role do they play in the political process?
2. How does the American two-party political system work?
3. How are political parties organized?
4. Do political parties serve the public good?

### Key Terms

political party  
political spectrum  
nomination process  
electorate  
one-party system  
two-party system  
multiparty system  
third party  
independent candidate  
precinct  
ward

Use the graphic organizer online to take notes on how political parties serve the public good.



**Political Parties and Democracy** In the United States, political parties have been around since James Madison used his quill pen to write letters to Thomas Jefferson. Parties began to form almost as soon as the Constitution was ratified. Today the United States has one of the oldest systems of popularly based political parties in the world. Some scholars suggest that this system has contributed to the long-term success of American democracy.

Yet to the Framers of the Constitution, factions, as political parties were called, were a new development—one that many of them opposed. Madison, whose thoughts and writings helped shape the form of government we have today, defined a faction as a group of citizens, whether a majority or a minority, that pursues its own interests at the expense of the common good. In *Federalist Paper* No. 10, Madison wrote the following:

*The public good is disregarded in the conflicts of rival parties, and ... measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.*

Despite his reservations, Madison would go on to form one of the nation's first political parties. A longtime tradition? Yes. However, what Madison wrote in 1787 still rings true today. The issue of how best to incorporate the will of the majority and the rights of the minority in public policy decisions is one political parties struggle with and why they matter today. ■

## A Tradition Steeped in History



**A photo of the 1920 Republican Party convention**

## **The Role of Political Parties**

Political parties are important to our system—they are the way we nominate, elect, and monitor our representatives. A **political party** is an organization that tries to elect its members to public office so that its views can become public policy.

**Party Ideology** Each political party has a basic set of ideas and goals about society and the role of government that its members and supporters generally share. When a party unites its ideas and goals into a social and political program, that program is the party's ideology. This ideology is what sets one party apart from others. It also determines the party's place on the **political spectrum**, or the continuum of social and political beliefs that stretches from conservative on the right, to liberal on the left.

On the political spectrum, the Democratic Party is considered liberal and the Republican Party is considered conservative. Liberals generally support government action to change social, political, or economic policies that are believed to be unfair. Conservatives generally support limited government, lower taxes, and traditional social values. Also within each party are moderates, or people who seek a middle ground between liberal and conservative positions. Furthermore, party members may not always be consistently liberal or conservative in their views. For

example, a person may have conservative views about foreign policy, but liberal views regarding social issues.

**Parties' Three Main Roles** Wherever they fall on the political spectrum, parties play three main roles: nominating candidates for political office, assisting the electoral process, and helping to operate the government.

The **nomination process**, or naming candidates for elective office, is a party's main function. A party's candidates may have their own views on specific issues, but their views must generally fit the party's beliefs to receive the party's support. Parties bring money, campaign workers, and other support to candidates, especially at state and local levels. In this and their other roles, parties train members to be future leaders.

Second, in addition to nominating candidates, political parties aid the electoral process in the following ways:

- Each party has a position on all major issues. Parties educate people about these issues and try to motivate people to vote.
- Parties provide a “brand name.” When a candidate is affiliated with a party, voters have an indication of his or her views on political issues.
- Parties help the **electorate**—the body of people entitled to vote—register to vote, learn about the issues and the party's position, and find out where they vote. Informed voters may make better choices.
- Parties watch how officeholders perform. Each party tries to ensure that its own officeholders do the public's business well. At the same time, parties act as “watchdogs” of officeholders from the other parties. Parties use their successes and the mistakes of other parties to attract voters to their own candidates in the next election.

## ACADEMIC VOCABULARY

**ideology** the integrated assertions, theories, and aims that make up a

social or political program

**continuum** a continuous succession or sequence of values or elements that vary only by minute degrees

Finally, parties help run the government. For example, in each house of Congress, whichever party is in the majority controls that house. People appointed to positions in the executive and judicial branches are usually members of the president's party. If one or both houses of Congress are controlled by one party and the presidency is held by a different party, parties may provide ways for the branches to work out their differences.

Because they participate in government, political parties differ from interest groups, which pressure government from the outside. Also, most political parties address a variety of issues, but each interest group focuses on one issue and does not address others.

**READING CHECK Summarizing** What are the functions of political parties in elections and government at the state and local levels?



## The American Two-Party System and Third Parties in U.S. History

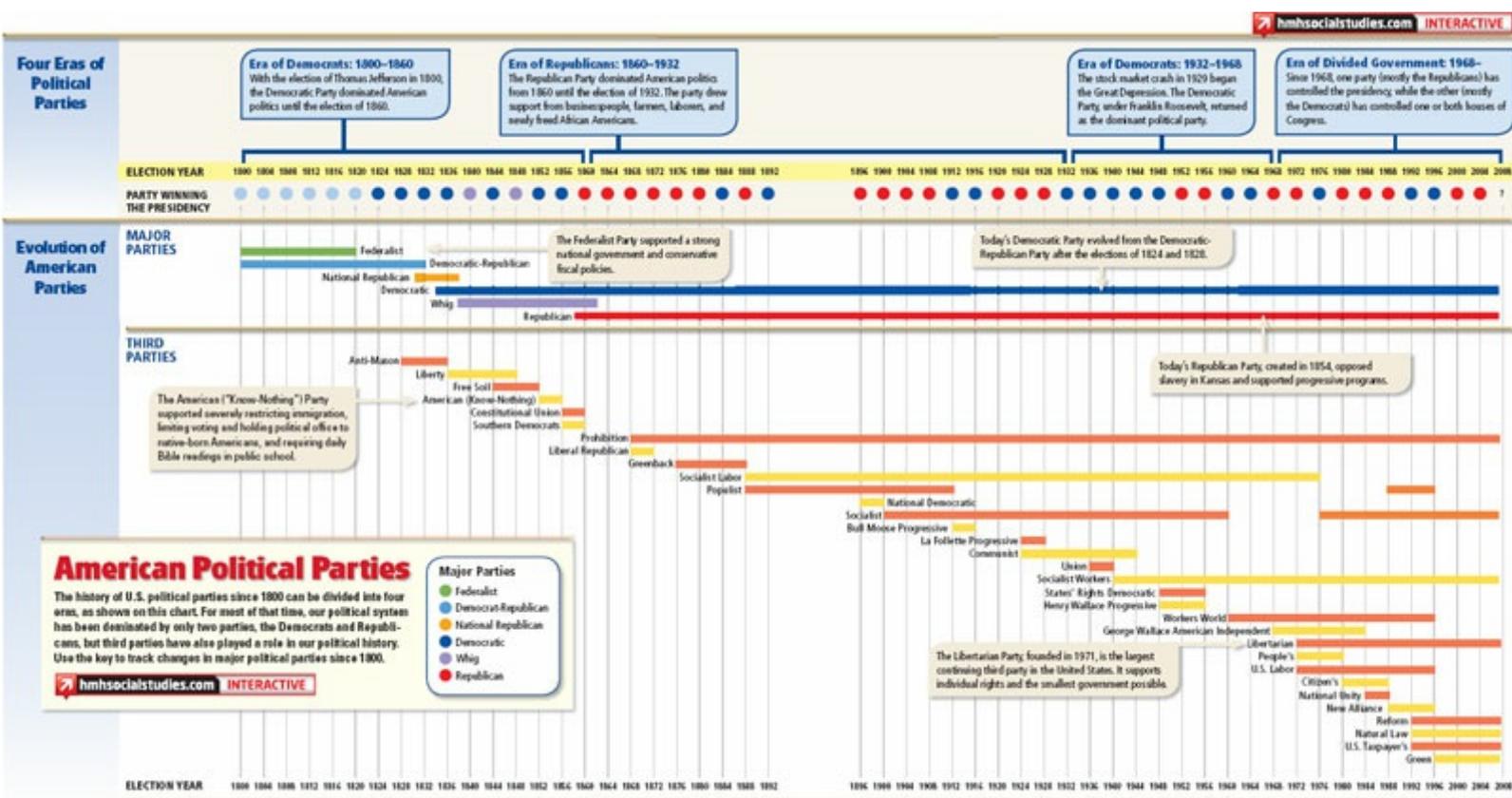
### The American Two-Party System

The role that political parties play in a nation's political system depends on the type of party system the country has. Generally, the more parties there are, the smaller the role and influence of any particular party.

**Party Systems** There are three basic types of party systems. They are the one-party, two-party, and multiparty systems.

- **One-party system** A single political party controls government. Other parties may or may not be allowed to operate, but they usually have no power.

- **Two-party system** Two major parties compete to control government. Other parties may exist and may affect elections, but they rarely have enough support to elect a national leader or control the legislature. The United States has a two-party system.
- **Multiparty system** Several parties compete for control. For example, India has about 12 major parties, while Italy's government has about 15 parties. Multiparty systems are the most common party system.



Generally, when no party has a consistent majority, unstable government can result. Often, several parties join to form a coalition, or temporary alliance, to create a majority. If one party leaves the coalition, the government may collapse. New elections may be needed.

**American Political Parties** The first American political parties emerged soon after the Constitution was ratified. They were the Federalist Party (not related to the Federalist supporters of the Constitution) and the Democratic-Republican Party.

Members of the Federalist Party were supporters of Alexander

Hamilton, who believed that the nation's future lay in a strong central government, large cities, and a strong manufacturing base.

Opposing the Federalist Party was the Democratic-Republican Party, which was led by Thomas Jefferson and James Madison. Jefferson believed that the nation's strength was in its agricultural base and in ordinary citizens living in small communities. After 1824, the party split. The two factions evolved into today's two major U.S. political parties, the Democrats and the Republicans.

These two parties have now dominated American politics for more than 150 years. Even so, in some elections voters have supported third-party and independent candidates. A **third party** is any political party in a two-party system besides the two major ones. An **independent candidate** is a candidate who is not associated with any party. Some third parties have affected the outcome of elections. For example, some people argue that in the 2000 presidential election, Green Party candidate Ralph Nader may have won enough votes in Florida to keep Democrat Al Gore from winning that state and its electoral votes, with the result that Republican George W. Bush was elected the new president.

**READING CHECK** **Drawing Conclusions** Why do you think the United States has only two major parties?

## Party Organization

Political parties are organized at all levels, from small local committees to the large national committees. Each level contributes to the success of the party.



If political parties had not arisen, how might the constitutional system have accommodated America's tradition of free and open political debate?

**Local Parties** Local party structures vary from state to state. The most common local organization is the county party, which is usually run by a committee. A county chairperson handles the party's daily affairs. His or her—and the local party's—main job is to select candidates for local offices and to help elect the party's candidates at all levels.

The county committee is usually selected by party members from precincts in the county. A **precinct** is the smallest unit for administering elections and local voting. Some cities have voting units, usually used for city council elections, called wards. A **ward** is a voting district made up of several precincts.

**State Parties** Each state party is run by a central committee made up of representatives from the party's county committees. The state committee appoints a chairperson to manage the party's daily operations. Party leaders and party members in each state support and try to elect local, state, and national candidates—especially the party's presidential candidate—in their state.

**National Parties** The national party of each major party is headed by a national committee of members from its state parties. A national chairperson leads a large paid staff and manages the party's operations.

Major national parties have committees for fund-raising, supporting campaigns, and other purposes. For example, each party has two congressional campaign committees, whose primary mission is to elect the party's candidates to the House and Senate.

Each party also sponsors affiliated organizations at the state and local level to attract specific groups of voters. Examples include the National Federation of Republican Women, the College Democrats of America, the National Teenage Republicans, and the Young Democrats of America.

**READING CHECK** **Making Inferences** Why do political parties sponsor affiliated organizations?

## **Political Parties and the Public Good**

Despite Madison's concerns, political parties have benefited American democracy in a number of ways. At the same time, however, parties are often the objects of criticism.

**Benefits of Political Parties** Some political scientists suggest that one way the two-party system serves the public good is that both parties filter out extreme or unconventional ideas. Each party wants to attract enough voters to win and keep a majority in government. As a result, parties provide stability against rapid and disruptive change.

In their effort to maximize their votes, parties try to include as broad a base of support as they can. The two major parties are made up of distinct groups, or constituencies, each with its own range of views. Generally, Democratic Party constituencies include labor unions, women, racial and ethnic minorities, and educated urban voters. Republican constituencies, in general, include religious conservatives, corporate and business interests, and white men. Parties try to accommodate the diverse views of their constituents. The result of parties' efforts to include a variety of opinions may be an increase in political and social stability.

Because each major party represents a variety of groups and views, supporters who agree with most of the party's positions will not abandon the party over one issue with which they might disagree. This party loyalty also promotes stability by discouraging frequent, short-term shifts in power that might make government less stable.

Finally, parties provide a political "brand name" in much the same way a soft-drink company does for its products. Voters may not need to know everything about the candidates to reach political decisions. They might vote for a party's candidate because, overall, they support the party's views.

**Criticisms of Political Parties** Some critics argue that by trying to appeal to as many types of voters as possible, the major parties lack unity, discipline, and loyalty. As a result, parties may not be able to fulfill all the campaign promises they make. It is true that in the United States, officeholders from the same party stick together on issues less often than those in most other countries.

Some people note that interest groups give money for campaigns and other party activities. These contributions, people argue, influence parties and their officeholders to act in ways that benefit narrow interests rather than serve the larger public good.

Critics also charge that parties are full of office seekers who are interested more in their own personal success than in serving the public good. For example, a candidate may express support for a certain policy during a campaign because doing so helps the person get elected—even though in a previous campaign or office, the candidate had held, and stated, a position directly contrary to his or her new position. Voters and other candidates often call this reversal of position a flip-flop.

Finally, some people are angered by the partisan bickering between the two major parties. They charge that parties offer simple, narrow solutions to complex problems and are more interested in winning public opinion—and votes—than in solving the complex issues confronting the nation.

**READING CHECK Summarizing** How is a party's broad base both a benefit and a detriment to society?

SECTION

3

ASSESSMENT

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ONLINE QUIZ

## Reviewing Ideas and Terms

- Identify** What is a **political party**?
  - Evaluate** Why are political parties important to the American political system?
- Recall** Why were the Federalist, Democratic-Republican, Democratic, and Republican parties created?
  - Make Inferences** Which type of party system produces the most stable government? Explain why.
- Summarize** What is the main purpose of a political party at all levels of its organization?

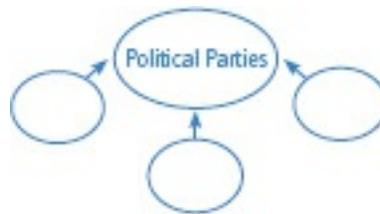
**b. Evaluate** How important is each level of political party organization to achieving a party's goals? Explain how each level supports the others.

**4. a. Recall** What are some criticisms of political parties?

**b. Evaluate** Do political parties promote the public good? Why or why not?

## Critical Thinking

**5. Analyze** Copy and fill out the graphic organizer to illustrate how political parties are organized. Then identify opportunities for citizens to participate in political party activities at local, state, and national levels.



## FOCUS ON WRITING



**6. Persuasive** The national chairperson of a party wants to eliminate the party's state and local organizations and conduct all operations at the national level. You are a national committee member. Write a memo to other national committee members explaining why this proposal is or is not a good idea.

## DEBATING THE ISSUE

### Voting for a Third-Party Candidate

*Is voting for a third-party candidate a meaningful use of your political voice?*

#### THE ISSUE

Third parties and independent candidates have long played an important

role in American politics, despite the fact our political system has been dominated by two major political parties for well over a century. Whether in a national election or a local election, third parties have been an important catalyst for positive change in our society. Whether you vote for a third-party candidate or a candidate from one of the two main parties, it's important to research the issues thoroughly and identify which ones really matter to you. It's important to exercise your right to vote, whatever party you support.



**Third-party candidates do not usually win major political office, but some, such as Jesse Ventura, are successful. Ventura was elected governor of Minnesota in 1998.**

## **VIEWPOINTS**

**Your vote will not count or will not be meaningful.** Many people argue that if you vote for a third-party candidate, especially in a presidential race, you are squandering your vote. According

to this view, most voters will choose one of the major-party candidates. Even if the third-party candidate has made it through all the primary elections, it is unlikely that he or she will win enough electoral votes to be elected president. Voting for a third-party candidate can also sway the outcome of an election in favor of a major candidate.

One slogan used by the Democratic Party during the 2000 presidential campaign was “A vote for Nader is a vote for Bush.” Even if a third-party candidate wins a significant portion of the popular vote, as Ross Perot did in 1992, the fact that the candidate lost means that he or she will not have any influence on public policy in the winner’s administration.

**A vote for a third-party candidate is both meaningful and worthwhile.** Third parties play an important role in the U.S. political system as critics and innovators. Many people choose to vote for a third-party candidate because they feel that their interests are not being addressed

by the major-party candidates. Because they are vying for the broad support of many diverse groups, both major parties are considered relatively conservative in their views, and their stances on major issues often overlap. In addition, third parties bring to the table issues not addressed by the big parties. For example, many ideas that we may take for granted today, such as women's suffrage and government regulation of food and drug safety, were first introduced and made popular by third parties. By not voting for a good third-party candidate, you ensure that the only voices that influence public policy are the same voices we always hear.

## What Is Your Opinion?



1. Do you think third-party candidates have a greater chance of winning a national election or a state or local election? Explain your reasoning.
2. Would you ever vote for a third-party candidate? Why or why not?

SECTION  
**4**

# The Electoral Process

**BEFORE YOU READ**

**Main Idea**

The Constitution creates a system in which citizens elect representatives to public office. Each citizen has the responsibility to help make this system work. Citizens can affect the electoral process in many ways, but the most powerful is by voting on election day.

**Reading Focus**

1. How is a political campaign organized and financed?
2. How are candidates chosen for an election?
3. What are four factors that may influence voting and voter behavior?
4. What is the difference between a general election and a special election?
5. Do political campaigns serve the public good?

**Key**

**Terms**

hard  
money  
soft  
money  
write-in  
candidates  
caucus  
direct  
primary  
closed  
primary  
open  
primary  
plurality  
absentee  
ballot



Use the graphic organizer online to take notes on some factors that may influence voter behavior.



**Your Vote, Your Voice** Voting is the most basic exercise of

the constitutional principle of popular sovereignty. American author Louis L'Amour observed that “to make democracy work, we must be a nation of participants, not simply observers. One who does not vote has no right to complain.” What does that mean today? Our democratic system depends on citizens being actively involved in the political process. In our democratic republic, we elect people to represent us at all levels of government. These people pass laws and make other decisions that affect the potholes in our streets and the security at our ports everything from health care to warfare.

Candidates and their campaigns, political parties, and all kinds of interest groups spend hundreds of millions of dollars to influence opinions and votes. The decisions you make as a voter—or do not make by choosing not to vote—can impact you, your community, and your nation. ■

## THE POWER TO Choose



**Several Republican Party presidential candidates appear at a debate**

in June 2007.

## Organizing and Financing Campaigns

Political campaigns are expensive in both time and money. A person who wants to run for office must determine if he or she can raise the money for a campaign and if he or she is willing to spend the time it will take. So why do people bother to run for office?

First, holding elective office is considered an honor in our society. Also, most candidates are public-minded people who want to contribute to society. They are fulfilling a citizen's responsibility to act for the common good in public affairs. Finally, some people run for office because they want the power.

**Political Campaigns** Campaigning is hard work. Local candidates may spend hours walking door-to-door and attending local functions to meet voters. Presidential candidates travel from state to state to appear at rallies, fund-raisers, and meetings.

Candidates are trying to reach and attract enough voters to win. Candidates rely heavily on the media, especially television, to spread their message. They buy air time to run political ads or stage events to get free TV coverage. Today most candidates have Web sites and Web logs, and they hold virtual town meetings where voters e-mail or instant message questions to the candidate.

**Money and Campaigns** A candidate spends a lot of time raising money. Sources of campaign funds include political action committees (PACs), the candidate's party, private individuals, the candidate's personal funds, and, in some cases, public funds.

Money donated to an individual campaign is known as **hard money**. State and federal laws limit how much money individuals and organizations can give to candidates. Candidates must file reports with state or federal officials, listing how much hard money they have received and spent.

Contributions called soft money are a way to get around the limits

on hard money contributions. **Soft money** is money given to a party, rather than to a specific candidate.

**READING CHECK Summarizing** Where do candidates get the funds to pay for their campaigns?

## **Choosing Candidates**

How does a person get his or her name on the ballot as a candidate? Nomination is the first step in the electoral process. As you read in Section 3, nominating candidates is one of the functions of a political party. Parties select candidates by either primary elections or caucuses. Either way, a candidate usually makes an announcement in the company of party officials. The nominating process varies from state to state, but it usually involves one or more of the following methods.

**Self-announcement** The first step to becoming a candidate is to announce that you are running for a certain office. You might announce that you are seeking a specific party's nomination for the office, or you may decide to run as an independent candidate. Sometimes, people who fail to get their party's support will run as a self-announced candidate.

Self-nomination usually involves a registration process, such as paying a filing fee or circulating a petition—signed by a certain number of registered voters—to get on the ballot. Nomination by petition is often used at the local level. Candidates for local offices must submit petitions with the signatures of a certain number of qualified voters who reside in the election district.

A candidate can run as a write-in candidate and avoid the petition process. **Write-in candidates** announce they are running for an office, usually as an independent candidate or as a challenger to the party's preferred candidate, and ask voters to write in their name on the ballot. Write-in candidates almost always lose: If they had more support, they would not run as a write-in.

One of the most famous—though unsuccessful—write-in candidates was Eugene V. Debs, who ran for president in 1920. Debs, a leader of the

Socialist Party, had been convicted under the Espionage Act of 1917 for a speech he gave in 1918. Although his conviction made him ineligible to hold office, Debs ran a write-in campaign from his prison cell in Atlanta, Georgia. Debs received almost 1 million write-in votes out of approximately 26 million votes cast.

**Caucuses** In some states candidates are chosen by caucus. A **caucus** is a meeting of party members who select the candidates to run for election. The caucus system began in the early 1800s, before today's election process existed. State party leaders would meet and select all the candidates for office.

When national party conventions first appeared in 1831 and 1832, state party leaders still met in state-level caucuses where, in addition to selecting candidates, they chose delegates to the national convention. Party leaders controlled both who went to the convention and how they voted when they got there. In the 1890s, reformers began to take the nominating power out of the hands of party leaders and let party members vote for the candidate of their choice.

Caucuses are still used in a few states, such as Iowa. Precinct caucuses—the lowest level—are open to all party members in the precinct. Starting in the precincts, caucuses endorse candidates for local offices and select delegates to the caucus or convention at the next level, such as the county or district. Caucus members select the delegates based on each delegate's stated preference for a particular candidate. The candidate with the most votes at the precinct level generally has the most delegates at the next level.



**Conventions** Caucuses and conventions are similar in some ways and different in others. Only party members take part in both, and both are ways to nominate candidates. However, a convention is open to the public. Also, delegates to a convention represent party members who are not there.

Local conventions choose delegates to the party's state convention and may nominate candidates for local offices. State conventions choose candidates for statewide offices, and in presidential election years, select delegates to the party's national nominating convention, which chooses the party's candidates for president and vice president.

**Primary Elections** If more than one member of a political party seeks the same office, a direct primary (meaning "first") election is held. In a **direct primary**, the party's candidate for office is chosen directly by voters. There are two types of direct primary elections: closed and open. In a **closed primary**, only voters registered as party members can vote in selecting that party's candidates. In an **open primary**, any registered voter may vote in either party's primary election, but only in one of them.

## ACADEMIC VOCABULARY

**endorse** to express support or approval publicly and openly

## **Presidential Candidate Selection**

**From self-announcement to national party conventions, the process of presidential candidate selection can last from about nine months to a year and a half.**

**SELF-ANNOUNCEMENT**  
Candidates for political office almost always self-announce, or declare publicly that they are running for office.



Bill Clinton announced his candidacy for president in October 1991.

**PAY FILING FEE**  
Candidates usually pay a filing fee in each state to get their names placed on that state's election ballot.

**COLLECT SIGNATURES**  
Candidates who lack funds to pay the filing fee may get their names on the ballot by collecting enough signatures on a petition.

**WRITE-IN CANDIDATES**  
A candidate who can neither raise the money nor collect enough signatures may ask voters to write his or her name on the ballot.

**PARTY PRIMARY ELECTION**  
In most states, if two or more candidates from the same party are running for president, the party conducts a primary election to choose a candidate.

**NOMINATING CAUCUS**  
Several states use a party caucus, or a "meeting of neighbors," to choose the party's candidates.

**NATIONAL PARTY CONVENTION**  
Delegates to each party's national convention officially select the party's presidential candidate.



In July 1992 Bill Clinton won the Democratic Party's presidential nomination. Clinton was elected president in 1992 and again in 1996.

**Skills FOCUS** **INTERPRETING CHARTS**  
How does having the support of a political party make it easier for a candidate to run for president?

Most states hold presidential primary elections, which allow voters to express their preference for a presidential candidate. The primary may also choose some or all of the state party members who will be delegates to the party's national convention. Each party's presidential candidate is chosen *after* all the states have held their primary elections.

For both major parties, primaries—not party leaders or nominating conventions—play the greatest role in determining who the candidates for president will be. Candidates, therefore, want to win the early primaries to show their strength with voters and build momentum for their nomination. Traditionally, Iowa and New Hampshire hold the first nominating contests. Recently, though, other states have sought to hold their primaries as early as possible. States with early primaries attract candidates—as well as the money that comes with them—and can influence the nomination process.

**ACADEMIC VOCABULARY**

**incumben** person who currently holds an office or position

**READING CHECK** **Summarizing** Why are primary elections an

important part of the electoral process?

## **Voting and Voter Behavior**

After the candidates have run their campaigns, it is time for voters to choose. Voting is a right, and to many people a duty, in our democracy. It is a person's most direct and powerful act of popular sovereignty.

In recent presidential elections, however, fewer than two-thirds of eligible voters voted. In years with no presidential election, turnout may reach the mid-40 percent range. In state and local elections, voter turnout is usually even lower. Why don't people vote? There are a number of reasons, such as voter apathy disaffection with government, and the belief that voting will not make any difference. The competitiveness of a race also affects turnout. Voters are more likely to vote in close races than they are in races where the outcome seems predictable.

### **ACADEMIC VOCABULARY**

**apathy** lack of interest or concern

**Voting Requirements** To qualify to vote in a general election, a person must be a U.S. citizen at least 18 years of age and a resident of the state in which he or she wishes to vote. Except in North Dakota, you cannot vote unless you are registered to do so. The registration requirement prevents ineligible people from voting. It also keeps people who have not registered from voting, even if they are eligible.

Some experts believe that the registration requirement is the main reason the voting rate in the United States is so low. In recent years, governments have made registration easier. States are required to let citizens register by mail or when they renew their driver's licenses. Some states are considering Internet registration and registration at the polls on election day.

**Voter Behavior** Many factors, from being the incumbent to being considered likable, can influence the way a voter votes. Campaigns address as many factors as they voters will feel that the candidate

deserves to win. Four main factors influence why people vote the way they do:

- **Party Identification.** Some voters rely greatly on and respond to a candidate's party affiliation. About a third of voters identify themselves either as strong Republicans or strong Democrats.
- **Issues.** Voters' views on issues that are important to them—such as abortion, health care, or taxes—can affect their choice of candidates.
- **A candidate's background.** A voter's evaluation of a candidate's record, personality, integrity, age, and character affects the choices the voter makes.
- **The voter's background.** A voter's age, gender, race, family beliefs, and income and education levels all affect how he or she chooses candidates.

**READING CHECK** **Identifying the Main Idea** What factors affect voter behavior?

## More About Elections

Primary elections are one kind of election. Two other kinds of elections are general elections and special elections. All elections are held according to state and federal laws. In addition, each Native American nation establishes its own procedures, rules, and requirements for electing its leaders.

**General Elections** The end of a campaign is the general election, in which one candidate is elected to each office. In most states, only a plurality is required for election. A candidate wins by a **plurality** if he or she has more votes than anyone else. In some states, however, a candidate must get a majority — more than 50 percent—of the votes to win. Otherwise, a runoff election is held.

**Special Elections** Special elections are sometimes held at the local or state level to let the people, rather than government leaders, decide an issue—for example, whether to raise taxes. A special election also might be called to replace an officeholder who has died in or resigned from office.

**Holding an Election** The dates of general elections are set by law. Federal elections take place on the first Tuesday following the first Monday in November of every even-numbered year. Most states hold statewide elections on the same day, and more than half the states require that local elections take place on this day as well.

On election day, voters go to the polling place in the precinct where they live. The polling place is usually run by workers paid by the local election authority. Occasionally, there will be a number of poll watchers from one or more political parties.

Voters cast a secret ballot—that is, they vote in private and no one knows for whom any individual voted. Votes may be cast on paper ballots or on some type of voting machine. Many voting machines are now electronic. Electronic voting is controversial because some machines do not keep a paper record of votes cast. Critics fear that using such machines increases the chance for inaccurate or unfair results due to system failure or illegal tampering.

Some voters are not able to vote at their polling place because they are seriously ill or, as with many members of the armed forces, are away from home. These voters can request an **absentee ballot**, which is a ballot submitted on or before election day by a voter who cannot be present on election day. A voter fills out this ballot and mails it in by the date set by law. All states now allow absentee voting by mail, but 22 states require voters to provide the reason they are using the vote-by-mail provision.

More than 30 states now allow voters to vote early, whether they will be absent on election day or not. Early voting rules vary by state. The early voting period may be as long as 45 days, but most states limit it to about 14 or 21 days before election day.

**READING CHECK** **Contrasting** How does a special election differ from a general election?



## PRIMARY SOURCES

### Politics and the Net

These excerpts from a July 2007 Rock the Vote blog were written after YouTube sponsored a televised presidential debate.

**Was the YouTube Debate the Debate for Young Voters? Did you catch the CNN/YouTube Democratic Presidential Debates...? We sure hope you did, because a good portion of the media coverage has been emphasizing that this was the debate where young voters finally were heard. This debate, held in Charleston, South Carolina, was a bit more nontraditional, for the questions were asked not by a famous news personality, but rather by average Americans who submitted their queries over the popular video website YouTube ... Though many newspapers and blogs posted varied opinions about the candidates' performances or the technology used in the debate ... many of the articles agreed that young voters had a disproportionate role in the debates.**

**Skills**

**Focus**

**INTERPRETING PRIMARY SOURCES**

**Making Inferences** How will Web logs and online videos influence politics and public policy in the future?

See **Skills Handbook**, p. H9.

# Campaigns and the Public Good

Political parties, interest groups, and individuals all play a part in determining who represents us in our local, state, and national government. Parties nominate candidates and help define the public issues and public agenda the campaign will cover. Interest groups lend their voices to the public debate and support or oppose candidates and issues. Individuals vote, and the results of the vote determine which issues are important and which policies should continue and which policies should change.

**Elections and the Public Good** Elections serve the public good by allowing citizens to express their opinion on how the country should be run. Election campaigns spend a lot of time and money to inform voters about the candidates and call attention to important issues. Both functions can help voters make informed choices on election day.

**Criticism of Campaigns** On the other hand, the way that many campaigns are conducted has generated criticism. Some dislike campaigns' reliance on TV advertising. How much useful information, critics ask, is provided in a 30-second TV spot? Critics also charge that campaign advertising may distort or omit information, which leaves voters misinformed rather than informed.

Many campaigns are criticized for their negative ads. Voters often tell pollsters that they oppose negative campaigning. However, campaigns continue to "go negative" because a candidate who feels that he or she has been attacked usually feels the need to respond in a similar fashion. In addition, some candidates have found that criticizing an opponent is more effective in terms of influencing voter behavior.

Critics blame these factors, along with voter-registration requirements and today's reduced role of political parties, for the low level of voter turnout. These factors may also help explain why one-third of Americans claim to have little or no interest in politics and public affairs.

Whatever people think of political campaigns, the issues facing the country, such as health care, terrorism, and national security, will not go

away. Your vote is your voice. Voting will help you shape the future of your community, state, and country.

**READING CHECK Summarizing** What are two criticisms that some people have about political campaigns?

SECTION

4

ASSESSMENT

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ONLINE QUIZ

## Reviewing Ideas and Terms

- Describe** How does a person become a candidate?
  - Evaluate** How important to a candidate is a strong campaign organization?
- Identify** What is a candidate's main activity during an election campaign?
  - Make Inferences** Why do you think election laws place limits on hard-money contributions?
- Recall** What two basic requirements must a person meet to be eligible to vote?
  - Evaluate** What are some reforms that might increase the voting rate? How effective do you think those reforms might be in increasing voter turnout?
- Recall** What is the federal general election date?
  - Make Inferences** Why might political parties station poll workers at polling places on election day?
- Describe** How do elections and election campaigns serve the public good?
  - Explain** What are some steps government might take to improve public attitudes about election campaigns?

## Critical Thinking

- Summarize** Copy and complete the graphic organizer. Then use it

to describe each type of primary election and its uses.



## FOCUS ON WRITING



**7. Expository** Create a pamphlet that a nonpartisan civic group could distribute to educate citizens about voting and why it is important.



### ***Buckley v. Valeo (1976)***



*Campaign finance laws aim to limit the influence that wealthy individuals and organizations might exert over elections and public officials. The Court's decision in **Buckley v. Valeo** established the basic rules that govern how modern presidential campaigns are financed.*

### **Background**

When corrupt campaign finance practices came to public attention following the Watergate scandal and the 1972 presidential election, Congress passed several amendments to the 1971 Federal Election Campaign Act (FECA). Among other provisions, the amendments limited the amount individuals and political action committees could contribute

to federal election campaigns. The amendments also placed limits on the amount candidates could spend on their campaigns and created the Federal Election Commission (FEC) to enforce federal campaign laws.

Shortly following the passage of the legislation, a group led by New York senator James Buckley filed suit against the FEC, charging that the new FECA amendments were unconstitutional because they violated rights protected under the First and Fifth amendments to the Constitution. The U.S. District Court of Appeals for the District of Columbia upheld the spending limitations enacted by Congress, and the case proceeded to the Supreme Court.

## Arguments for Buckley

The plaintiffs argued that limiting campaign contributions and expenditures violated the right to freedom of speech under the First Amendment, because “virtually all meaningful political communications in the modern setting involve the expenditure of money.” Limiting contributions and expenditures, they said, would restrict the speech of some in order to enhance the speech of others and would be unconstitutional.

## Arguments for Valeo

Proponents for Valeo and the 1974 FECA amendments argued that placing limits on campaign contributions and expenditures would not restrict a citizen’s ability to participate in the political process. These limits would, in fact, make the process more fair by equalizing the influence that wealthy and nonwealthy individuals could exert. If wealthy individuals were allowed to contribute more, then in effect, they would be given a stronger voice in the political process and more rights than the nonwealthy.

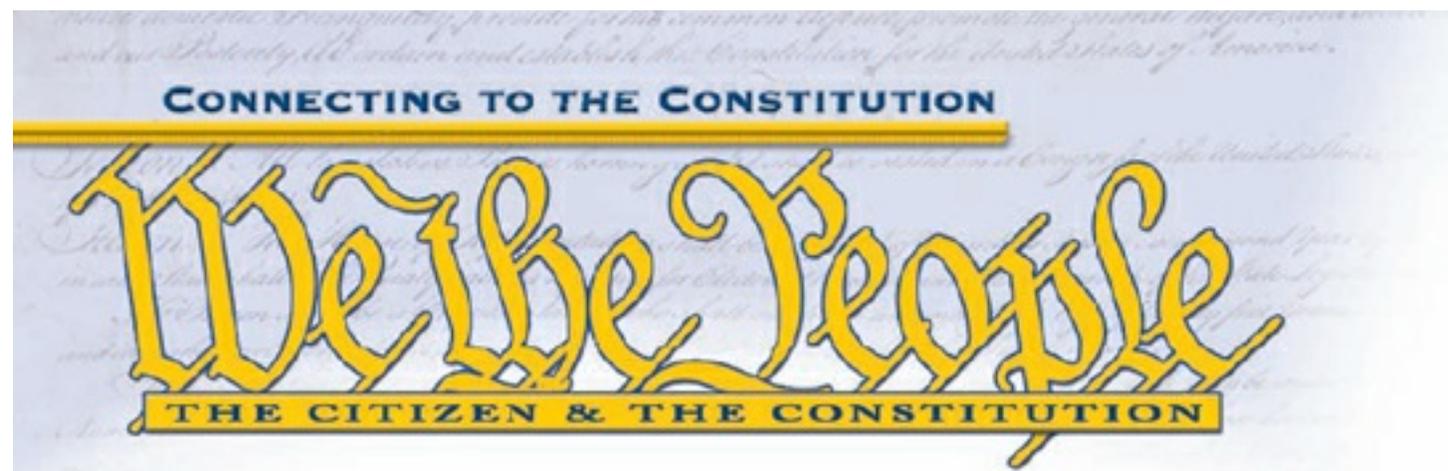


After *Buckley* limited contributions to campaigns, soft-money contributions began to flow to the two parties and related organizations. Millions of dollars ended up in presidential and

congressional campaigns. Legislation, such as the 2002 Bipartisan Campaign Reform Act (BCRA, or the McCain-Feingold Act), tried to limit soft-money contributions. Parts of the BCRA were upheld by the Court in 2003, but other provisions of the act were ruled unconstitutional in 2007. The impact of *Buckley* and later cases today depends on how the Federal Election Commission interprets and enforces these opinions.

### CRITICAL THINKING

**What Do You Think?** In *Buckley*, the Court effectively said that in politics, “money is speech.” It upheld limits on campaign contributions but not on campaign spending. Should either campaign contributions or campaign expenditures be limited in any way? Why or why not? Give examples to support your position.



## **The Role of Political Parties in the Constitutional System**

Soon after the Constitution was ratified, there was an unforeseen development to which most of the Framers were opposed: the formation of political parties. Learn about the Framers’ views on political parties and how parties became an essential component of the American political system by helping to address challenges that the Constitution left unresolved.

**How did the Framers think about political parties?** James Madison’s argument that the new Constitution would control the effects of “factions” was part of an ongoing debate within Anglo-American political thought about political parties. Some British writers, as well as

Americans such as Alexander Hamilton, used the words *faction* and *party* as synonyms and viewed them as an evil to be eradicated in the society at large. Others, such as the Scottish political philosopher David Hume (1711–1776), had argued that parties were the inevitable result of diverse interests. In fact, James Madison followed this reasoning in *Federalist Paper* No. 10 and believed that factions could be controlled. Ireland’s Edmund Burke (1729–1797), another important political thinker, contended that open opposition expressed through political parties was a good thing. Without parties, Burke believed, opponents of the ruler would resort to conspiracy and intrigue. Political parties motivated by self-defined guiding principles provided a crucial service to the body politic by fostering open debate.

No major eighteenth-century American leaders echoed Burke’s arguments. However, Americans were accustomed to factional politics in their colonial and new state governments, often because of differing regional or economic concerns. Some of the Framers recognized the potential value of political parties. For example, Alexander Hamilton argued in *Federalist Paper* No. 70 that parties within a legislature could “promote deliberation and circumspection, and serve to check excesses in the majority.” But once a decision was made, Hamilton continued, opposition should cease.

Hamilton, Madison, and the other delegates to the Constitutional Convention had no experience with an ongoing party system, that is, a system of organized, relatively durable political parties that accept one another’s right to exist and to compete in elections and within government.

Political parties developed within a decade of the ratification of the Constitution. Ironically Madison and Hamilton became leaders within those parties—on opposite sides. Several issues contributed to divisions within the national government and the nation as a whole. Those divisions became the basis for the first parties.



The presidential election of 1800 was the first to feature candidates for president and vice president who were openly supported by political parties. Federalists supported the re-election of John Adams. Republicans supported Thomas Jefferson. The candidates themselves did not campaign because it was considered undignified for presidential candidates to seek the office actively. But the election heightened the bitter party disagreements.

**What part do political parties play in today's political system?** Today political parties play an essential role in the American political system. Since the 1860s, the Democratic party and the Republican party (founded in 1854) have been the two major parties in the United States, although the agendas and constituencies of each have changed dramatically over the years as new issues have created new coalitions and new divisions. Political parties serve several important purposes:

- They mobilize popular participation in the nomination and election of candidates for public office.
- They connect the executive and legislative branches of government. Presidents generally work most closely with members of their own party in Congress, and governors do the same with those in their state legislatures.
- Political parties connect the national government with state governments. However, each major party has enough internal variation to remain viable in states with very different political climates.
- By joining a political party people indicate their support for a

particular platform, the label given to the priorities and policies of that party.

- Political parties provide forums for deliberating about public policies. In a sense they work in a way that is opposite from what Madison suggested about factions. Rather than fracture the citizenry and promote passion and interest over reason and the common good, parties can help organize and channel passions and interests into the system. Each major party is like a large tent, under which a variety of interests and issues can coexist. Like the “large republic” that Madison envisioned, political parties actually could work against the most divisive tendencies of faction and passion.
- In times of rapid political change political parties can provide a way of ensuring that people demand a change of government, not a change of constitution. Parties can be an agent of stability.

In recent years many commentators also have observed less favorable aspects of the political party system:

- The longstanding dominance of the Democratic and Republican parties, entrenched through campaign finance laws and other structures, makes it difficult for parties espousing truly alternative views and agendas to gain lasting political support. In most other nations, especially those with parliamentary systems, there usually are many more parties, each representing a particular set of policies and values. Voters in such systems may feel as though they have a wider range of choices.
- American “third parties” tend to be short-lived expressions of discontent with the two major parties (such as Ross Perot’s Reform party in 1992), to be small and oriented toward a narrow set of issues, or to be local or state-based. They have little chance of becoming new major parties that are competitive nationally and

over the long haul with the Republicans and the Democrats.

- If a single set of interests, or a particularly passionate interest, gains dominant power within a party, then the party is subject to the same threat of majority tyranny that Madison and other Framers feared in small republics and from political factions.

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## Reviewing Ideas and Terms

1. **Identify** For Alexander Hamilton, what purpose might political parties serve within a legislature?
2. **Explain** What are six important functions that political parties serve in today's electoral system?

## Critical Thinking

3. **Elaborate** In what ways does America's two-party system promote or thwart America's constitutional principles?



## Chapter Review

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# Comprehension and Critical Thinking

## SECTION 1

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: public opinion, public policy, mass media, poll, sampling error.
- b. Make Inferences** How might the media influence policy or regulatory decisions made by a government agency or institution? Give a recent example from the news.
- c. Elaborate** In what ways can the techniques used to conduct a poll affect its results?

## SECTION 2

2. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: special interest group, political action committee, lobbying, grass roots.
- b. Summarize** What are the six basic types of interest groups? Provide an example of each.
- c. Evaluate** Do you think that political action committees and lobbying should be illegal? Explain why or why not.

## SECTION 3

3. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: political party, political spectrum, two-party system, third party, precinct.
- b. Contrast** What are the basic differences between a one-party, two-party, and multiparty system?
- c. Elaborate** Why are political parties important to the political system in the United States?

## SECTION 4

4. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: soft money, caucus, direct primary.

- b. Explain How does the purpose of a general election differ from the purpose of a primary election?
- c. **Evaluate** What is your opinion about why so many eligible voters do not take part in elections?

## Critical Reading

*Read the passage in Section 4 that begins with the heading “Choosing Candidates.” Then answer the following questions.*

5. Why did many states replace the caucus system with conventions?

- A Caucuses were too expensive.
- B Conventions are open to the public.
- C Party leaders largely controlled the outcome of caucus decisions.
- D Reformers wanted party leaders to have more power.

RESPONSIBILITIES OF LEADERSHIP



6. Political parties can affect our political system as well as individuals and elected officials. Research the **roles political parties play** and describe the changing influence of parties on elections and elected officials. Include in your analysis the roles of formal and informal party memberships, the development of party machines and regional party strongholds, the rise of independent voters, and disillusionment with the party system.
7. Political communications come from various sources. Select any **public policy issue**, such as health care, taxes, or privacy. Research one blog, one political speech, and one interest group dealing with that issue. Create a spreadsheet and compare the three sources of information, using the following criteria: logical validity, appeal to emotions, factual accuracy, factual omissions, distorted evidence, and appeals to prejudice or bias. Analyze your results. Explain which type of communication you would use to decide on a public

issue.

- 8.** One of the responsibilities of a leader is to help **resolve conflicts between groups**. At the local level—at school, in your neighborhood, or at the city council—your political behavior, such as writing letters or making speeches, might help resolve such conflicts. Give an example of a conflict in your community. Describe what steps you could take to resolve it. Assess how successful your leadership might be in helping the parties reach a satisfactory result to the dispute.
- 9.** Under the Constitution, **you are entitled to equality, justice, certain freedoms, and individual rights**. Select one of these ideas. Research and evaluate how changes in economic, geographical, technological, and social forces have affected the topic you chose. For example, how have economic, geographic, technological, and social changes affected, if at all, your individual rights or the idea of justice?

## CONNECTING TO THE CONSTITUTION

- 10.** Research third-party movements in the United States. In two or three paragraphs, describe their influence and the policies that have resulted.

### Analyzing Primary Sources



**Political Cartoons** *Each of the two major political parties has a wide and different base of support. Many people feel that the two-party system gives voters clear choices on election day. However, others accuse the two parties of holding similar views on many issues.*



11. **Analyze** In your opinion, who is “feeding” the two parties?
12. **Elaborate** Do you think that contributions from special interest groups make the two parties more alike or reinforce their differences? Explain your answer.

## FOCUS ON WRITING



**Persuasive Writing** *Persuasive writing takes a position for or against an issue, using facts and examples as supporting evidence. To practice persuasive writing, complete the assignment below.*

### **Writing Topic: Money and Politics**

13. **Assignment** Some people think that money plays too great a role in politics and that donations to campaigns should be limited or banned. Defenders of the system say that campaign finance laws and ethics laws for officeholders make the process fair and open. Write an editorial explaining and defending your position on campaign finance. Give examples to support your position.

# Civil Liberties

**Essential Question** How does the Constitution protect the civil rights and civil liberties of Americans?

**About the Photo** On April 22, 1970, more than 200 million people around the globe rallied and raised awareness for environmental concerns, including marching at the Capitol in Washington, D.C. Originally begun in 1973, the idea of Earth Day was thought up by Gaylord Nelson, a U.S. Senator from Wisconsin, as a way to protest pollution in the same way war was protested. Because of the success of Earth Day and a new public awareness of environmental issues, several bills were passed in the following years, including the formation of the U.S. Environmental Protection Agency in 1970, the Clean Air Act of 1972, and the Endangered Species Act of 1973.

## CHAPTER AT A GLANCE

### SECTION 1 Protecting Constitutional Rights

- The Bill of Rights protects Americans' civil liberties and civil rights.
- In some cases, government may place limits on individual freedoms for the sake of the common good.
- The Supreme Court has established that many of the provisions of the Bill of Rights limit the actions of state and local governments as well as of the federal government.

### SECTION 2 First Amendment Freedoms

- The First Amendment protects five freedoms that are fundamental to the American concept of liberty: religion, speech, press, assembly, and petition.
- Government may not act to establish an official religion, support one religion over another, or tell people what they must believe in matters of religion.
- The First Amendment gives every person the right to express his or her opinion. While this guarantee protects unpopular speech, free expression is not unlimited.

### SECTION 3 Protecting Individual Liberties

- The Second Amendment protects the right to keep and bear arms. The Third and Fourth Amendments guard the rights to security of home and person.
- The Supreme Court has interpreted the Constitution as protecting a right to privacy.
- The Constitution's guarantees of due process require that government act in accordance with fair and public laws in whatever it does.

### SECTION 4 Crime and Punishment

- The Constitution protects rights of people accused of crimes, including the right to a fair trial.
- People convicted of crimes also have certain rights. The Constitution prohibits government from imposing excessive fines or cruel and unusual punishments.

## CONNECTING TO THE CONSTITUTION

Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of fundamental rights and the doctrine of incorporation.



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# Protecting Constitutional Rights

### BEFORE YOU READ

#### Main Idea

The United States was formed out of a belief that individuals had certain important liberties and rights. The Constitution’s Bill of Rights protects these liberties and rights.

#### Reading Focus

1. What is the Bill of Rights, and what does it protect?
2. What are the limitations on civil liberties and rights?
3. How does the Fourteenth Amendment help protect civil liberties?

#### Key Terms

civil liberties  
civil rights  
due process  
incorporation  
doctrine

Use the graphic organizer online to take notes on how the Bill of Rights protects Americans' civil liberties and rights.

## Guarding OUR Liberties



**The Importance of the Bill of Rights** In the early years of World War II, as German troops swiftly conquered the democratic nations of Europe, President Franklin D. Roosevelt gave an eloquent speech in which he predicted a brighter future for the world. Roosevelt's historic "Four Freedoms" speech, delivered before Congress in January 1941, predicted a time when American ideals of liberty had spread to the farthest reaches of the earth. To Roosevelt, the essential human freedoms that every person should possess include the freedom of speech and expression and the freedom to worship as he or she chooses.

Why are liberties such as those promoted by Roosevelt so important to Americans? Simply put, civil liberties—including religious freedom, freedom of speech, and personal security—are the fundamental safeguards that protect us from government actions. The Bill of Rights guards these freedoms.

Respecting and protecting civil liberties is among the most important responsibilities of a democratic government. The principle behind the Bill of Rights—that government may not restrict freedoms and liberties without good reason—is why the United States has long been a symbol of freedom to people around the world. Without these protections, American society would be very different.



**For many Americans, the Statue of Liberty symbolizes the rights and freedoms that we hold dear.**

**The Bill of Rights**

It was a firm commitment to their personal freedoms that drove American colonists to break from Great Britain in the Revolutionary War. The Declaration of Independence explains the colonists' actions as an effort to protect their rights, including "Life, Liberty, and the pursuit of Happiness." Eventually, this quest to protect these rights led to the creation of the Bill of Rights.

**After Independence** Once independent from Great Britain, states adopted their own constitutions, most of which protected the liberties Americans had fought so hard to win. Virginia, for example, approved a Declaration of Rights that protected many freedoms, including freedom of religion.

Yet when delegates gathered in 1787 to draft a new national constitution, there was little talk of specifically protecting individual rights until the very end of the Constitutional Convention. At that time, George Mason—who had written the Virginia Declaration of Rights—proposed including a bill of rights in the Constitution. Other delegates argued that state constitutions and a separation of powers were enough to protect Americans' rights, and Mason's proposal was defeated. As a result, the Constitution included few specific protections of individual rights.

**The Ratification Battle** During the national debate over the ratification of the Constitution, it quickly became clear that the lack of a bill of rights could doom the Constitution. After years of British rule, the American people simply did not trust any government's commitment to protecting liberties and rights. Thomas Jefferson expressed concern over the Constitution.

#### **PRIMARY SOURCE**

**“A bill of rights is what the people are entitled to against every government on earth, general or particular, and which no just government should refuse.”**

—Thomas Jefferson, letter to James Madison, 1787

**The Ten Amendments** In order to win ratification of the Constitution, supporters of the Constitution agreed to add a bill of rights as soon as the new national government met in 1789. When the government gathered, James Madison began drafting amendments to the Constitution. Members of Congress changed some of his proposals and rejected others. They also debated the very existence of a bill of rights. Some members of Congress feared that listing individual rights might imply that the government would protect only those rights. To address this concern, they added an amendment stating that listing specific rights did not mean that other rights were denied to the people.

Ultimately, 10 amendments were ratified by the states. These amendments—the Bill of Rights—became part of the Constitution in December 1791.

### PROFILES IN GOVERNMENT

**George Mason**  
1725-1792



George Mason, sometimes called the Father of the Bill of Rights, was a Virginia political leader and an early advocate of the constitutional protection of individual rights.

In 1776 Mason helped write the first Virginia constitution and the Virginia Declaration of Rights, a document that listed the inalienable rights of Virginians and called for independence from Great Britain. The Declaration influenced Thomas Jefferson's draft of the Declaration of Independence later that year.

Mason was a member of the Constitutional Convention that met in 1787, although he refused to sign the Constitution, believing that it did not do enough to protect individual liberties against government abuse. Later, as a delegate to the Virginia convention that met to ratify the Constitution, Mason urged delegates to demand a bill of rights as a condition of ratification. The Bill of Rights that was eventually adopted is based largely on Mason's Virginia Declaration of Rights.

**Draw Conclusions** Why is George Mason called the Father of the Bill of Rights?

**James Madison and the other Framers had to make difficult decisions about what should be included in a bill of rights. In all, the states proposed a total of 210 amendments, 10 of which eventually became the Bill of Rights.**

The amendments in the Bill of Rights protect both civil liberties and civil rights. **Civil liberties** are basic freedoms to think and to act that all people have and that are protected against government abuse. For example, the First Amendment's guarantee of religious freedom protects a civil liberty. **Civil rights** are rights of fair and equal status and treatment and the right to participate in government. The First Amendment's guarantee of the right to petition government helps protect a civil right.

## BILL OF RIGHTS

**First Amendment** Protects freedom of speech and expression and forbids Congress from making laws that establish religion or limit the free exercise of religion.

**Second Amendment** Protects the right to bear arms.

**Third Amendment** Prevents government from forcing someone to house troops in his or her home except in specific circumstances.

**Fourth Amendment** Prohibits government from searching a building or person, or seizing a person, without first meeting specific legal standards or getting a court order.

**Fifth Amendment** Protects people accused of a crime:

- requires a grand jury indictment for most serious crimes;
- prevents "double jeopardy"—an individual cannot be tried more than once for the same offense;
- prevents people from being forced to testify against themselves.

Protects people from unfair government actions:

- requires due process before government deprives anyone of life, liberty, or property;
- prohibits government from confiscating property without making proper payment.

**Sixth Amendment** Protects people accused of a crime:

- requires speedy and public trial by jury;
- requires that accused persons be told of charges against them;
- permits accused to question witnesses against them and to call their own witnesses;
- requires that accused persons be given legal assistance.

**Seventh Amendment** Guarantees trial by jury in federal civil cases involving more than \$20.

**Eighth Amendment** Protects against excessive bail or fines in criminal cases and against "cruel and unusual punishments."

**Ninth Amendment** Protects other rights that are not specifically mentioned in the Constitution.

**Tenth Amendment** Reserves to the states or to the people powers not given to the federal government.



### INTERPRETING CHARTS

1. What fundamental freedoms are protected by the First Amendment?
2. How does the Fifth Amendment protect Americans?

Despite the language of the Bill of Rights, civil liberties and rights were not originally guaranteed for all Americans. Women and slaves, for example, had their freedoms severely restricted. Over time, the protections of liberties and rights have been expanded to cover all American citizens. Today debate on this issue centers on the rights of aliens—citizens of other countries who are living in or visiting the United States.

**READING CHECK** **Sequencing** List the sequence of events that led to the creation of the Bill of Rights.

## Limits on Civil Liberties and Rights

The Bill of Rights sets limits on government, but people do not have complete freedom to do whatever they choose. To protect the common good—the welfare of all—there are limits on individual liberties and rights.

**When Rights Conflict** To the Framers of the Constitution, the ideal government would be one that limited liberties as little as possible. Yet in some cases the government does limit personal freedoms. That is because one person’s exercise of a certain freedom—such as smoking in a public place—can sometimes harm another person or conflict with civic responsibilities. In other words, individual liberties and rights can conflict. In that case, the government must decide if liberties and rights should be limited for the sake of the common good.

Take, for example, the freedom of speech. The right to express ideas publicly is widely considered to be necessary for democracy, and the First Amendment limits the government’s power to deny this right. Yet the Supreme Court has found that when speech is likely to lead to immediate lawless action, government can limit free speech. For example, during wartime the government may be able to limit speech that aids the enemy, such as publishing information about the tactics of American soldiers. The Court has examined the limits of different constitutionally protected freedoms over the years. You will read more about the Court’s decisions later in this chapter.

**The Role of the Courts** Balancing the protection of civil liberties and the protection of the common good is an enormous challenge for government. One way government maintains this balance is through the courts, which can strike down laws that they determine violate individual liberties and rights.

The courts, however, cannot bring action on their own. They can only issue rulings when cases are brought before them. Early in the history of the United States, few such cases were brought before the courts, in part because many of the people and groups who most needed their rights protected did not have access to the courts. African Americans, for example, could not readily bring a case against white people who were denying them rights. As a result, most Supreme Court cases that have protected civil liberties and rights have occurred since the early 1900s.

Some of the cases involving civil liberties and rights have come to the courts through the actions of interest groups such as the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU), and the Mexican American Legal Defense and Educational Fund (MALDEF). The groups' involvement in these cases has had an important impact on the courts' decisions about liberties and rights.

**READING CHECK** **Summarizing** Why are individual liberties and rights sometimes limited?

## **Civil Liberties and the Fourteenth Amendment**

The Bill of Rights was intended to limit the actions of the federal government. This does not mean, of course, that state and local governments can deny individuals their civil liberties and rights. For one thing, many state constitutions have their own bills of rights. Article I of the Indiana state constitution, for example, clearly outlines the basic freedoms that residents of the state possess. In addition, the U.S. Supreme Court has ruled that most protections in the Bill of Rights apply not only

to the federal government but also to state and local governments.

**The Due Process Clause** The Supreme Court's rulings that much of the Bill of Rights applies to state and local governments are based upon the Fourteenth Amendment. Ratified in the aftermath of the Civil War, the Fourteenth Amendment was intended to protect the rights of formerly enslaved African Americans. The amendment forbade states from passing laws that would "deprive any person of life, liberty, or property without due process of law." **Due process** means following established and complete legal procedures.



How is due process related to the principle of limited government?

The Court has held that the Fourteenth Amendment's due process clause means that many of the guarantees of the Bill of Rights apply to the states. Thus, the Court has incorporated, or merged, much of the Bill of Rights into the Fourteenth Amendment. The Court's reasoning for incorporating these rights—known as **selective incorporation**—holds that certain protections are essential to due process of the law. Thus, states cannot deny these protections to the people.

**Key Cases** The process of incorporation has taken place through a number of Supreme Court cases over many years. The first such case was *Chicago, Burlington & Quincy Railroad Company v. Chicago* (1897). In this case, the Court held that the Fourteenth Amendment's due process clause incorporated the Fifth Amendment's "just compensation" clause, thus requiring the states to give owners fair compensation when taking private property.

Starting in the 1920s, a flurry of cases led to the incorporation of the First Amendment freedoms. In *Gitlow v. New York* (1925) the Court agreed that New York State could forbid a man from plotting to overthrow the government. Using the due process clause, however, the

Court ruled for the first time that states must respect the First Amendment's guarantee of freedom of speech.

Six years later, in *Near v. Minnesota* (1931), the Court incorporated the freedom of the press. *DeJonge v. Oregon* (1937) incorporated freedom of assembly and petition. *Everson v. Board of Education of Ewing Township* (1947) incorporated the First Amendment's limits against government establishment of religion.



<b>PROCESS OF INCORPORATION</b>	
<b>AMENDMENT, PROVISIONS</b>	<b>SUPREME COURT DECISIONS</b>
First, Establishment clause	<i>Everson v. Board of Education</i> , 1947
First, Free exercise clause	<i>Cantwell v. Connecticut</i> , 1940
First, Freedom of speech	<i>Gitlow v. New York</i> , 1925
First, Freedom of the press	<i>Near v. Minnesota</i> , 1931
First, Assembly and petition	<i>DeJonge v. Oregon</i> , 1937
Second, Right to bear arms	<i>McDonald v. Chicago</i> , 2010
Fourth, Exclusionary rule	<i>Mapp v. Ohio</i> , 1961
Fifth, Double jeopardy	<i>Benton v. Maryland</i> , 1969
Fifth, Self-incrimination	<i>Malloy v. Hogan</i> , 1964
Sixth, Speedy trial	<i>Klopfer v. North Carolina</i> , 1967
Sixth, Trial by impartial jury	<i>Duncan v. Louisiana</i> , 1968
Sixth, Confront witnesses	<i>Pointer v. Texas</i> , 1965
Sixth, Right to counsel	<i>Gideon v. Wainwright</i> , 1963
Eighth, Cruel and unusual punishments	<i>Robinson v. California</i> , 1962

Other Supreme Court rulings have addressed other Bill of Rights amendments—sometimes in painstaking detail. For example, it has taken

at least a dozen cases to incorporate each aspect of the Sixth Amendment. The Court has also issued multiple rulings incorporating parts of the Fourth, Fifth, and Eighth Amendments.

The Supreme Court has not incorporated all of the Bill of Rights into the Fourteenth Amendment. The Court's deliberate decision to incorporate only certain rights is known as selective incorporation. In *Hurtado v. California* (1884), for example, the Court chose not to apply the Fifth Amendment's grand jury requirement to the states.

Note the recent ruling in 2010 on the incorporation of the Second Amendment's protection of the right to bear arms. However, the Supreme Court so far has not ruled on the incorporation of the Third or Seventh Amendments. Still, the incorporation of many rights into the Fourteenth Amendment has proved critically important for the protection of the rights and liberties that Americans hold dear.

**READING CHECK Summarizing** How has the incorporation of the Bill of Rights into the Fourteenth Amendment affected the protection of civil liberties?

SECTION

1

ASSESSMENT

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ONLINE QUIZ

## Reviewing Ideas and Terms

- 1. a. Recall** What is the difference between civil liberties and civil rights?

**b. Make Inferences** What do you think the desire for a bill of rights that some Americans felt during the 1780s suggests about their attitude toward the new national government?
- 2. a. Describe** How do the courts help to protect civil liberties and rights?

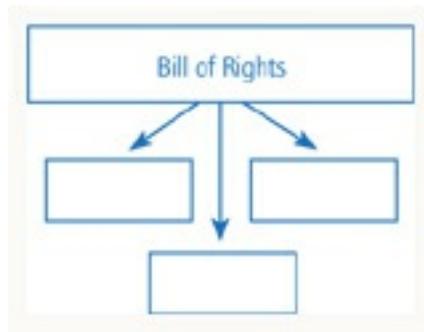
**b. Explain** How can individual rights and the common good come into conflict?

**c. Elaborate** "My right to swing my fist ends where it meets your nose." What do you think this statement means?

3. **a. Define** Define the following terms: due process, selective incorporation.
- b. Explain** How has the incorporation doctrine affected Americans' civil liberties?
- c. Evaluate** Do you believe that each state should be bound by all guarantees and protections of the Bill of Rights?

## Critical Thinking

4. **Rate** Use a graphic organizer like the one below to list the civil liberties and civil rights protected by the Bill of Rights. You may need to add more boxes to your chart. In your opinion, which of these liberties and rights are most important today? Why?



## FOCUS ON WRITING



5. **Persuasive** Write a newspaper editorial from the perspective of an American in the 1780s, arguing either for or against the addition of a bill of rights to the U.S. Constitution.



# First Amendment Freedom

## BEFORE YOU READ

**Main Idea**  
The First

**Reading Focus**  
1. How does the

**Key Terms**  
establishment

Amendment	First Amendment	clause
protects five	guarantee religious	free exercise
fundamental	freedom?	clause
freedoms that are	2. What are the	slander
central to the	guarantees of and	libel
American notion of	limits on the	treason
liberty: the	freedoms of speech	sedition
freedoms of	and of the press?	prior restraint
religion, speech, the	3. What are the	symbolic speech
press, assembly,	guarantees of and	freedom of
and petition.	limits on the	association
	freedoms of	
	assembly and	
	petition?	



Use the graphic organizer online to take notes on the five freedoms protected by the First Amendment.

## FUNDAMENTAL Freedoms

**WHY IT MATTERS** **The First Amendment** Today the five rights protected by the First Amendment—freedom of religion, speech, the press, assembly, and petition—are such a basic part of American government and society that many Americans take them for granted. The Framers of the Constitution had vivid memories of British restrictions on these freedoms, including forcing colonial support for the Church of England, punishing writers for criticizing public officials and laws, and limiting public demonstrations. The First Amendment was intended to prevent similar government abuses of Americans' rights.

The First Amendment is only 45 words long, covering barely two

lines in the original handwritten copy of the Bill of Rights. Yet despite its short length, the amendment is a cornerstone of the nation's liberty and is fundamental to our concept of what it means to be an American.

These rights are the freedoms that many Americans cherish above all others. With few exceptions, government cannot tell you what to believe in matters of religion, what you may or may not say, what the press may write or publish, or with whom you may gather. In short, the First Amendment gives us the freedom to live our lives as we see fit. ■



## Religious Freedom

Chief among the freedoms guaranteed by the First Amendment is the freedom of religion. The search for religious freedom was a central factor in the development of the United States. In colonial times, many people came to the American colonies for the freedom to practice their faith without the discrimination they faced in their home countries. As a result, protecting religious freedom was a major goal for the Framers.

## ACADEMIC VOCABULARY

**discrimination**

negative treatment based on class or category rather than on individual merit

The First Amendment guarantees religious freedom in two ways. First, it forbids the government from establishing an official religion. This portion of the amendment has been tested in court cases involving public religious displays and schools. Second, the First Amendment guarantees people's right to a "free exercise" of their own religion.

**The Establishment Clause** "Congress shall make no law respecting an establishment of religion." This part of the First Amendment, called the **establishment clause**, declares that government cannot take actions that create an official religion or support one religion over another. Through the incorporation doctrine, discussed in Section 1, state governments face the same prohibition.



Do you think it is important to keep church and state separate? Why or why not?

The idea behind the establishment clause was famously expressed in 1802 by Thomas Jefferson, a firm defender of religious freedom. In a letter to a religious group in Connecticut, Jefferson wrote that "religion is a matter which lies solely between Man & his God." He then cited the establishment clause, which he said built "a wall of separation between Church & State."

Jefferson's notion of the "wall of separation" has become a common metaphor for the separation of church and state. But while the First Amendment limits government support of religion, there is much disagreement about just how separated church and state should be. As a result, the courts have faced difficult questions about the proper role of government in religion. For example, can cities allow religious displays on public property? Can public money be used to support religious

schools? Rather than issuing rigid guidelines, the courts have taken a case-by-case approach.

**Public Displays** One issue the courts face under the establishment clause is the legality of government-sponsored religious displays. In *Lynch v. Donnelly* (1984), for example, the Supreme Court evaluated a Rhode Island display that included both religious and nonreligious symbols, such as a Christmas tree, a scene depicting Jesus's birth, and colored lights. The Court decided 5–4 that the display did not intend to benefit a particular religion. Acknowledging religion, the decision said, does not necessarily mean the government is promoting it.

In 2005 a divided Supreme Court issued two 5–4 decisions about government displays of the Ten Commandments, which are part of the Christian and Jewish traditions. In one case, government officials in Kentucky hung framed copies of the Ten Commandments in two courthouses. After a lawsuit, they modified these displays to include other historical documents, such as the Declaration of Independence. Government officials claimed that their goal was to show that the Commandments were part of the foundation of U.S. law and government. The Court, in *McCreary County v. ACLU of Kentucky* (2005), held that this display was an unconstitutional government promotion of a particular religious belief because it had no legitimate secular purpose. That is, the Court felt that the display focused excessively on the religious aspects of the Ten Commandments.

On the same day, however, the Court's decision in *Van Orden v. Perry* (2005) allowed the display of the Ten Commandments at the Texas state capitol. In Texas, the Ten Commandments were carved into a stone marker and were part of a larger display that included other markers representing aspects of Texas history. For this reason, the Court found that the Texas display of the Ten Commandments did not primarily promote a religion. Rather, it was part of a historical and educational display.

**Religion and Education** Perhaps the strongest debate over the meaning of the establishment clause has to do with education. Indeed, the first Supreme Court case exploring the limits of the establishment clause was based on educational issues.



### Public Religious Displays

Government-supported religious displays, such as the National Hanukkah Menorah at left and the Ten Commandments monument above, have been the subject of a number of Supreme Court rulings. Are these religious displays always lawful? Why or why not?

*Everson v. Board of Education* (1947) centered on a New Jersey school district's plan to use public money to bus students to private schools. In a 5–4 decision, the Court narrowly upheld the New Jersey plan, observing that the plan applied to students of all private schools. Because it did not single out students attending religious schools, the plan did not violate the establishment clause. The busing plan, said the Court, was similar to the use of public money for fire departments that protect all schools—public and private alike.

The Court again tackled the issue of religion in public schools in *Engel v. Vitale* (1962). New York school officials had written a prayer that public school students were asked to recite at the start of each day. The prayer was not based on any specific religion and students were not forced to participate, but the Court held that the prayer violated the

establishment clause.

### PRIMARY SOURCE

**“We think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite.”**

–Hugo L. Black, *Engel v. Vitale*, 1962

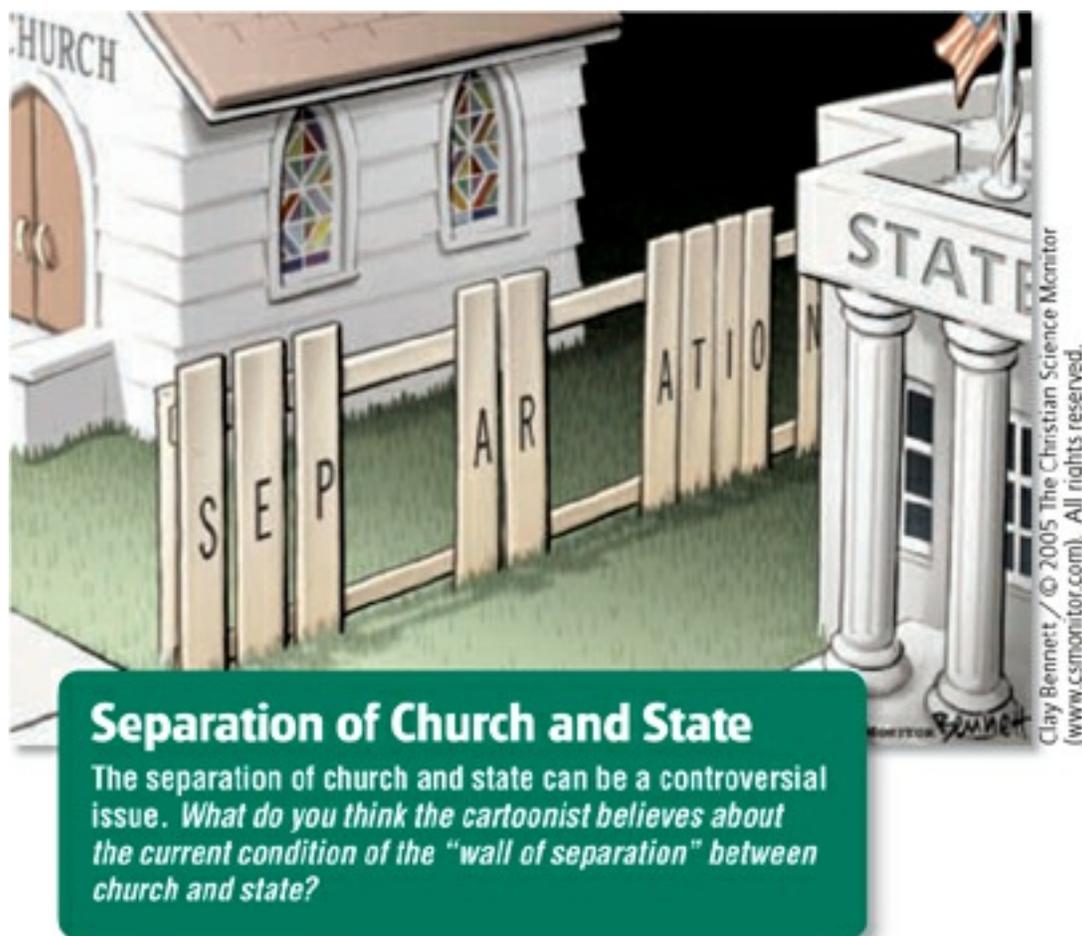
The *Engel* decision drew sharp criticism from some Americans who noted that the practice of beginning the school day with prayer had a long history in the United States. Others, however, supported the ruling. The public debate over prayer in public schools continues today.

The Supreme Court again took up a case involving public support for religious schools in *Lemon v. Kurtzman* (1971). In *Lemon*, the Court struck down a law that allowed public funding for the teaching of non-religious subjects at private schools, including religious schools. In its ruling, the Court established the so-called Lemon Test for use in future establishment clause cases. According to this test, a law must meet all three of the following standards in order to be found constitutional:

- It must have a secular, or nonreligious, purpose.
- Its major effects must neither advance nor inhibit religion.
- It must not encourage “excessive government entanglement with religion.”

The Supreme Court applied the Lemon Test in the case *Wallace v. Jaffree* (1985). At issue in this case was an Alabama law requiring that the public school day begin with “silent meditation or voluntary prayer.” In *Wallace*, the six-justice majority applied the Lemon Test and found that the Alabama law had a religious purpose. Therefore, the law was

unconstitutional.



**Free Exercise of Religion** The First Amendment also protects freedom of religion through what is known as the **free exercise clause**, which guarantees each person the right to hold any religious beliefs they choose. Simply put, the government cannot tell a person what he or she must believe in matters of religion.

The free exercise clause does not give people a clear right to behave in any way they wish, however. Courts have ruled that religious practices can be limited in some cases. For example, the Supreme Court found in *Employment Division of Oregon v. Smith* (1990) that government can punish illegal drug use even if the drug use is part of a religious practice. Yet deciding when government may limit religiously based behavior has been a difficult challenge for the courts.

The Supreme Court first took on the issue of limiting religiously based behavior in *Reynolds v. United States* (1878). The case involved a Mormon religious practice that the faith now prohibits—polygamy, or the

marriage of a man to more than one woman. The Court held that even though some Mormons saw polygamy as a religious duty, government could forbid it. Government had a strong interest in preserving certain social norms, the Court held. Toward that goal, laws regulating behavior could be constitutional, even if the result was to outlaw a religious practice—as long as those laws were neutral and did not target a specific religious group.

Similarly, in *Minersville School District v. Gobitis* (1940), the Court ruled that a child could be expelled from public school for refusing to salute the American flag or recite the Pledge of Allegiance, even though these actions violated the child's religious beliefs as a Jehovah's Witness. The Court held that government had an interest in encouraging national unity and that the flag-saluting requirement was therefore constitutional.

Three years later, though, the Supreme Court reversed itself. *West Virginia State Board of Education v. Barnette* (1943) also involved a Jehovah's Witness family and a state law requiring a flag salute. In *Barnette*, the Court decided that the state's interest in national unity was not strong enough to force people to act against their beliefs. Why the change? The beginning of American involvement in World War II in 1941 had made any refusal to salute the flag appear dangerously unpatriotic. As a result, Jehovah's Witnesses across the country had been physically assaulted, their meeting places burned to the ground. Recognizing the harmful consequences of the *Gobitis* decision, the Court interpreted the matter differently in *Barnette*, this time taking the side of religious freedom.

The *Barnette* ruling was later followed by the case of *Wisconsin v. Yoder* (1972). In this case the Court heard a challenge to a state law requiring school attendance until age 17, which conflicted with Amish religious beliefs. The Supreme Court again found that the state interest in forcing school attendance was not strong enough to justify the law at the expense of religious beliefs.

**READING CHECK** Identifying the Main Idea What two main

guarantees regarding religion are protected by the First Amendment?

## **Freedom of Speech and of the Press**

The First Amendment forbids Congress from making any law abridging freedom of speech or press, but courts have not treated these freedoms as absolute. The Supreme Court has ruled that government may place limits on freedom of speech and press, especially concerning issues of national security.

**Why Freedom of Speech and of the Press?** In the U.S. system of government, decisions are made by representatives chosen by the people. If Americans are to make thoughtful decisions and participate fully in the democratic process, they must have access to a full range of opinions, beliefs, and information. They must also be able to discuss and criticize government policies without fear of punishment.

This principle of free political debate has led to the adoption of open meeting laws by states and the federal government. These laws generally require government bodies to debate and act in public, rather than behind closed doors. Furthermore, under the Freedom of Information Act, the federal government must release government documents—except for certain secret or private records—to the press and the public upon request.

Protecting freedom of speech and of the press is especially challenging in the case of unpopular ideas. Few people, for example, would agree with racist or offensive speech, and it would be relatively easy for government to outlaw such speech. Yet the First Amendment exists especially to protect unpopular ideas.

**Limits on Freedoms** While the First Amendment protects even unpopular ideas, it does have limits. The ability to speak and to print ideas can be limited by government for a variety of reasons. For example, government can limit speech or printed material that is judged obscene. You will read more about government restrictions on the media later in this section. Government can also regulate what businesses say about their products.

False advertising, for example, can be outlawed.

As with other basic rights, freedom of speech and of the press does not give a person the right to knowingly harm another person. As Supreme Court justice Oliver Wendell Holmes wrote in *Schenck v. United States* (1919), “The most stringent [strict] protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”

The Supreme Court has also ruled that the Constitution does not protect defamation, or false statements about a person that cause harm to that person. A spoken defamatory statement is called **slander**. Defamation in print is called **libel**.

Individuals who believe that they have been slandered or libeled may take legal action to defend themselves. In the landmark case *New York Times Co. v. Sullivan* (1964), however, the Supreme Court ruled that public officials have fewer legal protections against libel than do private citizens.

# The Fundamental Rights



Supreme Court justice Robert H. Jackson wrote the majority opinion for *West Virginia State Board of Education v. Barnette* (1943), a decision that struck down a law that forced schoolchildren to salute the flag. The end of Jackson's opinion, excerpted here, is an eloquent defense of personal freedom.

“The very purpose of a Bill of Rights was to withdraw certain subjects from . . . political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections . . .

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”

**Skills  
FOCUS**

## INTERPRETING PRIMARY SOURCES

**Understanding Points of View** What does Jackson believe about the government's ability to restrict the freedoms mentioned in the excerpt?

See **Skills Handbook**, p. H4.

The *Times* case involved a full-page advertisement in the *New York Times* in which civil rights leaders described racial discrimination in the South. Some of the statements in the advertisement were false, and an elected official in Montgomery, Alabama, brought suit for libel.

In its decision, the Court rejected the libel suit. To be libelous, the Court ruled, a false statement about a public official must be shown to demonstrate “actual malice.” That is, the author must have known that the statement was false or recklessly disregarded whether or not it was false. The Court noted that trying to prevent all false statements involving public officials would have a chilling effect on free speech.



Do you think that in times of war and emergency the government should be able to place greater limitations upon freedom of expression than at other times? Why or why not?

### PRIMARY SOURCE

**“Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement [forceful], caustic [biting], and sometimes unpleasantly sharp attacks on government and public officials.”**

–William J. Brennan,  
*New York Times Co. v. Sullivan*, 1964

## PROFILES IN GOVERNMENT

### Louis Brandeis 1856-1941



Louis Brandeis was a Supreme Court justice from 1916 to 1939. As a successful lawyer in Boston, Massachusetts, Brandeis developed what came to be

known as the “Brandeis brief,” a technique in which he used economic and sociological data and expert opinions to help support his case in court. This was a revolutionary idea at the time, although it is now a common practice.

Brandeis was nominated to the Supreme Court by President Woodrow Wilson in 1916, becoming the first Jewish member of the Court. As a justice, Brandeis was a firm supporter of individual rights and believed that “the unlimited exercise of governmental power in the name of the people” was dangerous to the American way of life. In his opinions and votes, he consistently worked to expand protections of civil liberties and to limit the exercise of governmental power. Brandeis retired from the Court in 1939. Brandeis University in Massachusetts is named after him.

**Summarizing** What did Brandeis believe about civil liberties and governmental power?

As with laws against slander and libel, the government may limit First Amendment freedoms in the name of national security, such as to prevent treason or sedition. **Treason** is the crime of making war against the United States or giving “aid and comfort” to its enemies. During wartime, certain speech or writings may be treasonous—for example, publishing information about the location or tactics of American forces that aids the enemy.

**Sedition** is a legal term for speech or actions that inspire revolt against the government. Courts have upheld laws banning seditious speech. Attempts to define seditious speech and to analyze whether or not it has been protected by the First Amendment have caused controversy throughout American history.

**The Alien and Sedition Acts** In 1798 the United States was on the verge

of war with France. The Federalist Party, which controlled Congress and the presidency, passed the Alien and Sedition Acts. The acts were supposedly intended to protect the country from domestic dissent during a war; among other things, the acts outlawed “false, scandalous, and malicious” statements about the U.S. government. In reality, the new laws seemed designed to silence the Federalists’ political rivals, the Democratic-Republicans.

Widespread public anger at the acts helped bring about the defeat of President John Adams, a Federalist, in the election of 1800. Three of the four acts were later repealed or allowed to expire, but the Alien Enemies Act, which authorizes the president to deport resident aliens if their home countries are at war with the United States, remains in effect today.

**A “Clear and Present Danger”** During World War I, the federal government again passed laws—the Espionage Act and the Sedition Act—targeting criticism of the government and interference with the American war effort. Charles Schenck, who opposed the war, printed a flyer urging men to refuse to serve in the military and was convicted of interfering with the war effort. In *Schenck v. United States* (1919), the Supreme Court upheld his conviction.

The *Schenck* decision, written by Justice Oliver Wendell Holmes, established the idea that speech can be limited if it creates a “clear and present danger” of an outcome that government has a right to prevent. Yet Holmes soon changed his view. In *Abrams v. United States* (1919), Holmes argued for a specific definition of dangerous speech. “It is only the present danger of immediate evil or an intent to bring it about,” he wrote, “that warrants [justifies] Congress in setting a limit to the expression of opinion.”

The Court continued to struggle with the “clear and present danger” standard in later years. In *Whitney v. California* (1927), the Court went even further than it had in *Schenck*: The majority opinion held that the state has the power to punish those whose words *might* encourage crime, disturb the peace, or otherwise harm the public welfare.

On the eve of the entry of the United States into World War II, Congress passed the Smith Act, which outlawed calling for the forceful overthrow of the United States. Organizing or joining a group that held such views was also outlawed. The Smith Act remains in force today, although it has been severely limited by the Court's rulings in cases such as *Yates v. United States* (1957).

In 1969 the Court issued a new standard for determining when government can outlaw seditious speech. In *Brandenburg v. Ohio* (1969), the Court overturned its *Whitney* decision and ruled that speech must be allowed unless it is *likely* to lead to immediate lawless action.

**The First Amendment and the Media** Just as the First Amendment protects the freedom of speech, it also protects the freedom of the press. This protection acknowledges the importance of a free media in a democratic society. The press is vital to the free spread of information and ideas. As with speech, government has tried to balance the need for media freedom, the rights of others, and issues of national security.

### Media Freedom

Radio and television broadcasters, such as political commentator Rush Limbaugh, at right, can be fined or otherwise punished for speech that violates federal regulations. *Do you think that broadcasters should be regulated by the federal government? Why or why not?*



Radio and television broadcasters have fewer First Amendment protections than print media, as the courts have allowed government to

regulate the public airwaves over which radio and TV programs are broadcast. Congress created the Federal Communications Commission (FCC) to carry out this regulation. The FCC grants licenses to those wishing to use the public airwaves. Under FCC rules, certain language and content are limited or prohibited.

Because cable systems do not use public airwaves, they are given greater freedom than broadcasters. The Internet is also less subject to government regulation. The government has tried to limit pornography on the Internet, but this effort has been largely unsuccessful. In one case, *Reno v. American Civil Liberties Union* (1997), the Supreme Court rejected a law that sought to regulate Internet pornography, in part because users are not likely to encounter offensive content by accident. Instead, the Court ruled that the law violated the First Amendment's guarantee of free speech.



### Symbolic Speech

Protester Gregory Johnson was arrested for burning the American flag, but in *Texas v. Johnson* (1989), the Supreme Court ruled that his actions were a protected form of speech.

**Prior Restraint** Another issue related to the freedom of the press is **prior restraint**, or government action that seeks to prevent materials from being published. Consider the case of Jay Near, a Minnesota newspaper publisher in the 1920s who printed articles accusing local officials of corruption. The state of Minnesota tried to stop Near from publishing his paper. The state was not seeking to punish him for a past crime but was instead trying to restrict him from printing similar articles in the future. The Supreme Court ruled in *Near v. Minnesota* (1931) that prior restraint is almost always unconstitutional. Minnesota could punish Near if he violated a law, but the state could not prevent him from publishing his paper merely because officials believed he might violate a law in the future.

The Court addressed another case involving prior restraint in *New York Times Co. v. United States* (1971), in which President Richard Nixon tried to halt the *New York Times* publication of the Pentagon Papers. These were classified documents about the history of U.S. involvement in the Vietnam War. The White House argued that publishing the papers would threaten national security and the peace process, but in reality the Nixon administration realized that publication would reveal that U.S. officials had long misled the public about the war. The Court ruled that the government had failed to prove a need for prior restraint, and the papers were published.

**Symbolic Speech** In general, the Supreme Court has granted some First Amendment protections to **symbolic speech**, or the communication of ideas through symbols and actions. The Court has held that some symbolic speech deserves protection as long as the speech does not pose a major threat to property or public order.

An early case in which the Court protected symbolic speech was *Stromberg v. California* (1931). In *Stromberg*, the Court ruled on the case of a young woman who had been convicted under a California law that prohibited the display of a red flag, which according to the law was a symbol of opposition to organized government. The Court overturned her conviction, ruling that the California law was an overly vague and unconstitutional restriction on free speech.

Another important symbolic speech case was *Tinker v. Des Moines Independent Community School District* (1969). The Court ruled in *Tinker* that an Iowa school district could not prevent students from wearing black armbands to protest the Vietnam War. You will read more about the *Tinker* case in Chapter 13.

In the case *Texas v. Johnson* (1989) the Supreme Court ruled that burning the American flag as part of a political protest was a protected act of free speech. “If there is a bedrock principle underlying the First Amendment,” the ruling said, “it is that Government may not prohibit the expression of an idea simply because society finds the idea itself

offensive or disagreeable.”

**READING CHECK** **Drawing Conclusions** Why are freedom of speech and freedom of the press so important in our democratic system?

## **Freedoms of Assembly and Petition**

The First Amendment’s final two protections prohibit government from denying people the right “peaceably to assemble, and to petition the Government for a redress of grievances.” In other words, people have the right to meet together and express their views peacefully. This right helps ensure that Americans can share ideas with each other and make their opinions known to their government, including through measures known as initiatives, or petitions designed to force government to consider an issue or allow a vote. Still, there are limits to the right of assembly and petition.

**Landmark Cases** The Supreme Court has affirmed the freedoms of assembly and petition in several major decisions over the years, including *DeJonge v. Oregon* (1937). That case involved a man named Dirk DeJonge, who had attended a meeting of the American Communist Party. At the time, the party called for a revolution against the U.S. government. Oregon state law prohibited participation in meetings held by such organizations. DeJonge, however, argued that the meeting he attended was peaceful, did not involve discussion of any illegal actions, and was thus protected by the First Amendment. The Court agreed. The ruling recognized the right to peaceably assemble as a basic civil liberty and incorporated it into the Fourteenth Amendment, making it illegal for state governments to deny this right.

*Edwards v. South Carolina* (1963) was another important case involving the rights of assembly and petition. This case involved a group of 187 African American students in South Carolina who had gathered to protest racial injustice in the state. Though the assembly was peaceful, local police told the students to leave the area, fearing that the crowd gathering to watch the protest might become violent. When the students

did not end their protest, they were arrested. In the *Edwards* decision, the Court declared that the students had been denied their constitutional right to assemble and petition for a redress of grievances. If an assembly is peaceful, the ruling said, it cannot be stopped simply because bystanders are disorderly.

## Peaceful Protests

The First Amendment protects Americans' right to meet and express their views peacefully, even when those views are offensive to others. These photos show police officers protecting members of the Ku Klux Klan at a white supremacy rally as a crowd of anti-Klan demonstrators protests. *When may the right to assemble be limited by the government?*



**Limits on Assembly and Petition** In general, government cannot limit the right of assembly and petition based on protesters' points of view. Only in extreme cases, such as protesters encouraging others to commit violent acts, does government have strong enough reason to limit this important First Amendment freedom.

Government can more easily limit the right of assembly and petition for reasons other than the ideas expressed by protesters. For example, governments can place reasonable restrictions on the time, manner, and place of a gathering. Courts have found, for example, that citizens can be required to obtain a permit for holding a demonstration. They can be denied the right to make excessive noise. They can be kept off of private

property or prevented from invading the privacy of others. But any such rules must serve a clear and valid purpose, and government must apply them evenly and without regard to the content of the demonstrator's message.

**Freedom of Association** The phrase *freedom of association* does not appear in the First Amendment. Still, the Supreme Court has determined that the freedoms guaranteed by the amendment together establish the right to **freedom of association**—the right to join with others, share ideas, and work toward a common purpose.

A major case involving the freedom of association is *National Association for the Advancement of Colored People v. Alabama ex rel. Patterson* (1958). The state of Alabama had tried to force the National Association for the Advancement of Colored People (NAACP) to give the state a list of its members. At the time, however, the NAACP was involved in a bitter fight to improve civil rights in Alabama and feared that publicizing the names of its members would lead to violence and other harmful consequences.

The Supreme Court agreed with the NAACP. In a unanimous ruling, the Court stated that “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” Forcing the release of the names of the NAACP's members, the Court felt, would harm the freedom to associate. Alabama's actions, therefore, violated the Constitution.

**READING CHECK** **Drawing Conclusions** What are the purposes of the freedoms of assembly and petition?

SECTION

2

ASSESSMENT

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ONLINE QUIZ

## Reviewing Ideas and Terms

1. a. **Define** What are the establishment clause and the free exercise

clause?

**b. Contrast** What is the difference between government acknowledgment of religion and government endorsement of religion?

**c. Evaluate** Why do you think so many questions of religious freedom have involved schools and public education?

**2. a. Describe** Under what conditions can the freedoms of speech and of the press be limited?

**b. Draw Conclusions** Why do you think the courts are reluctant to allow prior restraint?

**c. Predict** What might happen if the freedoms of speech and of the press were rights that could never be restricted or limited by government?

**3. a. Describe** What are time, manner, and place restrictions?

**b. Make Inferences** How is the freedom of association implied by the First Amendment?

## Critical Thinking

**4. Analyze** Use a chart like the one below to explain how civil liberties are protected by the First Amendment and limited by the government. Are the limits on these freedoms reasonable? Why or why not?

	Protections	Limits
Religion		
Speech and Press		
Assembly and Petition		

## FOCUS ON WRITING



**5. Descriptive** Write a short essay that evaluates how interpretations of the First Amendment have changed over time. In your essay, include a time line that lists major Supreme Court rulings on the

First Amendment. You may wish to focus on one of the freedoms protected by the amendment.

## DEBATING THE ISSUE

### Prayer in Public Schools

*Does the Constitution permit prayer in public schools?*

#### THE ISSUE

The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” This protection of religious freedom both forbids the government from establishing an official religion and guarantees Americans’ right to freely exercise their own religious beliefs. But what about prayer in public schools? Some Americans believe that allowing prayer in public schools is an unconstitutional government support for religion. Others believe that the right to pray in public schools is an essential religious freedom.



# **This 1990 photo of a coach leading his team in prayer predates court rulings that have declared this practice unconstitutional.**

## **VIEWPOINTS**

**Prayer in public schools should be prohibited.** State-sponsored prayer implies that only one form of prayer—and of religion—is approved of by the state. American public school students come from families with many different religious beliefs or with no religious beliefs at all. As a result, any state-sponsored prayer will differ from some students' beliefs and will interfere with parents' right to influence their children's religious upbringing. Furthermore, the First Amendment forbids any government action to establish an official religion or support one religion over another. This separation between church and state is an important protection of religious freedom. In *Engel v. Vitale* (1962), the Supreme Court held that government-sponsored prayer in public schools violates the establishment clause, even if students are not forced to take part in the prayer. There should be no praying in public schools.

**Prayer should be allowed in public schools.** Prayer has been a part of American classroom life since colonial times, and religion has had and continues to have an important role in American public life. The influence of religion in the United States should be acknowledged in the classroom. Fortunately, the *Engel* decision does not actually forbid prayer in public schools; it merely says that *government-sponsored* prayer is unconstitutional, not prayer of any kind. In fact, students may pray alone or in groups on school property, including in classrooms outside of regular class hours. Furthermore, students may form religious clubs, wear clothing with religious messages, or hand out religious materials to classmates. So long as the government—in this

case, the school—takes no action to promote one religion over another, there is no violation of the First Amendment. Prayer should continue to be allowed in public schools.

## What Is Your Opinion?



1. Do you agree with the Supreme Court’s interpretation of the establishment clause in *Engel v. Vitale*? Why or why not?
2. Should beginning the official school day with prayer be permitted in public schools? Why or why not?



# Protecting Individual Liberties

## BEFORE YOU READ

### Main Idea

A key purpose of the Bill of Rights is to protect individuals from government abuses. Several amendments limit the government’s power and protect individual rights

### Reading Focus

1. What are the purposes of and limits on the right to keep and bear arms?
2. How does the Bill of Rights guarantee the security of home and person?

### Key Terms

probable cause  
search warrant  
exclusionary rule  
police power  
procedural due process  
substantive due process

against government actions.

3. How has the right to privacy developed?

4. How and why does the Constitution guarantee due process of law?



Use the graphic organizer online to take notes on the different amendments discussed in this section.

## Following THE Rules



**Limits on Government** What would life be like if police could enter your home for no reason at any time, day or night? What if the government could use illegally obtained evidence against you in court to convict you of a crime you did not commit? Thanks to the Constitution, these events cannot legally happen in the United States.



**The actions of government authorities, such as these FBI agents seizing evidence during a terrorism investigation, are limited by rules and laws.**

We all follow many rules and laws each day. Some of these rules are social customs, such as shaking someone's hand when you first meet him or her. Others are rules set by your school, such as no running in the hallway or no speaking loudly in the library. Still others are laws established by government, such as those regarding speed limits. These rules all restrict your actions in some way.

You may think of rules and laws as being things that only people have to obey, but it is important to know that governments also have rules they must follow. The government must act according to established rules and laws that are designed to protect the American people's rights and liberties. Many of these limits on government actions are established by the Bill of Rights, which guards Americans' right to live freely without

government interference. ■

## The Right to Keep and Bear Arms

Today one of the most heavily debated amendments in the Bill of Rights is the Second Amendment, which reads, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” This amendment was included in the Bill of Rights to protect the right of states to form militias and to ease the fears of those who worried about the power of a standing army controlled by the federal government.

Some Americans believe that the Second Amendment protects an individual right to own all kinds of firearms. Others believe that the amendment was intended only to protect the rights of states to form militia units, and that government can therefore place many limits on gun ownership.

The Supreme Court has issued two major rulings on the Second Amendment. In the first case, *United States v. Miller* (1939), the Court upheld a law that placed some restrictions on possession of automatic weapons and sawed-off shotguns, the types of guns that were then often used by criminals. The Court ruled that the Second Amendment was not meant to protect the right to have all types of weapons. Instead, it protected only those guns that might be used by people in a militia.

In the second case, *McDonald v. Chicago* (2010), the Court ruled again in support of the “the right to keep and bear arms” by stating that the Second Amendment applies equally to both the federal government and state and local governments. *McDonald v. Chicago* involved a challenge to Chicago’s gun control law, which is one of the strictest in the nation. The Court’s decision in *McDonald* followed a case in 2008 that overturned portions of an equally strict Washington, D.C., law that banned almost all ownership of handguns or rifles within the District. Gun rights advocates hailed the decision in *McDonald v. Chicago* as a major victory, while gun control supporters fear it will weaken gun laws across the country.

**READING CHECK** Summarizing What is the controversy over the Second Amendment?

## Security of Home and Person

Much of the Bill of Rights reflects Americans' desire to protect their rights from the kind of government abuses they had seen during their years under British rule. Together, the Third and Fourth Amendments help protect Americans' rights to be secure in both home and person.

**The Third Amendment** In colonial times, the British military sometimes quartered—housed—its soldiers in colonists' homes. Although the British occasionally paid homeowners for the food and shelter, they often did not. As tensions between Great Britain and the colonies rose during the years leading up to the Revolutionary War, more British soldiers were sent to the colonies—and many of them occupied private homes. As a result, the Declaration of Independence listed the quartering of troops among the many American complaints against the British government.

The Third Amendment forbids the government from housing troops in private houses during times of peace without the consent of the owner. During war, troops can only occupy private houses as prescribed by law. In other words, military forces cannot simply take over a house for no reason or without due process.

Today the Third Amendment is largely forgotten by most Americans. The forced quartering of troops has never been the subject of a Supreme Court case, and the amendment has not been incorporated into the Fourteenth Amendment.

**The Fourth Amendment** Like the Third Amendment, the Fourth Amendment was a result of a hated British practice during colonial days: the use of writs of assistance. A writ was a legal document that gave British authorities wide power to search private homes and businesses. British officials could conduct their searches without first showing **probable cause**, or the strong likelihood that they would find evidence of

a crime. To show probable cause, authorities must explain what evidence they are looking for and why they believe they will find it in that location. With a writ of assistance, however, the British could enter anyone's home at any time and search for as long as they wanted.

The Fourth Amendment was written to protect Americans against similar government abuses. It has proved to be an important guarantee of personal security.

**Search and Seizure** The purpose of the Fourth Amendment is to ensure that people are "secure in their persons, houses, papers, and effects." The amendment forbids "unreasonable searches and seizures." It also sets terms for issuing a **search warrant**, a document that gives police legal authority to search private property. The Fourth Amendment says government can issue a search warrant only after authorities have proved to a judge that there is probable cause for a search. The warrant must describe what will be searched and seized.

In most cases, authorities today need a search warrant to enter and search a building without the owner's consent. Officials can enter in an emergency situation without a warrant, but they must follow strict rules. They can only search for evidence directly related to the crime they are investigating. They may seize any other evidence they come across, but only if it is in "plain view," and only if the officer does not search for it.

The issue of "plain view" came before the Supreme Court in *Arizona v. Hicks* (1987), a case in which police entered an apartment without a warrant after a gun was fired there. The police then noticed some expensive stereo equipment in the apartment. Suspecting it had been stolen, officers moved the equipment to locate the serial numbers, which helped them determine that the equipment was indeed stolen property. The Court held that by moving the equipment, police had conducted a warrantless search without probable cause.

As a result of the warrantless search in *Hicks*, police could not use the stereo equipment as evidence. This rule that evidence obtained illegally may not be used against a person in court is known as the

**exclusionary rule.** The rule was established in *Weeks v. United States* (1914), in which the Court decided that the Fourth Amendment prevents such government actions.

The Court expanded the exclusionary rule to state actions in *Mapp v. Ohio* (1961). In *Mapp*, police had forcibly entered Dollree Mapp's home in Cleveland, Ohio, to look for gambling evidence. They did not have a warrant for the search and found no evidence of gambling, but they did find several allegedly obscene books. Mapp was convicted of violating obscenity laws. The Court overturned her conviction, finding the books had been seized in an illegal search.

The Fourth Amendment does not always require police to obtain a warrant before a search or seizure of evidence. For example, a person's right to be free from police searches does not reach outdoors. The Court has held that police can search through a person's trash without a warrant.

**Pedestrians and Cars** What about situations in which police stop people on the street to arrest or question them? Legally speaking, stopping a person is considered seizure. Police can stop someone on the basis of a reasonable suspicion—if, for example, the person is acting oddly. Once stopped, police may frisk, or search, the person if there is concern for the safety of the police officer or others. The frisk is meant to find concealed weapons, though police may seize other evidence in some cases. To arrest a person, however, the police must be able to show probable cause.

The Fourth Amendment also relates to the stopping and searching of vehicles. Under some circumstances, police can stop and search automobiles without a warrant. For example, police can stop drivers who are observed committing traffic violations. If the police have stopped a vehicle based on probable cause, they may seize any evidence that is in plain view and may search any place that is within reach or control of the vehicle's occupants. In some cases officers can also search the vehicle's trunk without a search warrant.

**Electronic Communications** The Fourth Amendment also protects a

person's "papers." With the invention of the telegraph, telephone, and Internet, the courts have had to decide whether the Fourth Amendment applies to new means of communication.

## PRIMARY SOURCES

### Government Surveillance

After the September 11, 2001, terrorist attacks on the United States, President George W. Bush authorized the National Security Agency (NSA) to monitor certain telephone calls, e-mails, and other communications without first obtaining a warrant. The controversial program was intended to help officials prevent future terrorist attacks, but it was widely criticized by people who believed it sacrificed important civil liberties protections.

21<sup>ST</sup> CENTURY



Skills FOCUS

#### INTERPRETING PRIMARY SOURCES

**Analyzing Political Cartoons** Does the artist support or oppose the NSA's warrantless surveillance program? How can you tell?

See **Skills Handbook**, p. H8.

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The Supreme Court first addressed this issue in *Olmstead v. United States* (1928). In *Olmstead*, agents had used evidence obtained by wiretapping, or using a concealed listening device to monitor telephone calls. The Court did not view wiretapping as an illegal search. But the Court reversed itself in *Katz v. United States* (1967). In *Katz*, the Court ruled that the Fourth Amendment protects a person's privacy as well as his or her personal space. After *Katz*, wiretapping has usually required a warrant based on probable cause.

The treatment of electronic communications became a major issue after the September 11, 2001, terrorist attacks on the United States. The USA PATRIOT Act, passed by Congress after the attacks, gave law enforcement agencies wide power to prevent future attacks. Among other things, the act gave officials more freedom to search telephone and e-

mail communications and business, medical, and library records. Critics charge that the PATRIOT Act weakens important civil liberties protections. In 2007 a federal judge struck down part of the act, ruling that it gave officials too much power to search phone and Internet records without court oversight.

In late 2005, during President George W. Bush's second term, Americans learned about a secret program under which the National Security Agency (NSA) was authorized to monitor telephone calls, e-mails, and other communications to U.S. residents made by people outside the United States with suspected terrorist links. The NSA did not obtain warrants before intercepting these conversations. As a result, there was widespread public debate about whether the program violated the Fourth Amendment.

**Testing for Drugs** Another modern-day Fourth Amendment question involves testing people for the use of illegal drugs. Are such tests a violation of the Fourth Amendment's protections of personal security? In general, courts have held that private employers have wide freedom to test their workers in order to discourage drug use. Governments, however, face limits in their ability to test workers. Courts have ruled that governments cannot test all employees to screen for drug use. They can, however, test employees whose jobs may affect public safety, such as airline crews and mechanics, bus and truck drivers, or railroad workers.

**Protections for Students** The Supreme Court has ruled that public school students have fewer Fourth Amendment protections than does the general population. While students do have some rights to privacy, the Court has ruled that a school's need to ensure a safe learning environment can override privacy concerns. For example, school officials may search students for drugs or weapons. In *New Jersey v. T.L.O.* (1985), the Court permitted an official's search of a student's purse without probable cause.

In another case, *Vernonia School District v. Acton* (1995), the Court ruled that schools could randomly test student athletes for drug use. The

*Vernonia* decision held that the school's interest in fighting drug use overrode student privacy concerns. The Court later extended this ruling in *Board of Education of Pottawatomie County v. Earls* (2002), in which the Court held that schools may require students participating in extracurricular activities to be tested for drugs.

## **ACADEMIC VOCABULARY**

**explicit** fully and clearly expressed

**READING CHECK** Summarizing How do the Third and Fourth Amendments protect Americans' security?

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### **Students and the Fourth Amendment**

The Supreme Court has ruled that public school students have fewer privacy rights under the Fourth Amendment than the general public. Officials can search students, their lockers, and their belongings for drugs or weapons. *Why do students have limited Fourth Amendment rights?*



**At right, a police officer and a drug-sniffing dog search student lockers. Below, students enter a school through metal detectors intended to prevent students from bringing weapons into the building.**

Throughout this section you have read references to the Supreme Court's protection of a right to privacy. Yet the Constitution makes no explicit reference to such a right. Where does this unstated right come from?

Those who believe in a right to privacy say that it is implied in several amendments. For example, the Fourth Amendment implies that people can expect not to have their privacy violated by unreasonable searches. Some scholars argue that a right to privacy should be considered part of the concept of liberty guaranteed by the due process clauses of the Fifth and Fourteenth Amendments.

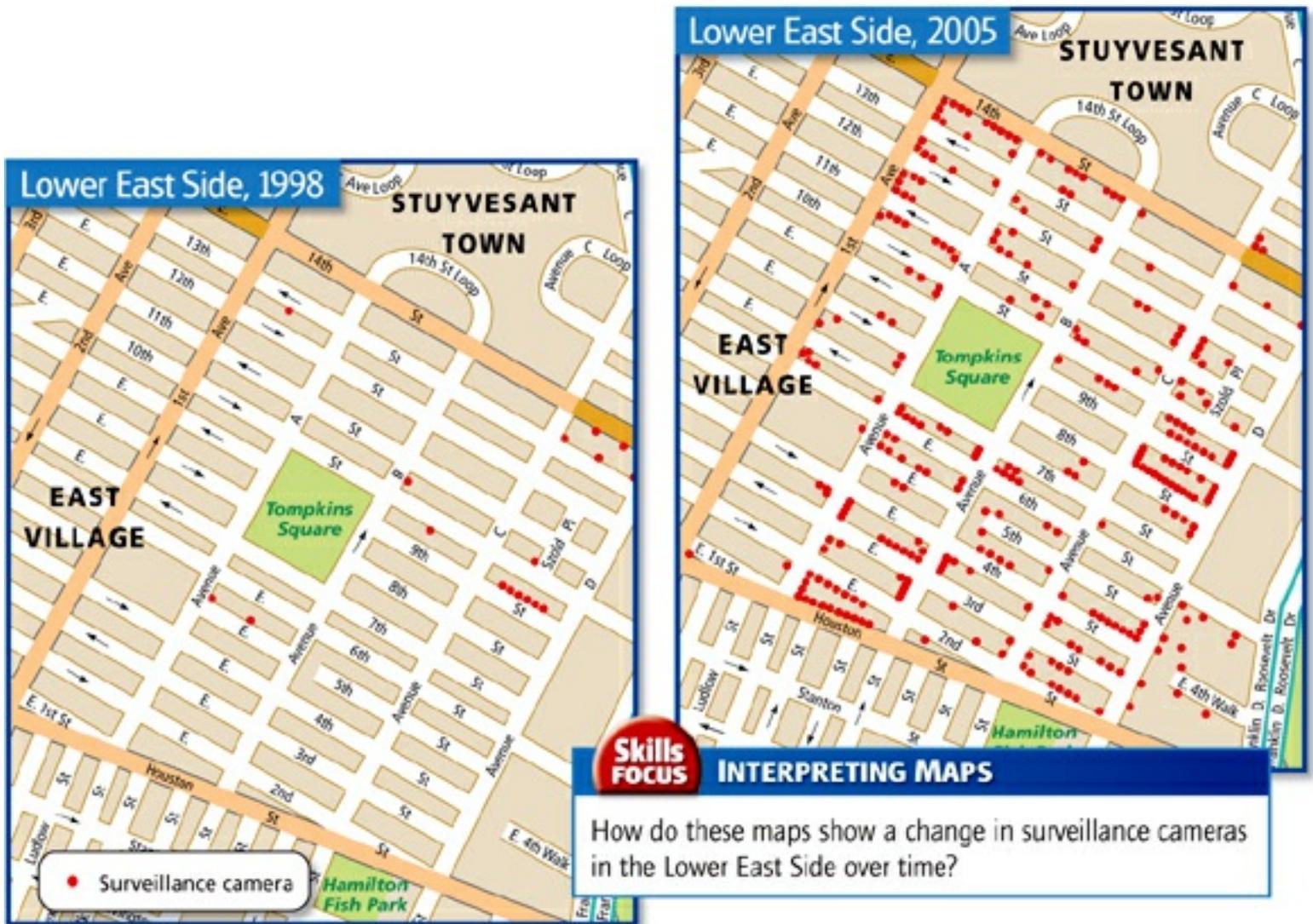
In *Olmstead v. United States*, the case involving the use of wiretaps on telephones, Justice Louis Brandeis wrote a dissent in which he argued for the existence of a "right to be let alone." Nearly 40 years later, the Court finally embraced a right to privacy in *Griswold v. Connecticut* (1965).

*Griswold* involved an organization that provided information about birth control to married couples. At the time, providing such information violated Connecticut law. The Court's decision stated that several constitutional amendments, including the Third and Fourth Amendments, create "zones of privacy." Within these zones of privacy, the Court held, was the right of married couples to make decisions about birth control.

Surely the most controversial Court decision concerning the right to privacy is *Roe v. Wade* (1973). This case centered on the question of whether state law could deny a woman the right to end a pregnancy by abortion. The Court, citing the right to privacy, said that the state could not do so in the first three months of the pregnancy.

The decision in *Roe v. Wade* has met with both approval and disapproval. Some critics have sought to bring cases to the Court that might lead to a reversal of *Roe*. In *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Court upheld some requirements of a law that allowed abortion only after a woman met several requirements, including parental consent for pregnant minors. The basic privacy right identified in *Roe v. Wade*, however, was left in place.

Surveillance cameras in public places—such as the Lower East Side of Manhattan, New York City—can help reduce crime, but civil liberties advocates worry that the growth of surveillance has harmed the right to privacy.



**READING CHECK** Drawing Conclusions Where does the concept of the right to privacy come from?

### Due Process of Law

The concept of due process is key to the protections provided by the Bill of Rights. The Fifth Amendment forbids the federal government from

depriving people of “life, liberty, or property, without due process of law.” The Fourteenth Amendment gives the same protections against state governments.

As you read earlier, due process requires that government act fairly and reasonably in accordance with established laws. Due process limits the government’s **police power**, or its ability to regulate behavior for the common good. There are two different components of due process: procedural due process and substantive due process.

**Procedural Due Process** As the term suggests, **procedural due process** requires that government follow certain procedures before punishing a person. You will read more about these procedures in Section 4.

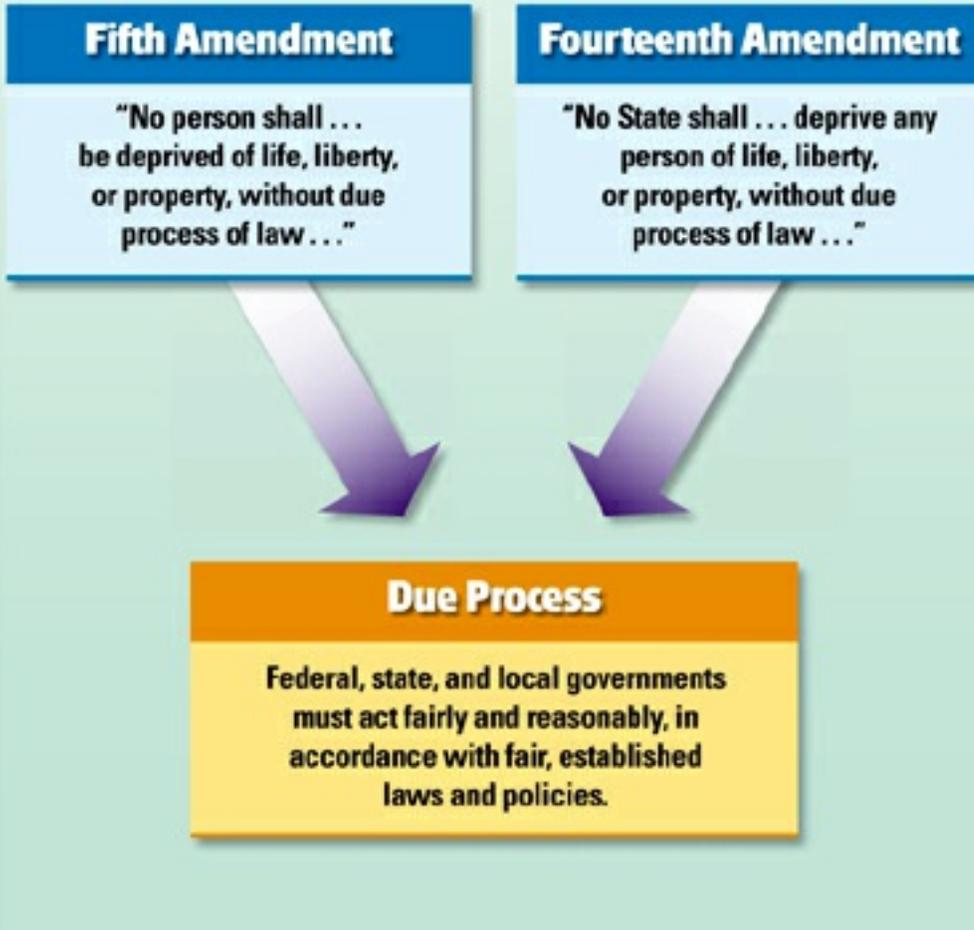
As with all rights, the right to procedural due process can be limited when government has a strong reason to do so. For example, the Supreme Court ruled in *Mackey v. Montrym* (1979) that a state could take away a driver’s license if the driver refused to take tests to show if he or she had been drinking alcohol. The state’s action in this case involved penalizing people without finding them guilty—that is, without going through a process. Yet the Supreme Court decided that the state’s interest in getting drunk drivers off the road was strong enough to deny due process.

#### RESPONSIBILITIES OF LEADERSHIP

**The police power is one of the greatest powers the government has. Using it wisely is an important responsibility.**

# Due Process

Due process requires that government act fairly and reasonably in accordance with established rules if it seeks to deprive a person of life, liberty, or property. This important concept has two sources: the Fifth Amendment, which limits the actions of the national government, and the Fourteenth Amendment, which limits state and local governments.



**Substantive Due Process** Procedural due process involves questions about whether or not legal procedures are fair. **Substantive due process**, on the other hand, concerns whether the laws themselves are fair and just. Substantive due process is based on the idea that all people have inalienable rights that cannot be taken away from them, even by laws that have been passed properly. For example, a racial segregation law may violate substantive due process.

The Supreme Court addressed substantive due process in its decision on three lawsuits collectively known as the Slaughterhouse Cases (1873).

These lawsuits involved a Louisiana law that allowed only one slaughterhouse to operate in a certain part of the state. The Court upheld the law in a 5–4 decision, but Justice Stephen Field dissented, arguing that the law violated most butchers’ inalienable rights by unconstitutionally denying them the right to work. This was a violation, he wrote, of substantive due process. Field’s opinion, joined by three other justices, would later become the basis for Supreme Court rulings that further defined due process.

**READING CHECK** **Contrasting** What is the difference between procedural and substantive due process?

SECTION

3

ASSESSMENT

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ONLINE QUIZ

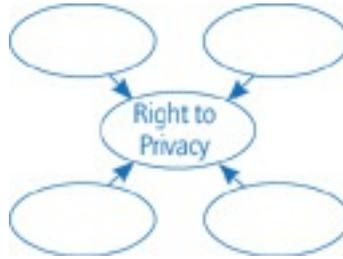
## Reviewing Ideas and Terms

- Identify** What right does the Second Amendment protect?
  - Predict** What might happen if there were no Second Amendment?
- Define** Define the terms probable cause, search warrant, and exclusionary rule.
  - Explain** Why must search warrants clearly explain what items the police are looking for?
  - Evaluate** Do you believe that the NSA wiretapping program violates the Fourth Amendment? Why or why not?
- Recall** How does the Fourth Amendment imply a right to privacy?
  - Evaluate** Do you think that it is proper for the courts to infer rights—such as the right to privacy—that are not explicitly mentioned in the Constitution? Explain your answer.
- Define** What are procedural due process and substantive due process?
  - Elaborate** How does due process limit government’s police

power?

## Critical Thinking

**5. Interpret** Use a graphic organizer like the one below to explain how the Second, Third, Fourth, and Fifth Amendments imply the existence of a right to privacy.



## FOCUS ON WRITING



**6. Persuasive** The Supreme Court has ruled that students in public schools have fewer Fourth Amendment protections than the rest of the population. Do you agree or disagree with the Court? Write an opinion essay for your school newspaper in which you explain your position.



# Crime and Punishment

## BEFORE YOU READ

### Main Idea

The Constitution contains many features that help ensure that people accused of a crime receive fair and reasonable treatment—from arrest to trial to

### Reading Focus

1. How does the U.S. justice system address both civil law and criminal law?  
2. How does the Constitution guarantee the rights of those accused of

### Key Terms

civil law  
criminal law  
indictment  
bail  
capital  
punishment  
Miranda  
warnings  
bench trial

punishment.

a crime?

double jeopardy

3. What are the major constitutional guarantees for ensuring fair trials?

4. How does the Constitution address the punishment of persons convicted of crimes?



Use the graphic organizer online to take notes on the protected rights of people accused of crimes.

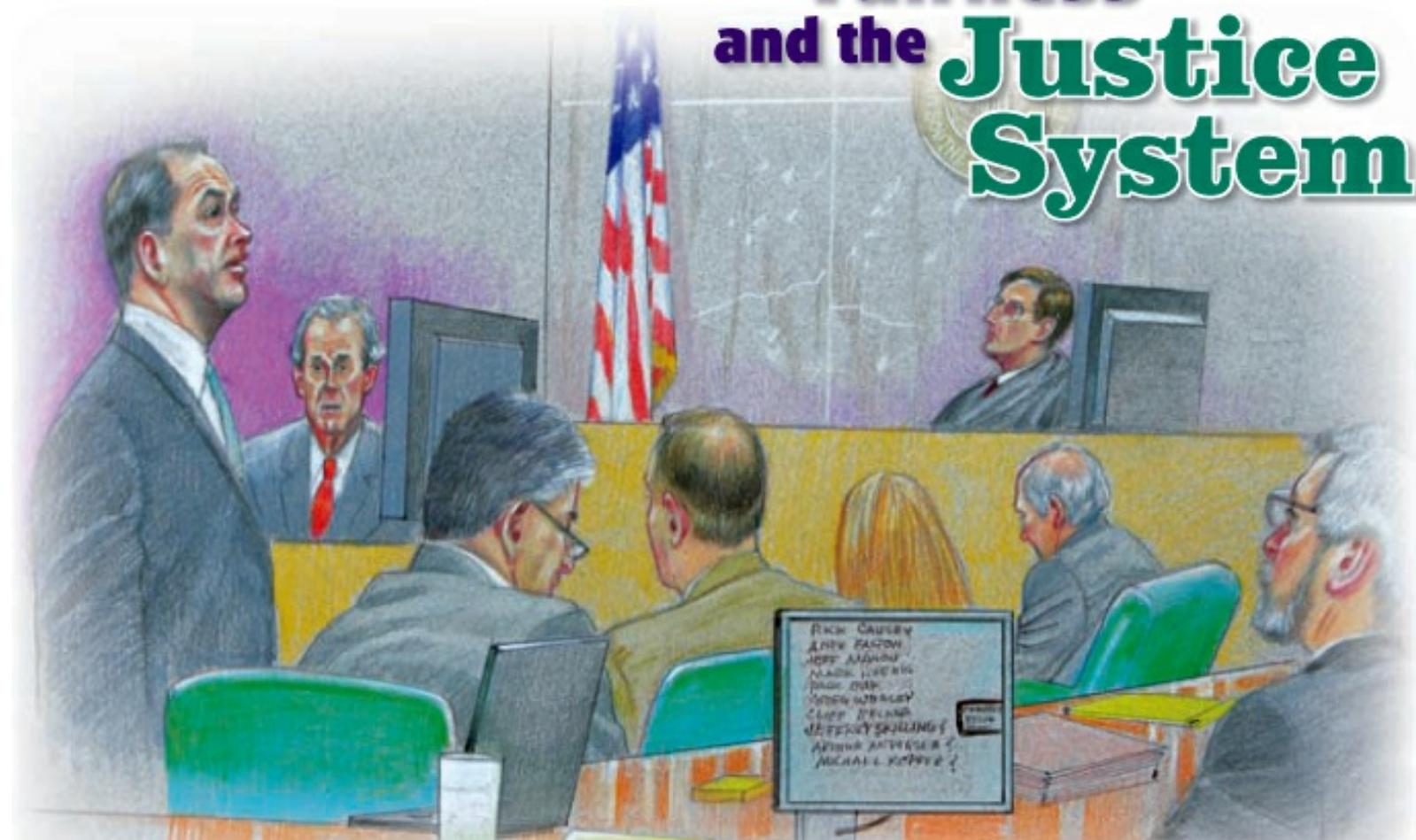


**Protections for the Accused** Even a child understands the fundamental concept of fairness. A child playing a game with friends, for example, quickly learns about fairness and the importance of playing by the rules. Fairness is at the heart of the U.S. justice system, which sets rules to protect the rights of those accused of crimes and to ensure a fair outcome to a trial. The Constitution offers many protections for persons accused of crimes as well as for those convicted and sentenced to be punished.

Why are there so many protections for those accused of crimes? While it is important to punish people who have committed crimes, it is also important to be sure that innocent people are not wrongly convicted. It is a core principle of American justice that a person accused of a crime is innocent until proven guilty. It can be difficult to balance the rights of the accused and society's interest in preventing and punishing crime, but under American law all people, no matter how terrible their crimes or

how long their criminal records, are entitled to justice. ■

# Fairness and the Justice System



**All persons accused of crimes have certain rights to ensure a fair trial and to prevent innocent people from being wrongly convicted. In addition to guaranteeing a fair trial, the Constitution also includes protections for those convicted of crimes.**

## **The U.S. Justice System**

In this chapter you have read about the importance of civil liberties in American life. These basic freedoms to think and to act as we choose are guarded by the U.S. justice system, which also provides protections for persons accused of crimes and for those convicted of crimes. The justice system seeks fair and impartial outcomes for disputes of all kinds. It follows rules and guidelines established in the Constitution and in U.S. law in order to resolve lawsuits, criminal trials, and other disputes.

**Types of Law** The law is commonly classified into two categories: civil law and criminal law. **Civil law** covers private disputes between people over property or relationships. People who violate civil law are often fined or otherwise punished, but they are not usually subject to imprisonment. **Criminal law** is the system for dealing with crimes and their punishments. People who violate criminal law may be fined, imprisoned, or even executed.

**Civil Law** The field of civil law consists of several categories, including contracts, tort law, property law, and family law. A contract is a legal agreement, or promise, between two or more parties that makes clear what each party must do and when he or she must do it. Contracts may be verbal or written agreements, but all are legally binding. Failure to follow the contract—known as breach of contract—may lead to legal action against one or more parties.



#### Settling a Civil Lawsuit

In 1999 five tobacco manufacturers, sometimes referred to as Big Tobacco, settled a civil lawsuit brought by 46 states. The suit accused the companies of hiding smoking's harmful effects.

Another category of civil law is called tort law. A tort is an action that harms another person, such as medical malpractice, wrongful death, or a civil rights violation. Personal injury cases are a common example of tort law.

Property law, as the name suggests, involves the purchase and sale of property, such as a house or an automobile. Family law addresses

issues related to families, such as marriage, divorce, and child custody.

**Civil Lawsuits** As you read in Chapter 8, a case in civil law is called a lawsuit. In a lawsuit, a plaintiff brings the suit against a defendant, often seeking damages, or financial compensation from the defendant to correct the alleged wrong. The plaintiff does not have to demonstrate the defendant's guilt beyond a reasonable doubt. Instead, a defendant may be found guilty based on a preponderance—majority—of evidence.

Not all civil lawsuits go to trial. In some cases, parties in civil suits may seek—or may be ordered to seek—alternative dispute resolution outside of the government judicial process. The alternative dispute resolution process is similar to a trial, but it is less formal and less costly. There are three basic types of alternative dispute resolution:

- Mediation, in which a trained negotiator works with both sides to reach a compromise agreement acceptable to everyone;
- Arbitration, in which a third party listens to both sides and issues a ruling that both sides have agreed in advance to accept;
- Negotiation, in which the sides discuss ways to resolve the issue without the involvement of a third party.

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**Justice Delayed**



**Edgar Ray Killen was first tried for the 1964 murder of three civil rights workers in 1967, but the all-white jury could not agree on a verdict. It was not until 2005, after years of increasing public pressure, that Killen—at 80 years old—was finally tried again. He was convicted of manslaughter. Below, Killen consults with his attorney; at right, he faces the judge at a hearing.**

Civil lawsuits that are not settled by alternative dispute resolution go to trial. Both federal and state courts hear civil cases, and procedures can vary. In general, though, cases follow the same basic steps:

- The plaintiff hires a lawyer and files a complaint with the court.

- The two sides can seek to settle the dispute before trial.
- If the trial goes forward, the two sides exchange information about evidence and witnesses in a process known as discovery.
- The trial may be heard by a jury or, in some cases, by a judge alone.
- The jury or judge issues a ruling.
- Decisions may be appealed.

**Criminal Law and Types of Crimes** While civil law deals with private offenses and disagreements, criminal law deals with crimes, or offenses against the public. In general, a crime occurs when a person breaks a law passed by any form of government.

There are two types of crimes— misdemeanors and felonies. A misdemeanor is a relatively minor offense for which a person may receive a minor fine or may be imprisoned for less than a year. Trespassing, traffic violations, and petty theft are examples of misdemeanor crimes. A felony is a more serious crime, such as murder, sexual assault, or grand theft, that carries a harsher sentence.

**Criminal Justice Processes** The Fifth Amendment guarantees that people cannot face trial for most federal crimes without first facing a grand jury. Remember that a grand jury is a group of 16 to 23 citizens who gather in secret to decide whether there is enough evidence to send an accused person to trial. The grand jury hears and collects evidence about alleged crimes. It calls witnesses and can use subpoenas, court orders requiring people to appear in court or to produce certain evidence in court. If the grand jury believes there is enough evidence to charge a person with a crime, it issues a formal complaint of criminal wrongdoing called an **indictment**. If the defendant waives his or her right to be indicted by a grand jury, a prosecutor can bring charges in what is called an information, an official report of the offense for which the person is

charged.

Next, the accused is arrested, or taken into custody by police. Arrest may happen before indictment or after, depending on the circumstances of the alleged crime.

After indictment and arrest, the accused may face several hearings before trial. Among these hearings is the arraignment, the formal reading of charges against the accused. At this time, the accused enters a plea—guilty or not guilty. Other hearings may involve motions, or requests, by the prosecutor or the defense—for example, to move the location of the trial or to block certain evidence from being considered.

## ACADEMIC VOCABULARY

**presume** suppose; take for granted

The court also may hold a hearing to discuss the setting of bail. **Bail** is money pledged by the accused as a guarantee that he or she will return to court for trial. If the accused appears in court at the proper time, the money is returned. If he or she flees, the money is forfeited. Bail helps ensure that innocent people are not imprisoned unnecessarily before trial.

Often, a defendant will plead guilty before a trial takes place. This may occur as the result of a plea bargain, by which the defendant agrees to plead guilty to a lesser charge. Government may accept the plea bargain to ensure a conviction or to obtain the defendant's assistance in another criminal matter, such as testifying against another person involved in the crime. In U.S. courts, the vast majority of criminal cases are settled through plea bargain.

If a defendant does not plead guilty or accept a plea bargain, the trial takes place. This complex process usually involves jury selection, which you will read about later in this section. Both sides present evidence and witnesses to support their claims, and the judge or jury decides the case.

**Sentencing** If a defendant pleads guilty or is found guilty in a trial, sentencing takes place at a separate hearing. Sentences depend on the

severity of the crime and other factors. Some convicted people receive probation, meaning they remain free but are under close supervision by authorities. Other convicted people are sent to prison. A small number receive **capital punishment**—punishment by death. You will read more about sentencing and punishment later in this section.

**READING CHECK** **Comparing and Contrasting** In the U.S. justice system, how are civil and criminal cases similar and different?

## Rights of the Accused

In our justice system, we presume that people accused of crimes are innocent until they are proven guilty beyond a reasonable doubt. Balancing the rights of the accused with the need to protect society from criminals is a major challenge. Yet the Framers recognized that people can need protection from government, especially when a person's freedom is at stake.

**Habeas Corpus** The writ of habeas corpus, which you read about in an earlier chapter, is one such protection from government actions. Remember that the writ of habeas corpus is a legal order requiring that an imprisoned person be brought before a court so that a judge may determine whether or not the imprisonment is legal. Sometimes referred to as the “writ of liberty,” the writ of habeas corpus is an important protection against the government abusing its police power. Without this protection, the government could arrest and hold people for any length of time without ever having to defend its actions in court.

Article I, Section 9, of the Constitution provides that: “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.” Citing these words, President Abraham Lincoln suspended habeas corpus in certain parts of the country during the Civil War. Under Lincoln's order, people faced arrest merely for criticizing the government. In addition, prisoners faced military trials, not trial by jury.

Lincoln's action was—and remains—controversial. In the decision *Ex*

*parte Merryman* (1861), a federal court ruled that his order was unconstitutional. In response, Congress passed a law approving of Lincoln's action. After the war, in *Ex parte Milligan* (1866), the Supreme Court ruled that neither Lincoln nor Congress had the power to suspend habeas corpus in this case, noting that Milligan was a civilian, the civil courts were functioning, and Milligan's activities did not take place in the theater of war.

The writ of habeas corpus has received much public attention in the aftermath of the September 11, 2001, terrorist attacks on the United States. In the years following the attacks, the United States and its allies captured a number of suspected terrorists in Afghanistan and Iraq. Many of these people—labeled unlawful enemy combatants by the Bush administration—were being held by the U.S. military several years after their capture without receiving any formal hearing or judicial process. Most were held in a U.S.-run facility at Guantánamo Bay, Cuba.

Several court cases have challenged the legality of the detentions, including three Supreme Court decisions. In *Hamdi v. Rumsfeld* (2004) and *Rasul v. Bush* (2004), the Supreme Court ruled that unlawful enemy combatants detained by the United States did have limited rights to challenge their imprisonment in a federal court. In 2006 Congress passed a law establishing a system for trying unlawful enemy combatants in military tribunals. A federal court in Washington, D.C., however, ruled that the law stripped detainees of the right to habeas corpus. A third Supreme Court case, *Boumediene v. Bush* (2008) ruled that detainees have a constitutional right to challenge their detentions in U.S. courts.

**Grand Juries** As you read earlier, the Fifth Amendment includes the guarantee that people cannot be tried for most federal crimes without first being indicted by a grand jury. The grand jury guarantee has not been incorporated into the Fourteenth Amendment, and some states do not have grand jury systems. In many states today, criminal charges are brought by a prosecutor in an information.

**Self-Incrimination** The Fifth Amendment provides another valuable safeguard for persons accused of crime, protecting the accused from being “compelled in any criminal case to be a witness against himself.” This means that a person cannot be forced to give evidence or testimony that is incriminating—that is, evidence or testimony that suggests his or her own guilt. This protection covers any government proceeding that might lead to criminal charges, such as pre-trial questioning by police as well as criminal trials themselves.



### **Unlawful Enemy Combatants**

In 2008, the United States government denied the writ of habeas corpus to unlawful enemy combatants held at Guantánamo Bay. *Do you think the government was right to deny habeas corpus to these unlawful enemy combatants?*

The protection against self-incrimination exists only for spoken testimony, however. Government can force people to be searched or to have blood samples or fingerprints taken as evidence, among other things.

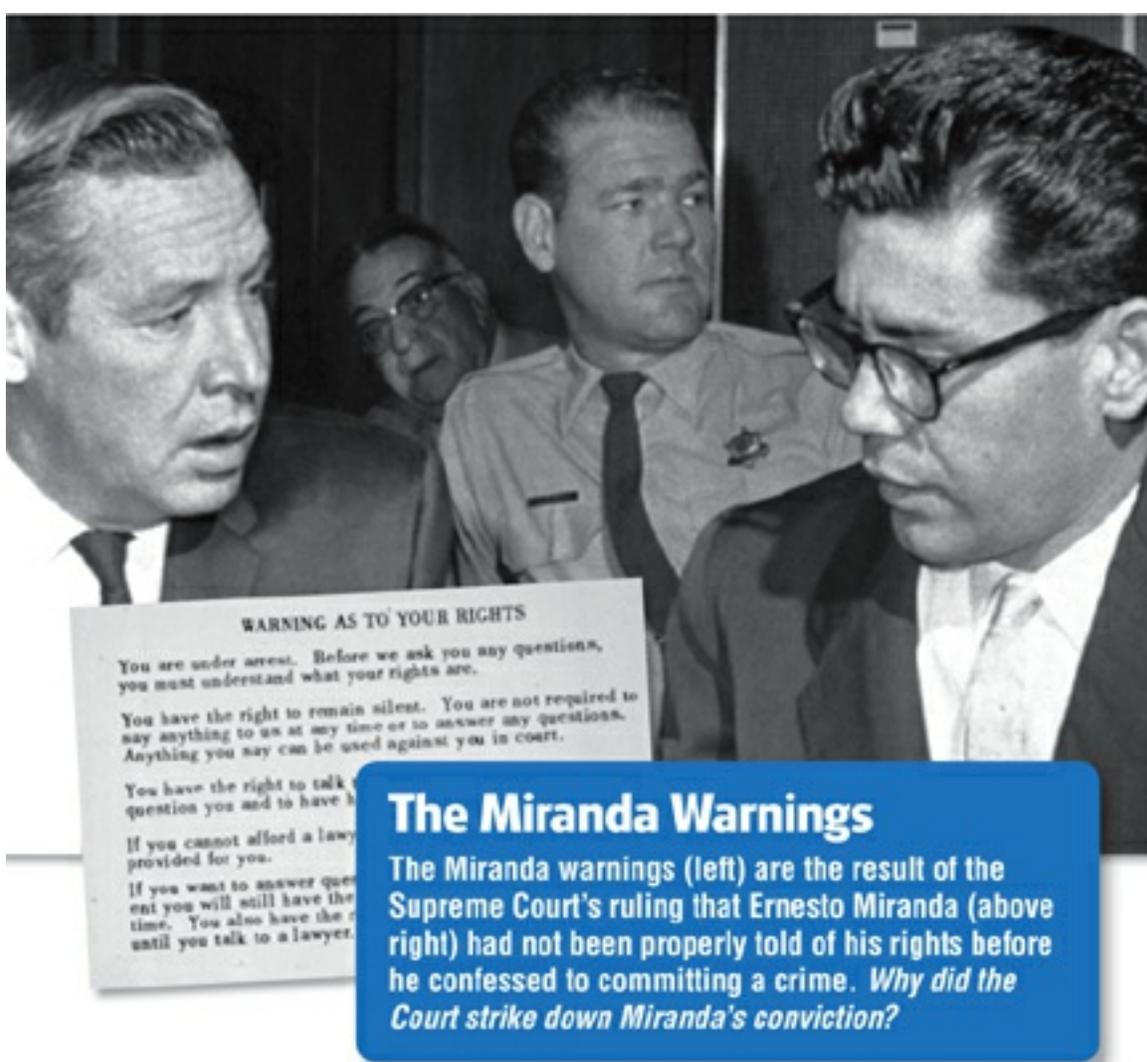
Government can also force people to give testimony against themselves by giving them immunity. That is, the government can agree not to prosecute a person for a crime. In return, the person can be forced to testify.

The protection against self-incrimination was the subject of *Miranda v. Arizona* (1966). The issue in *Miranda* was a suspect's confession to a crime after being questioned by police, who had not told him that he had the right to consult with an attorney before or during questioning. The Supreme Court ruled that the questioning of suspects under such circumstances violated the Fifth Amendment and that the resulting confession could not be used at trial.

### PRIMARY SOURCE

**“We hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self- incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege.”**

—Earl Warren, *Miranda v. Arizona*, 1966



The *Miranda* decision requires police to read the Miranda warnings to a suspect before the suspect is questioned. The **Miranda warnings** are a list of certain constitutional rights possessed by those accused of crimes. Suspects must be told that:

- They have the right to remain silent.
- Anything they say can be used against them in court.
- They have the right to have an attorney present.
- If they cannot afford an attorney, one will be provided for them.

If the police fail to advise a suspect of these rights, the courts may refuse to consider a confession as evidence. As a result, the Miranda warnings are controversial. Critics argue that some guilty people go unpunished simply because a police officer did not inform them of their rights. Others, however, believe that the warnings protect innocent people

from being tricked or forced into confessing to crimes they did not commit.

**Bail** The Eighth Amendment provides that “excessive bail shall not be required.” Courts have ruled that bail is excessive if it is greater than the amount judged necessary to ensure a suspect’s appearance at trial. The Eighth Amendment does not mean, however, that all people accused of crimes must be allowed to post bail. Some people charged with particularly serious crimes, such as murder, are not allowed to post bail.

**Bills of Attainder** Article I, Sections 9 and 10, of the Constitution prohibit Congress and the states from passing bills of attainder. As you read in Chapter 5, a bill of attainder is a law that declares a certain person guilty of a crime. In practice, a bill of attainder takes away a person’s right to a trial and violates the system of separation of powers by allowing a legislative body to convict and punish a person without trial.

Bills of attainder were common during the colonial era, but they are rare today. Still, cases involving bills of attainder occasionally arise. In *United States v. Lovett* (1946) the Supreme Court overturned part of an appropriations bill that forbade the use of appropriated money to pay the salaries of three specific people. The Court found that this bill was legislative punishment without benefit of trial and thus was an unconstitutional bill of attainder.

**Ex Post Facto Laws** The Constitution also outlaws ex post facto laws in Article I, Sections 9 and 10. Ex post facto laws are laws that apply to events in the past. If not prohibited, such laws would make it possible to punish a person for actions that were legal at the time they were committed.

**Victims’ Rights** Although the Bill of Rights and other parts of the Constitution provide many protections for people accused of crime, some people feel that the Constitution does not sufficiently protect victims of crimes. As a result, in recent years a number of states have passed laws

designed to protect victims' rights. These laws often defend the victim's right to be treated with fairness and respect; to be present at court proceedings related to the offense; and to be informed about the conviction, sentence, imprisonment, and release of the accused.

**READING CHECK** **Making Inferences** Why do persons accused of crimes need special protection against possible government abuse?



*Miranda v. Arizona* (1966)

**WHY IT MATTERS** **Miranda v. Arizona protects the rights of criminal suspects during police interrogations. Suspects in police custody must be informed of their rights before questioning.**

## Background

In 1963 Ernesto Miranda was arrested and brought to a Phoenix, Arizona, police station, where he was accused of committing a serious crime. The victim identified Miranda as responsible for the crime, but Miranda claimed to be innocent. After two hours of police questioning, however, Miranda confessed. At trial, prosecutors used Miranda's signed

confession as evidence, and he was convicted and sentenced to jail.

After Miranda appealed his conviction, the police acknowledged that they had never told Miranda he had the right to consult with an attorney before or during questioning. It was unclear, however, whether Miranda had been warned that anything he said during interrogation could be used against him in court.

### Arguments for Miranda

In Miranda's appeal to the Supreme Court, his attorney argued that Miranda's conviction was un-constitutional, violating aspects of the Fifth, Sixth, and Fourteenth Amendments. In *Brown v. Mississippi* (1936), the Court had ruled that confessions obtained through coercion, or force, by state or local officials violated the due process clause of the Fourteenth Amendment. As a result of *Brown*, coerced confessions were not admissible in court. Miranda's attorney also argued that Miranda's conviction violated the Court's recent decision in *Gideon v. Wainwright* (1963), in which the Court held that the Sixth Amendment protects a criminal defendant's right to an attorney. Furthermore, Miranda's attorney claimed that Miranda's conviction violated the Fifth Amendment protection against self-incrimination.



### Arguments for Arizona

The state of Arizona argued that there was no reason that Miranda's confession could not be used in court. Arizona argued that Miranda's confession had been given freely with no coercion. He had not been beaten or otherwise mistreated by police, as the suspect had been in *Brown v. Mississippi*. Although Phoenix police had not told Miranda of his right to consult with an attorney, Arizona claimed that this did not make his confession any less admissible.



In a 5–4 decision, the Court ruled that Miranda's rights had been violated and struck down his conviction. Today the issues

of due process and the rights of criminal suspects are still highly debated. Some people worry that providing too many protections for suspects would mean that criminals might escape punishment for their crimes simply because of police mistakes over legal technicalities. On the other side of the debate are those who worry that having too few protections for people accused of crimes would result in police abuse of power. They believe that innocent people would be coerced, through violence, intimidation, or trickery, into making false confessions to crimes they did not commit. Courts must balance the rights of those accused of crimes with the rights of society to be protected from criminals.

### **CRITICAL THINKING**

**What Do You Think?** Did the Supreme Court make the correct decision in ruling that Miranda's rights had been violated or did the Court go too far in protecting the rights of persons accused of crimes?

# PROTECTIONS FOR THE ACCUSED

QUICK  
FACTS

PROTECTION AND SOURCE	MEANING
<b>Habeas Corpus,</b> Article I, Section 9	<ul style="list-style-type: none"><li>Prisoner has right to court hearing to determine legality of imprisonment.</li></ul>
<b>No Self-Incrimination,</b> Fifth Amendment	<ul style="list-style-type: none"><li>Person cannot be forced to give testimony that suggests his or her own guilt.</li></ul>
<b>Grand Jury,</b> Fifth Amendment	<ul style="list-style-type: none"><li>Person cannot face trial for most federal crimes unless indicted by a grand jury.</li></ul>
<b>No Bills of Attainder,</b> Article I, Sections 9 and 10	<ul style="list-style-type: none"><li>Congress and states cannot pass laws declaring a specific person guilty of a crime.</li></ul>
<b>No Ex Post Facto Laws,</b> Article I, Sections 9 and 10	<ul style="list-style-type: none"><li>Congress and states cannot pass laws that apply to past actions.</li></ul>
<b>Speedy and Public Trial,</b> Sixth Amendment	<ul style="list-style-type: none"><li>Trial must take place soon after arrest or indictment and must be open to the public.</li></ul>
<b>Trial by Jury,</b> Sixth Amendment	<ul style="list-style-type: none"><li>All those facing criminal charges must be tried by a jury.</li></ul>
<b>Adequate Defense,</b> Sixth Amendment	<ul style="list-style-type: none"><li>Defendants must be informed of charges, be able to confront witnesses in court, and have adequate legal representation.</li></ul>
<b>No Double Jeopardy,</b> Fifth Amendment	<ul style="list-style-type: none"><li>No person may be made to stand trial twice for the same offense.</li></ul>

## Guarantees of a Fair Trial

The Constitution provides many safeguards for the rights of those accused of crimes. Portions of the Fifth, Sixth, Seventh, and Eighth Amendments, as well as Article I, guarantee the basic courtroom

protections that define the American legal system.

**Speedy and Public Trial** The Sixth Amendment says, in part, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” This guarantee also applies to the states through the incorporation doctrine.

The courts have never defined what the word *speedy* means, and there is no set time in which a trial is required to take place. But if a trial takes place soon after an arrest or indictment, an innocent person will spend less time confined in jail. Furthermore, the memories of witnesses will be fresher, helping ensure that their testimony is more accurate.

When considering complaints about the lack of a speedy trial, a court will examine the reasons for any delay and the delay’s impact on a defendant. In general, delays that harm a defendant or that give the prosecutor an advantage may violate the Sixth Amendment. In such cases, the charges against the accused may be dropped.

A public trial is another important element of a fair trial. Opening a trial to the public and the press helps prevent abuses of the law by allowing the public to monitor the proceedings and make sure everything is done according to law. Press access to the courtroom, however, is controversial. Some argue that press coverage—especially television coverage—may influence jurors and affect the outcome of a trial. In *Chandler v. Florida* (1981), however, the Supreme Court ruled that televising a trial does not necessarily prevent a fair trial.

Courts do have the power, however, to place limits on public access to courtrooms. For example, television cameras can be blocked if the judge feels the fairness of a trial is threatened. A judge may also keep some people out of a courtroom in order to maintain order and to prevent unfair influence of witnesses or the jury. Indeed, in extreme cases, trials may even be closed to the public. This can only happen, however, if there is no other way to ensure that a defendant gets a fair trial or to protect important public interests.

**Trial by Jury** The Sixth Amendment also says that those facing criminal charges have a right to trial by a jury. This right has been incorporated into the Fourteenth Amendment and applies to state as well as federal criminal trials. In the federal system and in most states, a trial jury—sometimes called a petit jury—is made up of 12 people. It is the responsibility of all citizens to serve as members of a jury, if called to do so.

A defendant may waive his or her right to a jury trial. If no jury is used, the judge conducts a **bench trial**, in which he or she alone hears and decides the case. The Supreme Court has held that jury trials are unnecessary for minor criminal offenses in which the possible punishment is less than six months' imprisonment.

The Sixth Amendment says that jury trials shall take place in the district in which the crime took place. Jurors must be impartial, or unbiased, and must come from the area where the crime was committed. Defendants are allowed to request that the trial be moved to another location if finding an impartial jury in the area would be difficult.

Under the Seventh Amendment, jury trials are guaranteed for certain types of civil cases, including those involving money damages. The right to a jury trial in civil cases has not been incorporated into the Fourteenth Amendment, and the states have different rules on this subject.

**Right to an Adequate Defense** The Sixth Amendment includes several features that help a defendant present an adequate defense at trial. All have been incorporated into the Fourteenth Amendment. These rights help guarantee that the judicial process is fair.

Under the Sixth Amendment, all defendants have the right to be informed of the charges against them. Simply put, the government must make clear what a defendant is accused of doing.

Defendants also have the right to be confronted with the witnesses against them. In general, a prosecutor cannot use as evidence something said by a person outside of the courtroom. The defendant must have the

chance to cross-examine all witnesses and to expose errors or weaknesses in their testimony. This right is considered essential in building a defense. The courts sometimes need to use a subpoena, a legal document that requires a person to appear in court, to ensure that witnesses appear at trial.

Adequate legal representation is another important element of a fair trial. In *Powell v. Alabama* (1932), the Supreme Court ruled that state criminal defendants charged with a capital offense (a crime punishable by death) could not receive a fair trial unless they were represented by a lawyer. The Court went farther in *Gideon v. Wainwright* (1963), ruling that *all* defendants accused of serious crimes have the right to an attorney. Anyone who cannot afford legal help must be given a lawyer at public expense.

## PRIMARY SOURCES

# The Right to an Attorney



Clarence Gideon was a poor, uneducated man who was convicted of a crime when he could not afford to hire a lawyer to defend him. His handwritten appeals to the Supreme Court, such as the excerpt below, contain many misspellings and grammatical errors, but the Court ultimately ruled in his favor in *Gideon v. Wainwright*. "Petitioner [Gideon] will attempt to show this Court that a citizen of the State of Florida cannot get a just and fair trial without the aid of counsel . . ."

“Respondent [Florida’s attorney general] claims that I have no right to file petition for writ of Habeus Corpus. Take away this right to a citizen and there is nothing left.

It makes no differense how old I am or what color I am or what church I belong to if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me a attorney and the court refused. All countrys try to give there Citizens a fair trial and see to it that they have counsel.”

Skills  
FOCUS

## INTERPRETING PRIMARY SOURCES

**Understanding Points of View** Why does Gideon believe that his trial was unfair?

In addition, courts have ruled that a lawyer’s failure to meet professional standards when representing his or her clients may violate a defendant’s Sixth Amendment rights. Defendants have the right to act as their own legal counsel, but judges may take away this right if the judge determines that a defendant is incapable of defending him- or herself properly.

**Double Jeopardy** Another protection provided by the Fifth Amendment is that no person shall be “twice put in jeopardy of life or limb.” This means that no person will be subject to **double jeopardy**, or made to stand trial twice for the same offense. This restriction prevents government from trying repeatedly to convict a person for allegedly committing a crime.

Protection against double jeopardy has been incorporated into the Fourteenth Amendment, but it is not considered double jeopardy for a

state and the federal government to try a person for the same offense. It is also not double jeopardy if a jury fails to reach a verdict and the government tries the case again.

**READING CHECK Summarizing** How does the Bill of Rights help ensure a fair trial for defendants?

## **Punishment**

The Constitution also includes protections for those convicted of crimes. As always, the Framers were anxious to protect the American people from the possible abuse of government powers.

**Excessive Fines** The Eighth Amendment prohibits government from imposing excessive fines. The Supreme Court has issued few rulings on the subject, although it has made clear that the limit applies only to government. It does not limit, for example, jury awards in civil cases.

**Cruel and Unusual Punishments** The Eighth Amendment also bans cruel and unusual punishments. This restriction comes nearly word-for-word from the English Bill of Rights, which prohibited torture and other cruel practices. The Supreme Court extended this prohibition to the states in *Robinson v. California* (1962) when it overturned a California law criminalizing drug addiction.

The Court has never defined what *cruel and unusual* means, although in *Wilkinson v. Utah* (1879), it did say that torture and “atrocities” such as burning at the stake would be considered cruel and unusual. In general, lower courts have been left to decide what constitutes cruel and unusual punishment on a case-by-case basis. As a result, the debate over these few words from the Eighth Amendment has figured into numerous cases involving the death penalty.



lightning is cruel and unusual.” Others on the Court noted that the death penalty in Georgia appeared to be applied far more often against African Americans and the poor than against others.

After *Furman*, Georgia reworked its capital punishment system. Four years later, the revised system again came before the Court in *Gregg v. Georgia* (1976). The new Georgia system involved two steps—the trial itself and a separate sentencing process. Other safeguards, including a review by the highest state court of all death sentences, helped ensure that capital punishment was applied fairly and evenly. The Supreme Court found Georgia’s new system constitutional.

## ACADEMIC VOCABULARY

**arbitrary** random or unreasonable

*Gregg* did not end the national debate over capital punishment. Most states still allow the death penalty, but some Americans have concerns over how fairly capital punishment is applied and about the nature of methods of execution. For example, new technology such as DNA analysis has helped prove the innocence of some convicted criminals who had been executed or who were scheduled to be executed. Lethal injection, which is used in 37 of the 38 states that have the death penalty, has also become the subject of controversy. In late 2007, the Supreme Court effectively halted the use of lethal injections as a means of execution until the Court ruled on whether that method constitutes cruel and unusual punishment. The Court’s decision on lethal injection is expected in 2008.

**READING CHECK** **Summarizing** What issues involving capital punishment are controversial?

## Reviewing Ideas and Terms

1. **a. Describe** What is the difference between civil law and criminal law?  
**b. Elaborate** Why do you think there are so many steps in the civil and criminal processes?
  
2. **a. Recall** What is the purpose of the Miranda warnings?  
**b. Make Inferences** Why did the Supreme Court rule that police must inform people of their constitutional rights before questioning them?  
**c. Elaborate** How do the constitutional protections for the accused reflect the idea that people are innocent until proven guilty?
  
3. **a. Identify** Which amendments help ensure a fair trial?  
**b. Analyze** Why do you think the Constitution seeks to protect the right to an adequate defense at trial?  
**c. Elaborate** How can a jury both help and hurt an accused person's right to a fair trial?
  
4. **a. Identify** Which amendment to the Constitution seeks to ensure fair punishment?  
**b. Summarize** Why was Georgia's capital punishment system found to be "cruel and unusual" in *Furman v. Georgia*?  
**c. Evaluate** What do you think would make a punishment "cruel and unusual"?

## Critical Thinking

5. **Analyze** Using a graphic organizer like the one below, analyze the

ways in which the Constitution protects people at all stages of the judicial process.



## FOCUS ON WRITING



**6. Persuasive** Does the Constitution do too much, too little, or just enough to protect the rights of people suspected, accused, or convicted of crimes? Write a newspaper editorial that expresses your opinion on the subject.

### CONNECTING TO THE CONSTITUTION



## Fundamental Rights and the Doctrine of Incorporation

Next to the preservation of the Union and the abolition of slavery, the most important constitutional development of the post–Civil War era was the passage of the Fourteenth Amendment. Originally intended to protect the rights of newly freed African Americans, the amendment has become a principal guarantee of the fundamental rights of all Americans, as important as the Bill of Rights itself.

**What is procedural due process?** Historically, due process of law meant that government officials must follow recognized procedures and not act arbitrarily when they make and enforce laws. This is called procedural due process, which requires government officials to act in certain ways before they regulate or take life, liberty or property. In England due process requirements initially focused on the rights of criminal defendants. For a criminal proceeding to be fair, for example, the laws

must be clear. The defendant must know the charges that the government seeks to prove and be given a fair trial by a jury of his or her peers and the right to confront witnesses.

In the United States due process guarantees apply to both criminal and noncriminal (civil) matters. For example, the due process clause of the Fourteenth Amendment addresses property, in addition to life and liberty. Property is a broad term. It refers to everything that a person can own, from tangible things such as land and buildings to intangible things such as copyrights and patents. People also have property interests in other intangibles, such as their jobs, welfare or unemployment benefits, and their reputations. In addition to constitutional guarantees, many laws enacted by state legislatures and Congress also contain provisions ensuring due process in matters such as public school discipline. Due process guarantees include the requirement of notice, the opportunity for a fair hearing, the opportunity to present evidence, and the opportunity to appeal an initial decision.

**What is substantive due process?** In the United States due process of law has two meanings. Procedural due process, described above, refers to the processes that governments must follow when they make and enforce laws. The second meaning of due process is known as substantive due process. It means that the Constitution usually prohibits some kinds of laws altogether, no matter how popular those laws may be with legislatures, executives, or even the people. Substantive due process is based on the idea that some rights are so fundamental that government must have a “compelling,” or exceedingly important, reason to regulate or interfere with them. It is the role of the courts, interpreting the Constitution, to determine whether a law is unconstitutional because it violates a fundamental right, and whether a governmental regulation of a fundamental right is justified by a compelling government interest.



The idea of fundamental rights traces to natural rights philosophy. Social contract theorists such as John Locke argued that people have natural rights that predate government. Some of those rights are so fundamental, or basic, that governments may not interfere with them or regulate them. One of the most difficult roles the Supreme Court plays is to identify which rights are fundamental and which are not. The justices' views of fundamental rights have changed over time.

For many years, for example, the Court held that the right to buy and sell a person's labor is so fundamental that state and Congressional laws establishing minimum wages and limiting the number of hours in a workday or work week were unconstitutional. This was known as the era of economic substantive due process. In 1937 the Court abandoned the view that economic rights are fundamental rights.

However, the Court did not abandon its effort to identify other fundamental rights. It has continued to try to identify rights that are so basic that Congress or states must have a "compelling interest" in order to pass laws that interfere with or regulate such rights. The Court has identified the following rights as "fundamental" (note that some but not all such rights are listed in the Constitution or Bill of Rights):

- the right to marry and have children,
- the right to purchase and use birth control,
- the right to custody of one's own children and to rear them as one sees fit,
- the right of mentally competent adults to refuse medical treatment,

- the right to free speech,
- the right to travel interstate,
- the right of legal voters to vote,
- the right to associate, and
- the right to religious freedom.

Whether any or all of these rights are indeed fundamental, and thus prohibit most governmental regulations, remains a topic of intense controversy throughout the United States.

**What is the doctrine of “incorporation”?** For the first few decades after ratification of the Fourteenth Amendment the Supreme Court continued to rely on the states to be the principal protectors of individual rights. All the state constitutions contained bills of rights. The Court was leery of interpreting the Fourteenth Amendment in a way that would upset the balance of power between the national government and the states.

However, not all states interpreted their bills of rights to ensure due process and to protect the fundamental rights of everyone within their boundaries. In 1925 the Supreme Court began to examine the due process clause of the Fourteenth Amendment with an eye to identifying the rights in the Bill of Rights that the states, like the national government, must protect. In *Gitlow v. New York* (1925) the Court recognized that the rights of free speech and free press are among the personal rights to liberty protected by the due process clause. States could not infringe on these rights.

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## Reviewing Ideas

1. **Summarize** How have Supreme Court justices’ views of fundamental rights changed over time?

**2. Identify** What is substantive due process?

### **Critical Thinking**

**3. Evaluate** Has incorporation of the Bill of Rights against the states validated the fears of the Antifederalists regarding the power of the national judiciary? Explain.

CHAPTER

**10**

# Chapter Review

## Connecting Online

 [hmhsocialstudies.com](http://hmhsocialstudies.com)

Go online for review and enrichment activities related to this chapter.



### Quiz and Review

#### GOV 101

Examine key concepts in this chapter.

#### ONLINE QUIZZES

Take a practice quiz for each section in this chapter.

### Activities

#### eActivities

Complete Webquests and Internet research activities.

#### INTERACTIVE FEATURES

Explore interactive versions of maps and charts.

#### KEEP IT CURRENT

Link to current events in U.S. government.

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Learn more about the law, your rights and responsibilities.

#### Center for Civic Education

Promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy.

 **Online Textbook**

#### ONLINE SIMULATIONS

Learn about U.S. government through simulations you can complete online.

## Comprehension and Critical Thinking

### SECTION 1

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: civil liberties, civil rights, due process.
- b. Explain** When may government limit civil liberties and rights?
- c. Elaborate** Since state constitutions generally contain the same guarantees as the Bill of Rights, why is the incorporation doctrine important to securing individual rights and liberties?

### SECTION 2

2. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: establishment clause, free exercise clause, slander, libel, prior restraint.
- b. Draw Conclusions** Does a public school that prohibits prayers in classrooms during the school day deny students their right to a free exercise of religion? Explain your answer.
- c. Predict** Americans' understanding of the First Amendment has changed over the years. How do you think our current interpretations of the Bill of Rights might change in the future?

### SECTION 3

3. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: probable cause, exclusionary rule, police power, procedural due process, substantive due process.
- b. Interpret** Should the Constitution be interpreted as protecting a right to privacy? Why or why not?
- c. Rank** Which do you think is more important: individual privacy or public security? Explain your answer.

### SECTION 4

4. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: capital punishment, double

jeopardy.

**b. Analyze** How do the guarantees of a public trial and a fair trial sometimes conflict?

**c. Rate** Which do you think is worse: An innocent person being punished or a guilty person going free? Explain your answer.

## Critical Reading

*Read the passage in Section 3 that begins with the heading “Substantive Due Process.” Then answer the questions that follow.*

5. Which of the following is true about substantive due process?
- A It involves questions about whether legal procedures are fair.
  - B It involves questions about whether the Constitution is fair.
  - C It involves questions about whether duly passed laws are fair.
  - D It involves questions about whether amendments are fair.
6. Substantive due process is based on which of the following ideas?
- A States should have more rights than the federal government.
  - B All people have certain rights.
  - C Inalienable rights can be denied in some cases.
  - D As long as a law follows proper procedures, it is fair.

*Read the passage in Section 1 that begins with the heading “When Rights Conflict.” Then answer the questions that follow.*

7. When can civil liberties and rights be limited by the government?
- A when the exercise of a liberty or right can harm another person
  - B when the exercise of a liberty or right can harm the common good
  - C when the exercise of a liberty or right can conflict with the liberties and rights of others
  - D All of the above.

**8.** In a short essay, identify and examine the nature and causes of crime in your community, explaining the effects that these criminal acts have on their victims. Evaluate your local government's **attempts to prevent crime**. In your opinion, what other steps should the government take to help stop crime? A good source of information on crime is the annual report that many local governments produce; you may be able to find reports for your community online or in a library. You may wish to speak to a local police officer or government official to get their perspective on crime issues.

#### CONNECTING TO THE CONSTITUTION

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**9.** Describe a situation that raises a question of procedural due process affecting young people. For example, the situation might be a story about students who were dismissed without a hearing from a school sports team. The students were reported to have been drinking at a party, thus breaking their team contract, which prohibited smoking and drinking by team players.

**Political Cartoon** *The National Security Agency's warrantless surveillance program led to widespread debate about whether the secret program violated Fourth Amendment guarantees of personal security.*



SARGENT ©2006 Austin American-Statesman. Reprinted with permission of UNIVERSAL PRESS SYNDICATE. All rights reserved.

- 10. Analyze** What is happening in this cartoon?
- 11. Draw Conclusions** Does the cartoonist believe that the NSA program is monitoring the right people?

## FOCUS ON WRITING

*Think about the following issue:*

**An editorial in a high school newspaper criticizes the principal of the school. In response, the principal announces that all future issues of the newspaper must be approved by school administrators before publication.**

- 12. Assignment** Was the principal's action a violation of the students' First Amendment rights or a reasonable measure to preserve order in the school? Write a short essay in which you develop your position on the issue. Defend your position with reasoning and examples from your reading and studies.

CHAPTER

11

# Civil Rights

**Essential Question** How did the civil rights movement lead to new laws protecting the rights of women, African Americans, and other groups?



**About the Photo** In 1963 civil rights leaders and more than 200,000 people marched on Washington, D.C. with the goal of passing meaningful civil rights laws. During the event Martin Luther King, Jr., delivered his famous "I Have a Dream" speech, which was a defining moment in the civil rights movement. After the march King and others met with President John F. Kennedy, who promised to give full backing to civil rights legislation.



## CHAPTER AT A GLANCE

### SECTION 1 Civil Rights and Discrimination

- Civil rights are the freedoms and protections that individuals have by law, especially those that concern equal status and treatment.
- The meaning of civil rights in the United States has changed over time as society, laws, and legal interpretations of civil rights have changed.
- For much of U.S. history, certain ethnic and racial groups, women, and others have suffered from discrimination and a denial of civil rights.

## **SECTION 2 Equal Justice under Law**

- The Fourteenth Amendment guarantees equal protection of the law.
- Despite attempts to protect their civil rights after the Civil War, African Americans suffered discrimination, unequal treatment, and legalized segregation.
- Women's struggle for equal justice initially centered on the right to vote.

## **SECTION 3 Civil Rights Laws**

- The civil rights movement in the 1950s and 1960s led to a series of federal laws designed to protect people's civil rights.
- In addition to civil rights laws, affirmative action policies attempted to address the effects of past discrimination.

## **SECTION 4 Citizenship and Immigration**

- Citizenship comes with both rights and responsibilities.
- Throughout U.S. history, immigrants have come to the United States hoping to attain U.S. citizenship.
- The federal government regulates immigration to the United States.



Our nation’s system of government is based on constitutional law established by the United States Constitution. See the “We the People: The Citizen and the Constitution” pages in this chapter for an in-depth exploration of the importance of civic participation in American constitutional democracy.



## Civil Rights and Discrimination

### BEFORE YOU READ

#### Main Idea

The Constitution is designed to guarantee basic civil rights to everyone. The meaning of civil rights has changed over time, and many groups have been denied their civil rights at different

#### Reading Focus

1. What are civil rights, and how have civil rights in the United States changed over time?
2. How has a pattern of discrimination affected the civil rights of some groups in U.S. history?

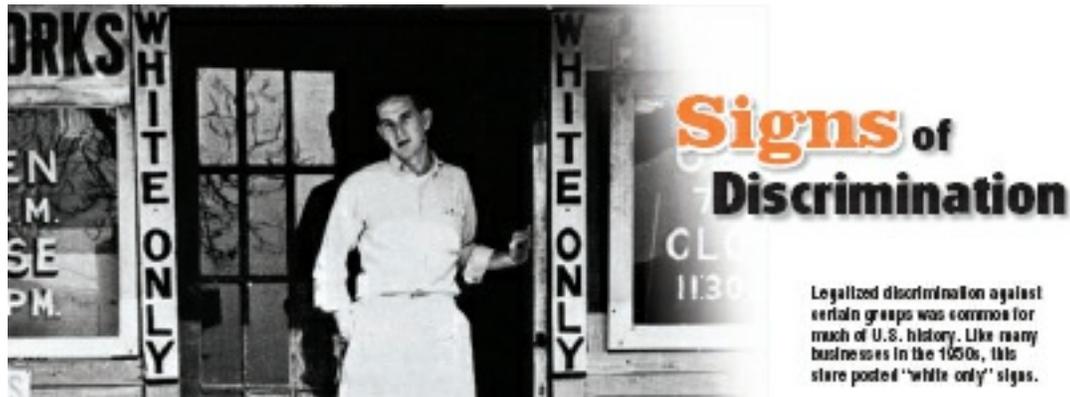
#### Key Terms

prejudice  
racism  
reservation  
Japanese  
American  
internment

times  
in U.S. history.



Use the graphic organizer online to take notes on the meaning and importance of civil rights and on how discrimination has affected different groups.



**WHY IT MATTERS** **The Importance of Civil Rights** Picture this: you walk into a restaurant with your friends and the manager says that you have to sit in a different section simply because you are a member of a certain racial group. That would be unfair, illegal discrimination, right? What if you were prevented from voting, fired from your job, or harassed by the government? You would probably go to court to protect your rights and to hold those who violated them accountable. But what if the courts ruled that it was legal for the government and private businesses to treat you and other people so unfairly?

The type of unfair treatment described above used to be common in this country. Certain racial and ethnic groups, women, and others were denied basic civil rights for much of U.S. history. They were prevented from voting, they were discriminated against by the government and by businesses, and they were kept in an inferior position in society.

So what has changed? Over time, some groups that have been treated so unequally organized, protested, and challenged these discriminatory practices. New laws and court decisions attempted to limit and end such unfair treatment. These changes in government and laws extended many

civil rights protections to more and more people.

The redefinition and expansion of civil rights led to dramatic changes in American society. There are now important legal limits that guard against actions by government officials or private citizens that would discriminate against you or deny your basic civil rights. You have the right to be treated equally and fairly and the right to use the law and government to ensure that your civil rights are protected. ■

## Civil Rights in the United States

Civil rights are some of the most basic and important rights we have in the United States today. However, the meaning and application of civil rights have changed greatly over time as society's ideas about fairness and equal treatment have changed.

**What Are Civil Rights?** Civil rights are rights that involve equal status and treatment and the right to participate in government. One of the most basic civil rights is the right to be treated equally regardless of race, ethnicity, sex, or other personal characteristics. In other words, every citizen has the right to be free from discrimination—the act or practice of treating people unfairly based on their race, national origin, sex, religion, age, or other factors. This includes discrimination sponsored by the government. For example, a person cannot be denied admission to a school or a movie theater simply because he or she is African American.

Another basic civil right is the right to equal opportunities in voting and running for political office. Voting and holding office allow people to have a say in their government's decisions. Without this basic right to vote or participate in government, people can be unfairly subjected to a government and legal system that they have little or no power to influence or change.

Civil rights like the right to vote are guaranteed and protected by law. The government establishes these laws and has the duty and responsibility of enforcing them. In the United States, laws that guarantee civil rights include the Constitution and its amendments, federal and state

laws, and Supreme Court decisions.

The idea that individuals have basic civil rights that government cannot violate is a more fundamental principle of American society than it has been in the past. We now recognize that *all* people in the United States are entitled to certain fundamental rights and freedoms, including many civil rights. In the past, however, that was not always the case, as you will read in this chapter.

**How Have Civil Rights Changed?** The meaning of civil rights in the United States has changed greatly over time. This is because civil rights are about fairness and equal treatment, and people's ideas in the past about what is fair and who deserves equal treatment were very different from what they are today.

**Civil Rights** QUICK FACTS

**Key Civil Rights**

- The right to fair and equal treatment
- The right to be free from discrimination
- The right to vote, run for office, and participate in public life

**Legal Sources of Civil Rights**

- Constitutional amendments, including the 1st, 5th, 13th, 14th, 15th, 19th, 24th, and 26th amendments
- Federal laws, including the Civil Rights Act of 1964 and Voting Rights Act of 1965
- Supreme Court rulings, such as *Brown v. Board of Education of Topeka, Kansas* (1954)
- State civil rights laws

The Declaration of Independence, for example, states that “all men are created equal.” Note that women were not included in this statement. At the time the Declaration was written, society viewed women’s participation in government and politics as unnecessary. In addition, not all men were considered to be truly equal—in general, only white men of European ancestry were given equal treatment. Racial minorities, such as African American and Native American men, were viewed as unequals

who were not entitled to the right to participate in government or enjoy its freedoms.

Much has changed since the Declaration of Independence was written, however. Groups that were denied equal treatment by the government, including women and ethnic and racial groups, fought for their rights nonetheless, inspired by the ideal of equality. In the course of their struggles, these groups succeeded in pushing for the passage of constitutional amendments, federal and state laws, and legal decisions that redefined the meaning of civil rights, fairness, and equal treatment. As a result, women and racial and ethnic groups won the right to vote, participate in government, and be free from discrimination. In this chapter, you will learn about the story of these struggles and how they changed our laws and government to protect, redefine, and extend civil rights.

**READING CHECK** **Contrasting** How is the meaning of civil rights today different from in the past?

## A Pattern of Discrimination

The United States has a long history of inequality and unfair treatment of certain groups. In the past, the government even legalized and supported discrimination. Those in power viewed members of certain groups with **prejudice**, a negative opinion formed without just grounds. Widespread prejudice in society was often caused by **racism**—discrimination and unfair treatment based on race.

## ACADEMIC VOCABULARY

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**legalize** to give legal sanction or validity to

Because of racism and prejudice, women and racial minorities suffered unequal treatment in areas such as voting rights, housing,

education, employment, and access to public facilities. Religious minorities such as Catholics, Jews, and Mormons as well as immigrants have also experienced widespread discrimination.

**African Americans** Perhaps no group has suffered more unfair treatment in American history than African Americans. African Americans were first brought here against their will to be sold as slaves. Over a period of some 250 years, generations of African Americans suffered inhumane treatment, including violence, forced labor, and separation from their families and culture.

Because enslaved African Americans were viewed as property, the government denied them any civil rights protections. In the Supreme Court case *Dred Scott v. Sandford*, Chief Justice Roger Taney wrote in 1857 that African Americans, whether slaves or free, could never be citizens of the United States. According to Taney, they historically had “no rights which the white man was bound to respect.” Taney argued that the authors of the Declaration of Independence did not have African Americans in mind when they wrote that all men were created equal.

### **PRIMARY SOURCE**

**“ But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration.”**

—Roger Taney, *Dred Scott v. Sandford*, 1857

After the Civil War, the United States abolished slavery with the Thirteenth Amendment. The Fourteenth and Fifteenth Amendments were then passed in an attempt to protect the civil rights of former slaves by granting them citizenship and the right to vote. But these amendments did not result in fair and equal treatment for African Americans. In many places, former slaves were kept from taking part in civic life by threats

and physical attacks. In addition, new laws and judicial decisions legalized discrimination against African Americans.

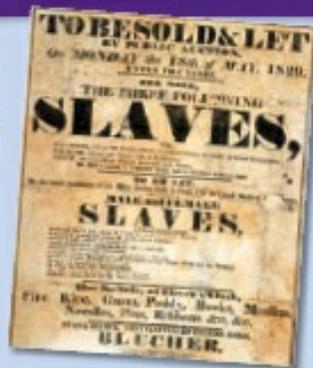
**Native Americans** Native Americans have also suffered from long and intense discrimination. Like African Americans, Native Americans were viewed in the past as separate peoples that were not a part of American society and therefore not deserving of any rights at all.

As soon as Europeans began colonizing North America, Native Americans began losing territory. Introduced diseases from Europe and conflicts with colonists weakened many Native American groups, allowing settlers to seize their land. The United States government also signed hundreds of treaties with Native Americans to acquire their land and then consistently violated these treaties, taking even more land.

## Discrimination in America

For much of American history, certain racial and ethnic groups and women have suffered widespread discrimination.

**African Americans** ▶  
First brought to the United States as slaves, African Americans had essentially no rights for generations.



**Native Americans** ▶  
Discrimination against Native Americans included sending their children to "Americanization" schools, where they were stripped of their native culture and taught "American" culture and values.



As the American population grew and more settlers began moving west, the government faced increasing pressure to take yet more Native American land. In the mid-1800s the government began a policy of removing Native Americans from their traditional lands and forcing them onto reservations. A **reservation** is an area of public land set aside by the government for Native Americans. Throughout the 1800s many Native American groups were forced further and further west or onto reservations.

In addition to losing their land, many Native Americans were

prevented from speaking their native languages or from maintaining their traditional ways of life. For example, some children were removed from their families and forced to go to “Americanization” schools, where they were isolated from their native language, dress, religion, and customs.

**Asian Americans** Asian Americans have come to this country from places such as China, Japan, Korea, South Asia, and Southeast Asia. Like many other racial minorities with their own languages, culture, and customs, Asian Americans faced significant discrimination almost from the moment they arrived.

Chinese workers first began to arrive in the United States in large numbers in the mid-1800s. They worked in mines and on railroads in the West. Many white Americans resented these new immigrants, who competed against them for jobs. As a result, white Americans discriminated against Chinese workers in jobs, housing, and access to public services. In fact, the United States government even passed a law to effectively end Chinese immigration—the Chinese Exclusion Act of 1882.

The Chinese were not the only Asian group to face discrimination. In the early 1900s widespread anti-Japanese feelings led to an agreement with Japan to end Japanese immigration to the United States. In return, the United States promised not to allow racial segregation of Japanese already living in America.

Japanese Americans suffered one of the most blatant civil rights violations during World War II. Fearing that Japanese Americans could aid a Japanese attack against the United States, President Franklin D. Roosevelt signed Executive Order 9066 in 1942. The order required all people of Japanese descent on the West Coast to report to War Relocation Centers. This event is known as the **Japanese American internment**. About 120,000 people, more than 60 percent of whom were American citizens, were forced to leave their homes and businesses, and about 80,000 people were confined to internment camps for the rest of the war. Many lost their homes, jobs, and businesses, in addition to their personal

freedom. When some Japanese Americans challenged this internment in court, the Supreme Court upheld the program as a military necessity, ruling that it was acceptable to curtail the civil rights of a racial group when there was a “pressing public necessity.”



**Asian Americans** Discrimination toward Asian Americans resulted in the internment of Japanese Americans during World War II.

**Hispanics** Hispanics have faced widespread discrimination in housing, education, voting, and other areas.

**Women** Discrimination toward women included the lack of voting rights and limited job opportunities.

**Hispanics** Hispanics, or Latinos, are people who have a Spanish-speaking background. They come from places such as Mexico, Puerto Rico, Cuba, and Central and South America. Like other groups with culture and language differences, Hispanics have faced discrimination in jobs, voting, education, and other areas.

In the 1840s the United States took control of what are now the states of Texas, New Mexico, Arizona, and California, and parts of Colorado, Nevada, and Utah. Mexican Americans in these areas were viewed as conquered peoples and suffered discrimination and violence. For example, their land was often taken under questionable circumstances. In addition, Mexican Americans were often forced to live in segregated communities.

From the mid-1800s to today, there have been several waves of

Hispanic immigration to the United States. Mexican immigrants originally came to work on farms, ranches, and mines. Today they work in many areas of the economy. Puerto Ricans emigrated to places like New York after Puerto Rico became part of the United States in 1898. Cubans fled political turmoil in their country to settle in Florida in the 1960s. All of these groups have faced discrimination as a result of being culturally different.

**Women** Although women are not a numerical minority in the United States, they were historically denied equal treatment. Before 1920 most women could not vote or shape the laws that they were required to follow. They also could not serve on juries and had unequal property and custody rights compared to men. Socially, women were assigned an inferior position in society and were expected to marry, raise children, and work in the home. Also, women did not have access to most education and job opportunities.

This view was given legal justification by the Supreme Court in *Bradwell v. Illinois* (1873), when it upheld a law barring women from becoming attorneys. The Court said the law was legal because the “domestic sphere” was the proper area for women. In the words of one justice, “The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.”

Like many other groups in American history, women suffered a pattern of discrimination that denied them their civil rights. Eventually, however, women and other groups fought for and won the right to equal justice under the law.

**READING CHECK** Summarizing What groups have experienced civil rights violations in the past?

## Reviewing Ideas and Terms

- Define** What are civil rights? Give two examples.
  - Explain** How has the meaning of civil rights in the United States changed over time?
  - Predict** What legal changes do you think happened to help minorities and women eventually win their civil rights?
- Define** Define the following terms: prejudice, racism.
  - Make Inferences** How do you think people used the legal system to discriminate against members of ethnic and racial groups and women?
  - Predict** What do you think are some possible contemporary effects of persistent discrimination against ethnic and racial minorities?

## Critical Thinking

- Compare and Contrast** Copy the graphic organizer below and use it to describe how discrimination and the denial of civil rights were both similar and different for ethnic and racial groups and women.



## FOCUS ON WRITING



- Persuasive** Write a newspaper editorial reacting to the announcement in 1942 that Japanese Americans will be evacuated from the West Coast and moved to internment camps. Be sure to address the issue of civil rights

SECTION  
**2**

# Equal Justice under Law

**BEFORE YOU READ**

## Main Idea

The Fourteenth Amendment was designed to bolster civil rights by requiring states to guarantee to freed slaves “the equal protection of the laws.” However, African Americans and women still struggled to win equal treatment in American society.

## Reading Focus

1. What is meant by equal protection of the law?
2. What civil rights laws were passed after the Civil War, and why did they fail to end segregation?
3. How did women fight for and win voting rights?
4. What events began to roll back racial and ethnic segregation in the United States?

## Key Terms

equal protection clause  
suspect classification  
segregation  
Jim Crow laws  
separate-but-equal doctrine  
suffrage  
Seneca Falls Convention  
de jure segregation  
desegregation  
de facto segregation

protection and its effects on the struggle of African Americans and women for equal rights.

**WHY IT MATTERS** **Equal Protection** On July 28, 1868, three years after the Civil War ended, the Fourteenth Amendment became part of the Constitution. At that time, the U.S. military occupied the defeated South. The federal government, as part of the South's Reconstruction, was responsible for ensuring law and order—and for protecting the rights of newly freed slaves. The Fourteenth Amendment promised to protect those rights by guaranteeing that no state could deny “the equal protection of the laws” to anyone. This promise of equal protection established for the first time in the Constitution a new idea of equality—that *all* Americans were entitled to equal rights.

It took a long time, however, for many Americans to begin to truly attain equal rights and fair treatment. Despite the passage of the Fourteenth Amendment, as well as other amendments and civil rights laws, African Americans and other groups continued to suffer from widespread racism and discrimination. Even though the Fourteenth Amendment promised equal protection, state governments passed racially discriminatory laws, and federal courts declared them to be constitutional. In fact, it took nearly 100 years for the government to ban many forms of racial discrimination.

Today, the idea of equal protection contained in the Fourteenth Amendment is much more accepted as one of the main legal foundations for civil rights. The Fourteenth Amendment holds the promise of equal treatment and equal justice— for everyone. ■

# A New Idea of Equality



The ideal of legal equality is enshrined on the Supreme Court building in Washington, D.C.

## Equal Protection of the Law

Much of the progress against discrimination has been made in the courts. Over time, judges have used the equal protection clause of the Fourteenth Amendment to ban discrimination by the government and to extend equal protection of the law.

**The Equal Protection Clause** The Fourteenth Amendment says that “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.” This statement is known as the **equal protection clause**. The equal protection clause requires states to apply the law the same way for one person that they would for another person in the same circumstances.

You might have noticed that the equal protection clause is targeted specifically at the states. The Fourteenth Amendment was passed after the Civil War to protect the rights of newly freed slaves, especially in the South where they were the victims of severe and widespread discrimination by state governments.

By targeting the states directly, the equal protection clause and the rest of the Fourteenth Amendment marked a major change in the Constitution. Before the Fourteenth Amendment, the Bill of Rights protected people only from abuses by the federal government. The Fourteenth Amendment required state governments for the first time to protect the basic civil rights of all people and to provide them with equal treatment.

## ACADEMIC VOCABULARY

**rational** based on reason

Although it was originally intended mainly to protect the rights of newly freed slaves, over time the Supreme Court has interpreted the equal protection clause in a way that prevents states from classifying any group of people unfairly or from making unreasonable distinctions between groups. As a result, the clause has been a vital tool in the fight for civil rights.

As the meaning of the equal protection clause has expanded over time, it has become increasingly important to society as a foundation for civil rights. In fact, the Fourteenth Amendment's equal protection clause is one of the main sources of civil rights protection today.

The equal protection clause, however, does not mean that all people must be treated the same in every respect. There are many times when it is legal to distinguish between different groups of people. This is known as reasonable distinction, and the courts have developed several tests to determine if reasonable distinction exists.

**Reasonable Distinction** In many situations, the government can distinguish between different groups of people. For example, state governments may charge visitor fees at state parks. In this case, the government has reasonably distinguished between two groups of people—park visitors and nonvisitors.

Governments cannot, however, distinguish between different groups

unreasonably. For example, while state governments can charge fees to park visitors, they could not charge only people with green eyes or red hair.

So when is distinguishing between different groups reasonable, and when is it unreasonable? This is an issue that the courts, among others, decide; and standards can change depending on the views of judges, social attitudes, and the facts of each case. Generally, classifications that seem random or without a valid purpose are not allowed.

Federal courts use three main guidelines to decide if the government has made fair distinctions between groups. These are the rational basis test, intermediate scrutiny test, and strict scrutiny test.

**Rational Basis Test** Governments often have a rational basis, or good reason, to treat different groups of people differently. Treating groups differently is valid under the rational basis test if the law in question establishes reasonable methods of accomplishing a legitimate goal of government.

For example, states have laws that establish a minimum age, such as 16, for driving a car. Are these laws reasonable? Legislators believe that people below the minimum age may not have enough experience and maturity to drive a car safely. The courts have agreed. In this case, the legitimate goal of government is to ensure public safety, and the government may treat people below a certain age differently.

# Applying Equal Protection

## **United States v. Virginia (1996)**

**Test Applied:** Intermediate scrutiny

**Background:** The Virginia Military Institute (VMI), a public military college, denied admission to women. In 1990 the U.S. Department of Justice sued the state of Virginia to force an end to this policy, arguing that it violated the equal protection clause of the Constitution.

**Decision:** In a 7–1 decision, the Supreme Court ruled that VMI failed to show a persuasive justification for excluding women and was in violation of the equal protection clause. It ordered VMI to admit women.

Male and female cadets at VMI listen to a lecture in 2007.



**Intermediate Scrutiny Test** Sometimes courts impose a higher standard to determine if laws violate the equal protection clause. For example, the intermediate scrutiny test has been used in cases involving classifications based on sex. In such cases, the government must show an important reason for treating people differently. Using this test, the Court has upheld treating men and women differently in some military matters, such as the requirement that only men register with the Selective Service in preparation for any future drafts for military service.

**Strict Scrutiny Test** The highest standard is known as strict scrutiny. It is applied when (1) a fundamental right is being restricted, such as the right to free speech or the right to vote, or (2) a classification is made based on race or national origin. A classification based on race or national origin is called a **suspect classification**. The courts are inherently suspicious that such classifications might violate the equal protection clause.

The standard of strict scrutiny is often very hard for the government to meet. Under strict scrutiny, the government must show that a law that classifies a group of people is more than just a reasonable method to accomplish a legitimate role of government. The government must show that there is “a compelling reason” that is in the public interest for the group classification.

The case of *Korematsu v. United States* (1944) is an example of the Supreme Court applying the strict scrutiny test to a law—and ruling that the law met the test. Fred Korematsu was a Japanese American who refused to evacuate California as ordered during World War II. His argument, based on the equal protection clause, was that the internment of people of Japanese descent simply because the United States was at war with Japan was unfair racial discrimination. But in a 6–3 decision, the Court ruled against Korematsu, saying that the government’s compelling interest to protect the public against sabotage outweighed Korematsu’s civil rights, as well as the rights of other Japanese Americans.

An example of a law that failed to meet strict scrutiny came in *Loving v. Virginia* (1967). In that case, the Supreme Court struck down a Virginia law outlawing marriage between whites and African Americans. The Court ruled that Virginia had no legitimate or compelling interest in preventing such marriages.

**READING CHECK** **Identifying the Main Idea** How does the Court interpret the equal protection clause?

## Laws and Segregation after the Civil War

The Fourteenth Amendment was one of the laws passed in the aftermath of the Civil War to protect the rights of African Americans. However, the new laws and amendments failed to extend equal treatment to African Americans for many years. While the laws had changed, the discriminatory views of society had not. In fact, when Reconstruction effectively ended in 1877, state governments in the South began to pass new laws against African Americans in direct violation of the new constitutional amendments and laws.

**Post–Civil War Laws** The first major civil rights laws in the United States were passed after the Civil War. These laws included three new

constitutional amendments and the first federal civil rights laws.

The Thirteenth, Fourteenth, and Fifteenth amendments were passed between 1865 and 1870. They are sometimes referred to as the Reconstruction Amendments. The Thirteenth Amendment banned slavery in the United States. The Fourteenth Amendment made all people born in the United States citizens and required states to guarantee “due process” and “equal protection of the laws” to all people. The Fifteenth Amendment guaranteed the right to vote to African American men.

In addition to these three amendments, Congress passed a series of federal civil rights laws. These federal laws attempted to provide African Americans some of the most basic rights that they had long been denied by white society. These new laws protected such rights as the right to own private property, the right to be a witness in court, and the right to fair treatment in public accommodations such as restaurants and theaters.

Despite these attempts to legally protect African Americans, civil rights discrimination continued. Racism and prejudice were so deeply rooted that new constitutional amendments and federal laws were not enough to end discrimination. Adding new words to the Constitution, it turned out, was not enough to transform society and create true equality.

**Racial Segregation** In the years after the passage of the Reconstruction Amendments and the federal civil rights laws, state governments began to set up a new system of racial inequality. Two key factors allowed state governments to create these unequal systems: the end of Reconstruction in the South and Supreme Court decisions that upheld racial discrimination.

During the era of Reconstruction, which lasted from 1865 to 1877, African Americans in the South made much political progress. Many African Americans voted, and some ran and were elected to office. But then a disputed presidential election led to the Compromise of 1877, which gave Republican candidate Rutherford B. Hayes the presidency on the condition that he remove the remaining federal troops from the South.

## Early Civil Rights: Reconstruction Amendments and Laws

The first civil rights laws attempted to guarantee basic civil rights to African Americans.

Thirteenth Amendment (1865)	Civil Rights Act of 1866	Fourteenth Amendment (1868)	Fifteenth Amendment (1870)	Civil Rights Act of 1871	Civil Rights Act of 1875
Outlawed slavery in the United States	Sought to guarantee African Americans the right to sue, own property, and be a witness in court	Granted citizenship to African Americans and required states to provide all people "due process" and "equal protection"	Granted African American men the right to vote	Sought to protect African Americans from Ku Klux Klan violence Allowed individuals to sue state officials for civil rights violations	Sought to grant African Americans equal access to public places Overturned by the Supreme Court in the Civil Rights Cases of 1883

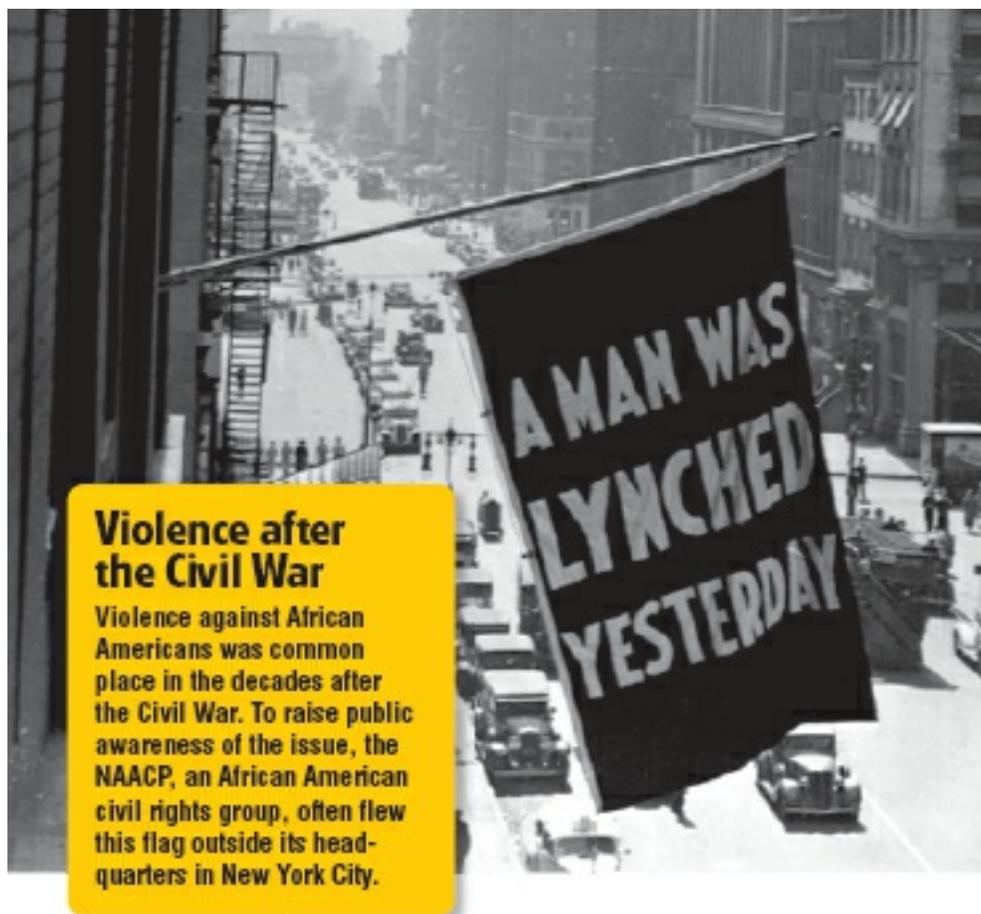
The end of military occupation in the South led to a breakdown in the rule of law. Free from federal interference, extremist groups such as the Ku Klux Klan used violence to keep African Americans from pursuing their civil rights. African Americans were prevented from voting and running for office. Eventually, white-dominated governments began to pass segregation laws and laws reducing or barring participation in government by African Americans. **Segregation** is the separation of racial groups.

Most of these segregation laws, known as **Jim Crow laws** after a popular racist song, were passed in the late 1800s and early 1900s and were aimed mainly at African Americans. Other racial segregation laws were aimed at other groups, such as Hispanics, Asian Americans, and Native Americans. No matter their target, Jim Crow laws were designed to accomplish the same goal: maintain power and privilege for whites and relegate nonwhites to an inferior position.

Jim Crow laws segregated nearly all areas of life, including schools, public transportation, public restrooms and water fountains, hotels, restaurants, and theaters. To comply with the letter of the law, separate facilities were established for whites and nonwhites.

In addition to legalized segregation, white society in general discriminated against African Americans to the point that they were virtually unprotected by the law. Whites controlled all of the powerful institutions of society, such as police forces, courts, judgeships, and other institutions of local government. They used these institutions to harass African Americans who challenged authority by asserting their civil rights.

The discriminatory laws put in place by state governments were given clear legal justification by the Supreme Court. In 1883 the Court ruled that the Civil Rights Act of 1875 was unconstitutional because the Fourteenth Amendment only prohibited discrimination by governments, not by private individuals. Chief Justice Joseph Bradley even suggested that African Americans had received enough federal help. “When a man has emerged from slavery ...” he wrote, “there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws.”



The Supreme Court also ruled that Jim Crow laws were constitutional in *Plessy v. Ferguson* (1896). In this landmark case, the Court upheld by an 8–1 decision a Louisiana law requiring African Americans to ride in separate railway cars from whites. The Court’s ruling in the *Plessy* case established the **separate-but-equal doctrine**, the policy that laws requiring separate facilities for racial groups could be legal so long as the facilities were “equal,” thereby effectively sanctioning racial discrimination.

Despite the *Plessy* ruling, in reality, separate facilities were almost never equal—facilities for African Americans and other racial groups were almost always inferior to facilities for whites. Fighting the separate-but-equal doctrine became one of the main goals in the struggle for African Americans’ civil rights.

**READING CHECK** **Sequencin** What events after the Civil War led to legalized segregation in the South?

## Voting Rights for Women

The struggle for African Americans’ civil rights in the 1800s influenced another civil rights struggle: the fight for women’s rights. Many women in the North had taken part in the battle to end slavery. As they fought for equal rights for African Americans, they also began to demand equal rights for women. One of the main goals of this struggle was women’s **suffrage**, or the right to vote.

**The Women’s Movement Begins** In 1848 a group of people led by Lucretia Mott and Elizabeth Cady Stanton held the **Seneca Falls Convention**, the first national women’s rights convention in the United States. Delegates to the convention called for voting rights for women, along with equal rights in other areas like education and property. They also adopted a Declaration of Sentiments, modeled on the Declaration of Independence, that called for equal rights for women.

Despite these early calls for women's rights, when the Fifteenth Amendment gave African American men the right to vote in 1870, women were still denied that right. In fact, women's rights advocates lobbied to have women included in the language of the amendment. However, their efforts failed, and women were purposely excluded from the language of the amendment. In response, women formed several organizations to lobby for women's suffrage. These organizations had their roots in the abolition movement to end slavery.

Some activists, such as Susan B. Anthony, refused to support the Fifteenth Amendment because it failed to extend voting rights to women. Others supported the Fifteenth Amendment and worked to win women's suffrage on a state-by-state basis. Their first success came in the Wyoming Territory in 1869, where American women were first granted the right to vote. Over the next 50 years, more western states and territories passed laws giving women the right to vote. The populations of the West were more open to the great social change that suffrage represented. Still, despite progress at the state level, the lack of any federal laws meant that many women were still denied the right to vote by the late 1800s.

**Winning the Vote** In the early 1900s, some 50 years after the Seneca Falls Convention, a renewed effort was made to win women's suffrage. Women's rights activists used marches, picketing, and hunger strikes to fight for suffrage. Some activists even chained themselves to the White House fence to protest for the right to vote.

Finally, in 1920 the United States ratified the Nineteenth Amendment, giving all women in the United States the right to vote. The language of the amendment was short and to the point:

### **PRIMARY SOURCE**

**“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.”**

After a 70-year struggle, all American women finally had the vote. However, there were still many more battles ahead in the fight for civil rights.

**READING CHECK** **Sequencing** What were some key events in the fight for women’s suffrage?

## **Rolling Back Segregation**

While women had won an important civil rights victory, African Americans and other groups still suffered from segregation and a denial of civil rights. The *Plessy* ruling had laid the foundation for **de jure segregation**, segregation by law, and segregation remained legal for the first half of the 1900s. Eventually, however, African American activists began to pursue a legal strategy of challenging segregation in court. As a result, the courts began to chip away at legalized segregation and, eventually, overturned it.

**Early Legal Challenges** In the 1930s the National Association for the Advancement of Colored People (NAACP) launched a campaign to end legal segregation. It focused first on segregation in education and was led by two brilliant attorneys, Charles Hamilton Houston and Thurgood Marshall. The NAACP’s approach was not to challenge the idea of “separate but equal” but to insist on true equality.

The first case to successfully challenge segregation was *Gaines v. Canada* (1938) in Missouri. Lloyd Gaines, an African American, was refused admission to the University of Missouri law school. The state offered him no alternative—no separate law program existed for African Americans. The Supreme Court ruled that the equal protection clause required states to either provide equal educational facilities for African Americans or admit them to white schools.

Another case, *Sweatt v. Painter* (1950), further rolled back segregation. Heman Sweatt applied to the University of Texas law school and, like Gaines, was denied admission. Texas offered Sweatt admission to a separate, all-black law school, but the facilities were far inferior. In a 9–0 ruling, the Court found that the segregated nature of the Texas law school for African Americans affected the quality of the education it provided. As a result, Sweatt was being denied equal protection of the law.

These two rulings were important steps in the battle to overturn segregation. The *Gaines* decision required states to provide separate facilities for African Americans, and the *Sweatt* decision required those facilities to be truly equal. While neither case reversed the separate-but-equal doctrine, the Court was approaching the recognition that, in fact, separate facilities could never be equal.

***Brown v. Board of Education of Topeka, Kansas*** A huge victory in the fight to end segregation, and to guarantee civil rights to everyone, came in the case of *Brown v. Board of Education of Topeka, Kansas* (1954). The case was a class action lawsuit—a lawsuit filed by one or more plaintiffs on behalf of themselves and everyone else who has suffered from an alleged wrong. The *Brown* case was filed for all African American students who were denied entry to public schools and directly challenged the legality of the separate-but-equal doctrine.

In a dramatic 9–0 decision, the Court overturned *Plessy* and declared segregation in public schools illegal under the equal protection clause. It ruled that a racially segregated school “generates a feeling of inferiority” among African American students “that may affect their hearts and minds in a way unlikely ever to be undone.” Chief Justice Earl Warren stated:

### **PRIMARY SOURCE**

**“Does segregation of children in public schools solely on the basis of race ... deprive the children of the minority group of equal**

**educational opportunities? We believe that it does ... We conclude that, in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”**

—Earl Warren, *Brown v. Board of Education of Topeka, Kansas*, 1954



For the first time in U.S. history, one of the branches of government, the federal judiciary, endorsed a new concept of equality. According to this concept, it was now illegal for state or local governments to provide separate facilities based solely on race.

**School Desegregation** After the *Brown* ruling, the Supreme Court ordered schools to end segregation “with all deliberate speed.” As a result, school districts began the process of **desegregation**, or ending the formal separation of groups based on race.

In many places, however, whites actively resisted desegregation and defied federal law. For example, some schools in Virginia closed for several years to avoid desegregation. In 1957 in Little Rock, Arkansas, the governor ordered Arkansas National Guard troops to stop African American children from attending white schools. After a three-week standoff, President Dwight Eisenhower sent more than 1,000 federal troops to Little Rock to escort the students to school.

Despite resistance, many schools were desegregated through a host of local court cases against individual school districts. As a result, by the 1970s de jure segregation in public schools had ended.

Another type of segregation, known as de facto segregation, still exists, however. **De facto segregation** is segregation in fact, even without

laws that require segregation. It is usually caused by school attendance rules and housing patterns that reflect social and economic differences among groups. For example, when whites live mainly in certain neighborhoods and racial minorities live mainly in others, schools will be segregated if students are required to attend schools in their neighborhood, even though laws requiring segregation are illegal.

How then, are schools supposed to end segregation? One attempted remedy was to bus students from one area to another within a school district. While the Supreme Court has upheld busing within districts, it has also placed sharp limits on using race and ethnicity to determine school attendance assignments. In 2007 the Court argued that there is no justification—including the goal of ensuring diversity and integration—to base school assignments primarily on race.

Despite the continuing challenges of desegregating both schools and society, the *Brown* decision caused important changes in this country. After *Brown*, calls for further civil rights protections, such as new civil rights laws, grew.

**READING CHECK** **Summarizing** How did legalized segregation in the United States finally end?

SECTION

2

ASSESSMENT



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ONLINE QUIZ

## Reviewing Ideas and Terms

- Identify** State the purpose of the Fourteenth Amendment.
  - Explain** Explain how the Supreme Court applies the **equal protection clause** to laws through the use of tests.
- Define** Define the following terms: **segregation, Jim Crow laws, separate-but-equal doctrine.**
  - Draw Conclusions** Why do you think the new amendments and

laws passed after the Civil War failed to end segregation?

- 3. a. Identify** Which amendment gave women the right to vote in the United States, and when was it passed?
- b. Make Inferences** Why do you think **suffrage** was the main goal for women's rights activists?
- 4. a. Describe** What legal strategy did the NAACP use to roll back segregation in the United States?
- b. Evaluate** How successful was the *Brown* decision in ending segregation? Explain your answer.

### Critical Thinking

- 5. Rank** Copy the time line below and use it to list three key events in the struggle for equal protection of the law by African Americans and women. Then rank the events in order of importance and explain your ranking for each one.



### FOCUS ON WRITING

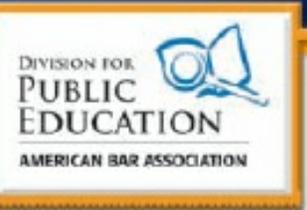


- 6. Narrative** Suppose that you are a student in 1955, just after the *Brown* decision. Write a short paragraph describing how the decision will affect your school.



# LANDMARK SUPREME COURT CASES

Constitutional Issue: Equal Protection



## *Brown v. Board of Education of Topeka, Kansas* (1954)

### WHY IT MATTERS

In this case the Supreme Court ruled that de jure segregation violated the equal protection clause of the Constitution. This decision led to desegregation and helped spark the civil rights movement.

### Background

In the 1950s many states had laws that required or allowed segregation in public places. While separate facilities for whites and other groups were supposed to be equal, they almost never were, and segregation was entrenched in many communities around the country. When the parents of third-grader Linda Brown requested a transfer for her to an elementary school closer to home, their request was denied solely on the basis of race. The NAACP filed a class action lawsuit against the local school board on behalf of the Browns and other African American residents of Topeka, Kansas. In its 1951 ruling on the case, the U.S. District Court in Kansas found that segregation did have a negative effect on African American students. However, the court still held that segregated schools did not violate the Fourteenth Amendment because other factors like teachers, facilities, and transportation were equal. The Supreme Court ruled on *Brown* in 1954 in combination with four similar cases from around the country.

## Arguments for Brown

NAACP counsel Thurgood Marshall argued that school segregation was a violation of civil rights protected by the Fourteenth Amendment. Marshall presented evidence from social scientists that segregation instilled a sense of inferiority in African American children, which in turn affected their motivation and academic performance. He argued that racially segregated schools stigmatized minority children by setting them apart and caused them permanent psychological damage.

## Arguments for Board of Education of Topeka, Kansas

The board of education argued that the Kansas law requiring whites and nonwhites to attend different schools was legally based on the separate-but-equal doctrine established in *Plessy v. Ferguson*. The board contended that, to the best of its knowledge and ability, the quality of education provided in both white and nonwhite schools was equal. The board of education denied that school segregation harmed minority children or implied that they were inferior.

### THE IMPACT TODAY

The Court's unanimous ruling in the *Brown* case was a huge victory for civil rights activists. The NAACP's broad goal with *Brown* was to secure equal protection under the law in all areas of public life, and the *Brown* decision was a major step in that direction. It struck down *Plessy* and was an early step toward dismantling the legal framework of segregation. After *Brown*, segregation in other areas was outlawed as well, based on the principles established in *Brown*, including segregated golf courses, state parks, and public transportation. Although the battle to end segregation would still require many more years of struggle, the *Brown* case marked the beginning of the end for segregation in this country.

### CRITICAL THINKING

**What Do You Think?** The *Brown* case involved the segregation of

children in public education. How do you think this fact influenced the Court's decision?



# Civil Rights Laws

## BEFORE YOU READ

### Main Idea

In the 1950s and 1960s, an organized movement demanding civil rights changed American society and led to a series of new federal laws that protected the civil rights of African Americans and other groups.

### Reading Focus

1. What was the civil rights movement, and what effects did it have on American society?
2. What new federal laws were passed in response to the civil rights movement?
3. How were civil rights extended to women, minorities, and people with disabilities?

### Key Terms

civil rights movement  
civil disobedience  
poll tax  
affirmative action  
reverse discrimination  
quota

4. How are affirmative action policies a part of the civil rights movement?



Use the graphic organizer online to take notes on the civil rights movement and how it led to new civil rights laws.



**Standing Up for Your Rights** What would you do if someone prevented you from going to school, and the government failed to do anything about it? Would you stand up and fight for your right to equal treatment? Would you demonstrate, march, or go on a hunger strike to demand equal rights? Would you risk your personal safety—and your life—by confronting those who were determined to keep you powerless and even use violence against you?

## A Courageous Walk



## Elizabeth Eckford walks to Little Rock's Central High School in 1957.

In 1957 a 15-year-old high school student named Elizabeth Eckford did just that. Eckford was one of nine African American students who attempted to enter the all-white Central High School in Little Rock, Arkansas. On their first attempt, the students were prevented from entering by hostile white parents, students, and even Arkansas National Guard troops.

A famous photograph of Eckford being harassed by white students helped bring attention to the struggle for civil rights and the hostility that African Americans faced. In the photograph, a white student named Hazel Massery yells at Eckford, who keeps her composure and dignity. In 1963 Massery apologized to Eckford, and the two women became friends. But on that day in 1957, Eckford refused to be intimidated by intolerance and abuse. Would you have had the courage to join her? ■

## The Civil Rights Movement

Elizabeth Eckford's attempt to enter Central High School was part of the **civil rights movement**—a mass movement in the 1950s and 1960s to guarantee the civil rights of African Americans. Civil rights activists used nonviolent protests to fight against injustice and segregation and to work toward the passage of new federal civil rights laws.

A key event in the civil rights movement came in 1955 when Rosa Parks, an African American, was arrested for refusing to give up her seat to a white person on a public bus in Montgomery, Alabama.

Her refusal violated the city's segregation laws, which had not been overturned by *Brown*, since the case applied only to segregation in public education.

Civil rights leaders in Montgomery responded by organizing a

boycott against the city's buses. The boycott was led by Martin Luther King Jr., a minister and Southern Christian Leadership Conference (SCLC) civil rights leader. Despite the boycott, the city refused to integrate its buses. The NAACP filed suit, arguing that in accordance with the new legal principles of *Brown*, laws that segregated public facilities were also unconstitutional, based on the equal protection clause. The NAACP won in federal district court, and the Supreme Court upheld the decision, resulting in one of the first major successes of the civil rights movement.

Nonviolent protests became a major strategy of civil rights activists. Boycotts, sitins, demonstrations, marches, and other acts of **civil disobedience**, or nonviolent refusals to obey the law as a way to advocate change, spread across the country.

But despite the use of nonviolence, protesters were often attacked and brutalized by those resistant to change, including state and local officials. As images of violent attacks on peaceful protesters spread around the country, support for the civil rights movement grew.

#### RESPONSIBILITIES OF LEADERSHIP

**Civil rights activists like Elizabeth Eckford and Rosa Parks teach us that leadership in American government sometimes comes more from ordinary citizens than from government officials.**

In 1963 more than 200,000 people gathered in Washington, D.C., to show their support for the civil rights movement. This large, peaceful event, known as the March on Washington, focused national attention on the civil rights movement. On the steps of the Lincoln Memorial, Martin Luther King Jr. gave his "I Have a Dream" speech, now considered one of the greatest speeches in American history.

One of the most important victories of the civil rights movement came in 1965 with the Selma to Montgomery marches. African Americans in Alabama who had been intimidated from voting organized a march from Selma to the capitol building in Montgomery. Local

sheriffs and Alabama state troopers responded by brutally attacking the peaceful protesters in an event now known as Bloody Sunday. Images of the attacks were shown on national television news programs and shocked the country. Bloody Sunday helped lead to the passage of new federal laws designed to protect the civil rights of African Americans and other minorities.



Under what circumstances, if any, do you think a citizen in a representative democracy has the right to engage in civil disobedience? Explain your position.

**READING CHECK** **Sequencing** What were the key events of the early civil rights movement?

## PRIMARY SOURCES

### “I Have a Dream”

Martin Luther King Jr. spoke at the March on Washington on August 28, 1963. His speech became one of the defining moments of the civil rights movement.



“I say to you today my friends so even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident, that all men are created equal.’

I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.

I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

I have a dream that my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. . . .”

**Skills  
FOCUS**

## INTERPRETING PRIMARY SOURCES

**Making Inferences** What effect do you think King’s speech had on people’s ideas about their rights and about political involvement?

See **Skills Handbook**, p. H9.

## New Federal Laws

In response to the civil rights movement, Congress passed a series of federal laws in a renewed attempt to guarantee all Americans' civil rights. By the mid-1960s these new federal laws began to transform the legal protections of everyone in the country.

**Civil Rights Laws under Eisenhower** In 1957 Congress passed, and President Dwight D. Eisenhower signed into law, the first civil rights legislation since Reconstruction. The Civil Rights Act of 1957 included several features to help the federal government fight discrimination. A key part of the law created the Civil Rights Commission, which had the power to investigate cases of discrimination and suggest remedies.

The next piece of federal civil rights legislation was the Civil Rights Act of 1960. This law empowered the federal government to actively engage in voter registration in places where voting discrimination had been found. It also made it illegal for anyone to obstruct a person's right to vote.

Both of these laws marked important advances in civil rights. However, they also faced powerful opposition, especially from southerners in Congress. As a result, both laws were weak and ineffective. One reason for this ineffectiveness was that the laws enabled the federal government to fight discrimination only on a case-by-case basis.

**Civil Rights Act of 1964** A breakthrough in the civil rights movement came with the Civil Rights Act of 1964. This law, passed over the strong opposition of many southern lawmakers, was one of the most far-reaching civil rights laws in American history.

The Civil Rights Act of 1964 banned discrimination based on race, color, religion, sex, or national origin in voting, employment, and public accommodations. Age was added in 1967. The act also allowed the federal government to cut off federal funds from any program that allowed discrimination.

One of the reasons the Civil Rights Act of 1964 was so powerful was that it was passed under the authority of the Constitution's commerce clause. You may remember that the Fourteenth Amendment and its equal protection clause applied only to actions by states—they did not prevent discrimination by individuals or businesses. By passing this new law under the commerce clause, however, Congress was able to ban discrimination by any person or business that engaged in interstate commerce. As a result, businesses such as hotels, gas stations, restaurants, and many others were now barred from practicing discrimination.

## Modern Civil Rights: Federal Laws

In response to the civil rights movement, Congress passed a series of federal laws in a renewed attempt to guarantee all Americans' civil rights.

Civil Rights Act of 1957	Civil Rights Act of 1960	Twenty-fourth Amendment (1964)	Civil Rights Act of 1964	Voting Rights Act of 1965	Civil Rights Act of 1968
Established the Civil Rights Commission to investigate civil rights violations; created a civil rights division in the Department of Justice to enforce civil rights laws	Gave the federal government the power to inspect local voter registration rolls and penalize anyone who obstructs a person's right to vote	Banned the use of poll taxes in federal elections	Banned discrimination based on race, color, national origin, or sex in voting, employment, and public accommodations; created the Equal Employment Opportunity Commission	Banned unfair tests in voting, such as literacy tests; allowed federal agents to help register African American voters	Banned discrimination in the sale, rental, or financing of housing

**Voting Rights Laws** One of the main goals of the civil rights movement was to guarantee African Americans' voting rights. For decades, southern states had used a variety of means to keep African Americans from voting. These ranged from restrictive legislation that denied them the right to register to vote to violence and intimidation.

By the 1960s some of the unfair laws used to prevent African Americans from voting had been struck down by the courts. For example, the Supreme Court outlawed the use of grandfather clauses. Some of

these laws limited voting to people whose descendants had the right to vote prior to the Fifteenth Amendment. The Court had also struck down white primaries—primary elections in which only whites could vote.

In 1964 the country took another step toward guaranteeing voting rights with the ratification of the Twenty-fourth Amendment. It banned the use of poll taxes to prevent people from voting. A **poll tax** is a tax levied on someone who wants to vote. Poll taxes were used to keep poor people, especially African Americans, from voting.

Still, despite these new laws and court decisions, few African Americans in the South could exercise their right to vote. The 1964 murder of civil rights workers in Mississippi who were trying to register African Americans to vote and the events of Bloody Sunday in 1965 showed how determined some people were to prevent African Americans from voting. These events showed that still more had to be done.

As a result, President Lyndon B. Johnson spearheaded the effort to have Congress enact the Voting Rights Act of 1965. This far-reaching law banned literacy tests, another device widely used against African American voters. The law also specifically targeted places where Congress believed discrimination was widespread. It gave the federal government power to review all changes to voting laws in these places, take part in voter registration, and monitor elections.

**Effects of New Federal Laws** The effects of the civil rights laws of the 1950s and 1960s were dramatic. For the first time, the new laws gave the federal government real power to stop discrimination by states and individuals. African Americans now had a powerful ally in the battle for desegregation, fair treatment in jobs and housing, and the right to vote. Finally, after many years, it was no longer legal to discriminate against people in voting, hiring, housing, or access to public accommodations based on race, national origin, religion, or sex.

**READING CHECK Summarizing** What major federal civil rights laws were passed in the 1950s and 1960s?

## Extending Civil Rights

The progress that African Americans made in their fight for civil rights inspired other groups who were victims of discrimination as well. While many of the civil rights laws passed in the 1950s and 1960s were enacted largely to protect African Americans, they prohibited discrimination against *anyone* based on race, national origin, religion, or sex. In addition, other new laws and court decisions extended civil rights protections specifically to women, Hispanics, Native Americans, and people with disabilities.

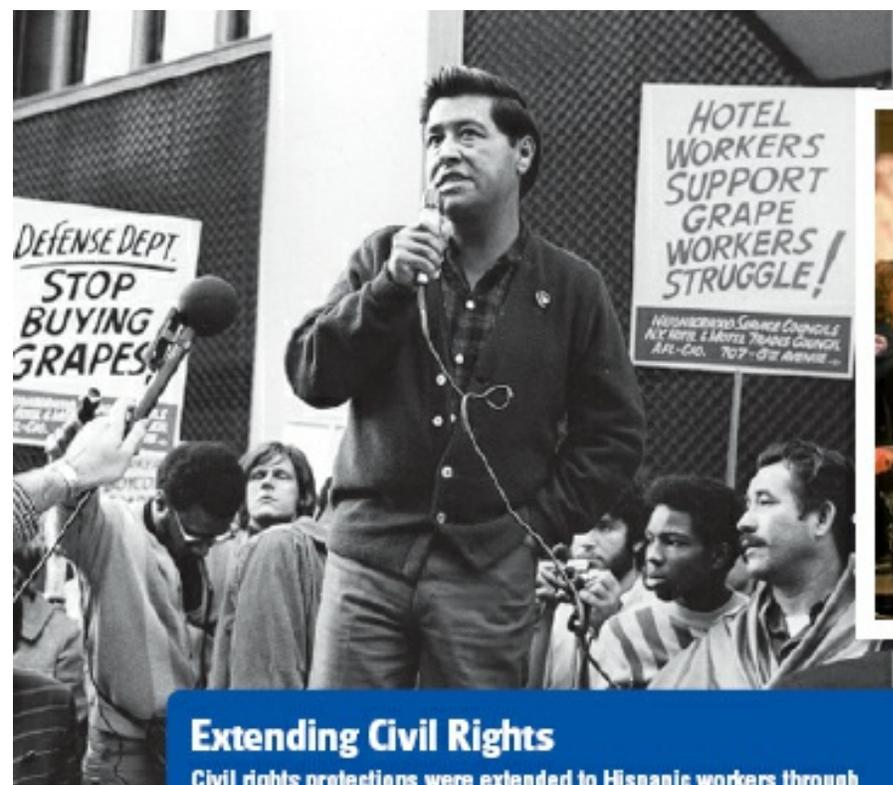
### ACADEMIC VOCABULARY

**prohibit** to forbid by authority

**Women** The Equal Pay Act of 1963 required employers to offer equal pay to men and women doing the same work. The Civil Rights Acts of 1964 and 1968 banned discrimination against women as well as members of racial and ethnic groups. In 1972 Title IX of the Education Amendments banned discrimination against women in areas such as admissions, athletics, and educational programs by schools and colleges that received federal funds. The Equal Credit Opportunity Act of 1975 prohibited banks, stores, and other businesses from discriminating against women in making loans or granting credit.

The courts have also helped women expand their rights. In 1973, for example, the Supreme Court ruled in *Roe v. Wade* that women had the constitutionally protected right to an abortion. According to the Court, this right was unlimited in the first three months of pregnancy, though it could be limited thereafter. A 1986 Supreme Court ruling declared that sexual harassment is a form of discrimination outlawed by the Civil Rights Act of 1964. The Court also struck down laws giving preference to fathers over mothers in administering their children's estates and

excluding women from serving on juries.



### Extending Civil Rights

Civil rights protections were extended to Hispanic workers through the efforts of activists like César Chávez (left). Disabled Americans lobbied successfully for the passage of the Americans with Disabilities Act in 1990 (right). How are activists in these photographs trying to effect change?

**Hispanics** Hispanics used legal challenges, walkouts, and marches in their fight for civil rights. Three court cases were particularly important in extending Hispanic civil rights. In 1946 a federal court in California ruled in *Mendez v. Westminster* that the state's segregation of Hispanic students was illegal. This case led to the end of racial segregation in California's public schools and facilities. In *Hernandez v. Texas* (1954) the Supreme Court ruled that the equal protection clause applied not only to African Americans but to Hispanics and other racial groups as well. In 1973, in the case of *Keyes v. Denver Unified School District*, the Court ruled that de facto segregation of Hispanics in public education was also unconstitutional.

## ACADEMIC VOCABULARY

**accessible** capable of being reached

Hispanics also made gains at the ballot box. In 1975 the Voting Rights Act was expanded to require that ballots be printed in Spanish and other languages in communities that had large numbers of non-English speakers.

The Hispanic labor and civil rights leader César Chávez also helped extend civil rights to Hispanics. He led marches and hunger strikes to fight for the rights of migrant farm workers, many of whom were Hispanic.

**Native Americans** Native Americans also used protests to demand new laws and better protection of their civil rights. The American Indian Movement (AIM) used aggressive and symbolic protests and takeovers to call attention to the inferior status of Native Americans in society. For example, in 1972 AIM and other Indian-rights groups took over the Bureau of Indian Affairs building in Washington, D.C., to demand a review of treaty violations as well as more education and economic help for Native Americans.

In response to these demands, Congress passed several laws, including the Indian Self-Determination and Education Assistance Act of 1975. The goal of this act was to allow Native American groups to control federally funded programs in their communities. In 1978 Congress passed the American Indian Religious Freedom Act, which declared that Native Americans have the same freedom of religion rights as other Americans.

**People with Disabilities** In 1990 Congress passed the Americans with Disabilities Act, which prohibited discrimination against people with disabilities. It also required that public buildings and transportation facilities be accessible to people with disabilities. As a result, wheelchair ramps, elevators, and other features are now common in public buildings. A court case in Alabama, *Wyatt v. Stickney* (2003), led to improved conditions for patients in state-run psychiatric facilities around the country.

**READING CHECK Summarizing** How were civil rights extended to groups besides African Americans?

## Affirmative Action

Thanks to the civil rights movement and the laws it generated, discrimination is illegal today, and victims of discrimination have tools to fight injustice in court. But is that enough? Because of past discrimination, women and members of racial and ethnic groups are still underrepresented in many areas and have many obstacles to overcome. These groups suffer from entrenched disadvantages caused by generations of discrimination and unequal access to education, employment, and social opportunities. For example, if a person's parents suffered from discrimination, he or she might not live in a good school district or be able to afford to go to a highly ranked university.

One policy that has attempted to address the effects of past discrimination is **affirmative action**—a policy that requires employers and institutions to provide opportunities for members of certain historically underrepresented groups. Supporters of affirmative action believe that government should not just ban discrimination; it should actively promote equality for members of racial and ethnic groups and women. Opponents argue that such efforts lead to special privileges for members of targeted groups and are unfair to whites.

**Early Affirmative Action Efforts** The federal government first began using affirmative action policies in the 1960s. These policies required businesses that contracted with the federal government and educational institutions that received federal funds to work to achieve more diverse workforces and student bodies.

In 1965 President Lyndon Johnson expanded that effort with Executive Order 11246, which declared that the government's policy was to “promote the full realization of equal employment opportunity through a positive, continuing program.” Under this order, contractors were required to “take affirmative action” in their employment practices. An

office in the Labor Department oversaw compliance with the order among large construction contractors. These employers were required to set goals and timetables for minority hiring.

By the late 1970s, however, affirmative action policies had become controversial. Some people charged that they were a form of **reverse discrimination**, or discrimination against the majority group. These people argued that giving preference to someone based on his or her race or sex was wrong, even if the intentions are good.



## Affirmative Action

**The Bakke Case** The first major challenge to affirmative action was *Regents of the University of California v. Bakke* (1978). Allan Bakke, a white student, was denied entry to the University of California–Davis Medical School. The school had a **quota**—a fixed number or percentage—of minorities needed to meet the requirements of an affirmative action program.

Under this quota, each year 16 of the 100 places in the medical school were held for nonwhite students who were admitted under a separate process. Bakke, who believed that he was highly qualified, was not able to compete for admission for those 16 places. He sued, arguing that he was being discriminated against solely because of his race.

## Major Supreme Court Rulings on Affirmative Action

**Ruling:** Race can be used as one factor in college admissions, but quota systems are unconstitutional.

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

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**Ruling:** Consideration of sex as a factor in promotions is acceptable.

**Case:** *Johnson v. Transportation Agency, Santa Clara County, California* (1987)

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**Ruling:** Affirmative action must be targeted at specific problems of past discrimination, not general discrimination by society as a whole.

**Case:** *Adarand Constructors, Inc. v. Peña* (1995)

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**Ruling:** Reaffirmed that race can be used as one factor in admissions, but overturned a system that awarded points to minorities.

**Case:** *Gratz v. Bollinger* and *Grutter v. Bollinger* (2003)

In its decision, the Supreme Court ruled in favor of Bakke and ordered the university to admit him. Although nonminorities held almost all of the other 84 admissions slots in the entering class, the Court decided that the strict quota system was invalid because it did not allow nonminorities to compete for any of the 16 places. However, a majority of the justices also held that race could be used as a factor in determining university admissions.

**The Michigan Cases** Some 25 years after the Bakke ruling, the Supreme Court again addressed the question of affirmative action in higher education. In 2003 the Court ruled on two Michigan cases—*Gratz v. Bollinger* and *Grutter v. Bollinger*.

Both Gratz and Grutter were white women who had applied to and been rejected by two different programs at the University of Michigan. Some minority applicants with lower test scores and grade point averages had been admitted, however. Both women sued, arguing that using race as a factor in admissions was discriminatory.

In its ruling, the Court overturned Gratz's rejection but upheld Grutter's. The difference was how race had been used in each case. In Gratz's case, the admissions policy awarded points to minorities based solely on the fact that they were minorities. This policy was mechanical and formulaic, so the Court rejected it because it was not carefully targeted to achieve the goal of diversity. In Grutter's case, however, there was no automatic award of points. Rather, race was just one factor taken into account in the admissions process.

**Ballot Measures** In addition to court rulings, several states have passed ballot measures restricting affirmative action policies. In 1996 California voters approved Proposition 209, the California Civil Rights Initiative. The measure amended the state constitution to forbid state and local agencies, including universities, from giving preferential treatment to any person or group based on race, color, ethnicity, or sex. The only exceptions are when the federal government requires affirmative action. Following California's lead, Washington and Michigan passed similar measures in 1998 and 2006, respectively.

**READING CHECK** **Summarizing** How have affirmative action policies changed over time?

SECTION

3

ASSESSMENT

 [hmhsocialstudies.com](http://hmhsocialstudies.com)  
ONLINE QUIZ

## Reviewing Ideas and Terms

- Identify** Which two key events in the **civil rights movement** took place in Alabama?
  - Predict** How do you think the civil rights movement and federal laws led to changes in American society and politics?
- Describe** What were three major civil rights laws or actions passed or taken in the 1960s, and what did each do?

**b. Evaluate** Why were the civil rights laws of the 1960s more effective in protecting people's rights than earlier legislation?

**3. a. Identify** Which groups besides African Americans benefited from the civil rights movement?

**b. Make Inferences** How did some groups use democratic principles to resolve issues relating to their civil rights?

**4. a. Define** Define each of the following terms: **affirmative action, reverse discrimination, quota.**

**b. Evaluate** In your opinion, when are affirmative action policies justified? When are they not justified?

## Critical Thinking

**5. Compare and Contrast** Copy the graphic organizer below and use it to compare three major federal civil rights laws and their effects. How were the laws similar and different?

1.	→	
2.	→	
3.	→	

## FOCUS ON WRITING



**6. Descriptive** Write two short paragraphs: one describing what society and discrimination laws were like before the civil rights movement, and one describing what they are like after the civil rights movement. Use the images in this section to add descriptive details to your paragraphs.

# Affirmative Action

*Should the government promote affirmative action to help address the effects of past discrimination?*



**Students at the University of Michigan debate affirmative action in the university's admissions policies.**

## THE ISSUE

Since 1965 federal law has required many public institutions and private companies to institute affirmative action policies to provide more opportunities for members of historically underrepresented groups, such

as racial minorities and women. Affirmative action policies vary widely, employing methods such as recruitment, quotas, and proportional representation. However, these policies have been controversial, drawing both praise and criticism. Although the Supreme Court has ruled on a number of affirmative action cases, it has overturned about as many policies as it has upheld.

## VIEWPOINTS

### **Government should promote affirmative action policies.**

Affirmative action was created to provide people with greater opportunity. Minority applicants are not selected solely on the basis of race. Affirmative action is not about choosing less-qualified applicants, but about giving all applicants a fair chance to succeed. President Lyndon B. Johnson once said, “You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, ‘you are free to compete with all the others,’ and still justly believe that you have been completely fair.”

Overall, white males remain at the top of the power structure and represent the majority in positions of power and in economic status. Accusations of

reverse discrimination are unfounded.

**Affirmative action is unfair, and government should not promote it.** Is a diverse workforce more important than a qualified workforce? By requiring private companies and state and local governments to follow affirmative action policies, the federal government is saying that a diverse workforce is more important. Employment or admissions decisions should be based solely on merit, not on race or gender. Giving minority or female applicants any kind of preferential treatment is a form of reverse discrimination. All applicants should be given equal consideration based on their individual merits and qualifications. Failure to do so results in exclusionary practices and goes against the very principles on which affirmative action supporters claim to stand.

**What Is Your Opinion?**

1. Is racial preference in employment or admissions practices equitable? Why or why not?
2. What are some ideas about how certain affirmative action programs could be revised?



SECTION  
4

# Citizenship and Immigration

## BEFORE YOU READ

### Main Idea

Being a U.S. citizen includes certain rights and responsibilities. The federal government regulates citizenship through its immigration and naturalization policies.

### Reading Focus

1. In what ways do people receive U.S. citizenship, and what civic responsibilities do citizens have?
2. What immigration policies has the federal government adopted in its history?
3. How has the federal

### Key Terms

jus soli  
jus sanguinis  
naturalization  
denaturalization  
expatriation  
undocumented  
alien  
deportation

government  
responded to the  
challenge of  
illegal  
immigration?



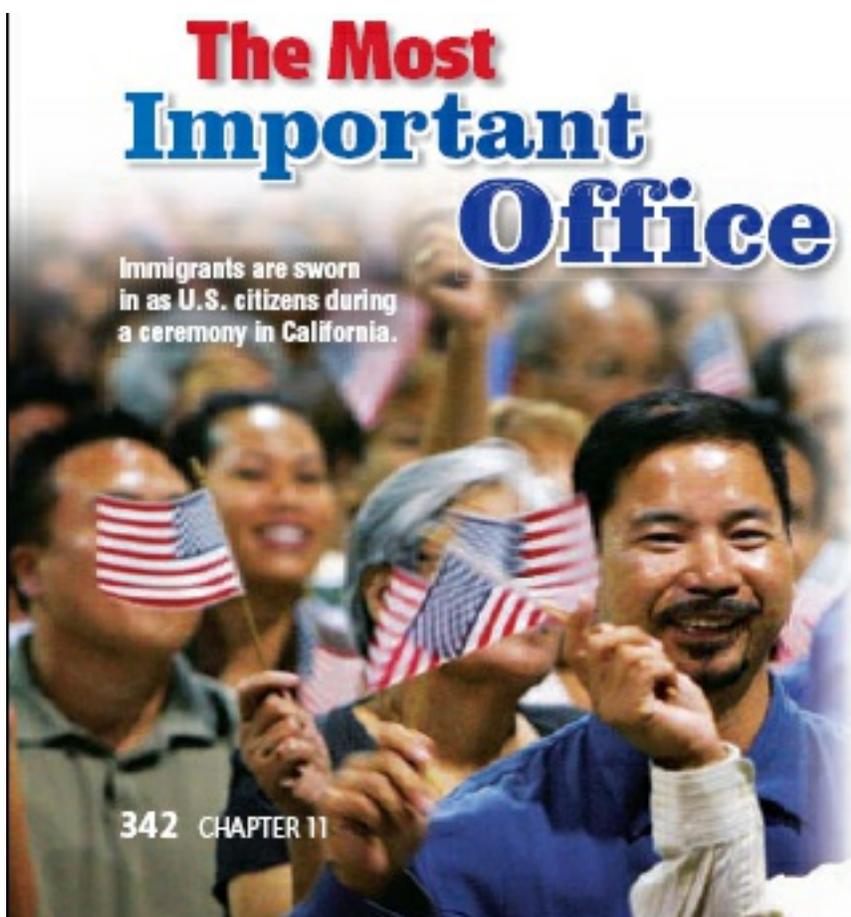
Use the graphic organizer online to take notes on American citizenship and immigration issues.

**WHY IT MATTERS** **U.S. Citizenship** Many Americans think only now and then about their citizenship—what it means, what rights and responsibilities it involves, and why it is so important. But for hundreds of thousands of immigrants who come to this country each year hoping to become Americans, citizenship is a vital matter.

Citizenship is the key to full membership in the American constitutional system. Only citizens, for example, have the right to vote and run for office. In addition, American citizens have duties and responsibilities. For example, they must obey the law, pay taxes, and be loyal to the government and its principles.

Our government draws its power from its citizens and works to protect their rights. That is why Supreme Court Justice Louis Brandeis called citizenship “the most important office” and added that “the only title in our democracy superior to that of President is the title of citizen.”

Some people who were born in the United States or have been citizens for a long time might take these rights and responsibilities for granted. But many newcomers are keenly aware of the meaning and importance of citizenship. As one new U.S. citizen said, “To be an American to me means to be free in my thinking, in my religious beliefs, and to be who I am.” It is a freedom and a responsibility that all Americans share. ■



## U.S. Citizenship

To fully participate in American democracy requires citizenship. Citizenship allows a person to participate in the political process at the national level, and at the state and local levels, too. That is because each U.S. citizen is also a citizen of the state and locality in which he or she lives. There are several ways to become a citizen.

**Citizenship by Birth** The vast majority of Americans become citizens by birth. People can become citizens by birth in two ways: by being born in the United States or a U.S. territory, or by being born on foreign soil to parents who are U.S. citizens.

Most people born in the United States or a U.S. territory automatically become U.S. citizens. This principle of citizenship by birthplace is known as **jus soli** (YOOS SOH-lee), a Latin phrase that means “law of the soil.” The Fourteenth Amendment affirms the principle of jus soli by stating that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” The main exception to jus soli is people who are born in the United States

but are not subject to U.S. control, such as the children of foreign diplomats.

The second way to become a citizen by birth is to be born on foreign soil to parents who are U.S. citizens. This principle of citizenship by parentage is known as **jus sanguinis** (YOOS SANG-gwuh-nuhs), a Latin phrase meaning “law of the blood.” However, there are many restrictions and rules on gaining citizenship in this way. Congress, applying its constitutional authority over the matter of citizenship, has spelled out these rules in the Immigration and Nationality Act.

**Citizenship by Naturalization** Another way to gain citizenship is by **naturalization**, the legal process by which an immigrant becomes a citizen. In general, naturalized citizens enjoy the same rights and privileges as native-born citizens. One major exception to this rule is that naturalized citizens cannot become president or vice president of the United States. Under the Constitution, those offices are reserved for “natural born” citizens only.

Naturalization typically begins after someone enters the country legally and meets certain requirements, including

- a period of continuous lawful residence and physical presence in the United States
- the ability to read, write, and speak English
- good moral character
- a belief in the principles of the U.S. Constitution
- a favorable disposition toward the United States

After meeting these and some other basic requirements, an applicant for citizenship must pass a citizenship exam administered by the government and take an oath of allegiance to the United States.

The U.S. government may also grant citizenship to an entire group of people through collective naturalization. For example, the Fourteenth

Amendment granted immediate citizenship to all African Americans. Collective naturalization has also been used when the United States gained new territories, such as the Louisiana Purchase, Texas, Hawaii, and Puerto Rico.

**Losing Citizenship** The loss of citizenship is rare, but some Americans do choose to give up their citizenship voluntarily. Only the federal government can take someone's citizenship away involuntarily, however. The Supreme Court has ruled that in most situations, the government cannot take someone's citizenship away because it would be cruel and unusual punishment. For example, people who illegally avoid military service or desert the military in wartime cannot lose their citizenship as a result.

There are several main ways that a person can lose his or her citizenship. First, a court can take citizenship away from someone who became a citizen through fraud. For example, if someone lies or provides false information during the naturalization process, he or she can lose citizenship through a process called **denaturalization**. Second, someone can lose citizenship by committing serious crimes against the U.S. government, such as treason. Third, citizenship can be lost if someone swears an oath of loyalty to, or serves in a high-level position in, another country's government or military. Fourth, one can voluntarily give up citizenship. The legal process of giving up one's citizenship is called **expatriation**. It usually happens if someone chooses to live in and vote in another country and to be a part of another country's government.



Review the list of criteria for naturalization today. Are there other or different criteria you think Congress should adopt? Explain.

**Responsible Citizenship** As you know, with citizenship comes rights. Ensuring rights for everyone, however, requires that all citizens live responsibly. Responsible citizenship involves living up to certain characteristics and fulfilling certain duties.

Responsible citizens exhibit certain characteristics. Those characteristics include trustworthiness and honesty, as well as courtesy, and respect for the rights of others. Additional characteristics of responsible citizens are: accountability, financial responsibility, self-reliance, respect for the law, and patriotism. A responsible citizen can exhibit any number of other characteristics, as well, but they will also exhibit, or at least strive to exhibit, each of those characteristics just mentioned. By living up to these characteristics, responsible citizens help ensure that society works well for everyone.

Responsible citizens are also bound by certain duties. Like all duties, the duties of responsible citizenship require action and effort. They may even require personal sacrifice to fulfill, but they are essential to maintaining the vitality of our democracy. Among the duties of responsible citizenship are: obeying the law, paying taxes, serving on juries, registering to vote, and voting. Other duties of responsible citizenship include: performing public service, keeping informed of current events, respecting the opinions of others, and practicing personal and fiscal responsibility.

**Civic Identity** A commitment to responsible citizenship is one of the features that unites Americans under a common civic identity. A devotion to key ideas such as patriotism, equality, popular sovereignty, and equal justice under the law are also part of our civic identity. Other shared civic values include support for individual rights and freedoms, and belief in limited and representative government.

**READING CHECK** **Identifying Supporting Details** What are the two main ways of achieving citizenship in the United States?

## **Immigration Policies**

Throughout our history, many people from other countries have come here to live and become citizens. This long history of immigration has

had a huge influence on American society and culture. The United States is often described as “a nation of immigrants.” Early in our history, there were few barriers to immigration, and it was generally encouraged. Over time, however, the government began to restrict immigration and to create national immigration policies.

**Encouraging Immigration** The federal government has the power to regulate immigration and to set immigration policies. This power is an inherent power that comes from a country’s right to control and protect its borders.

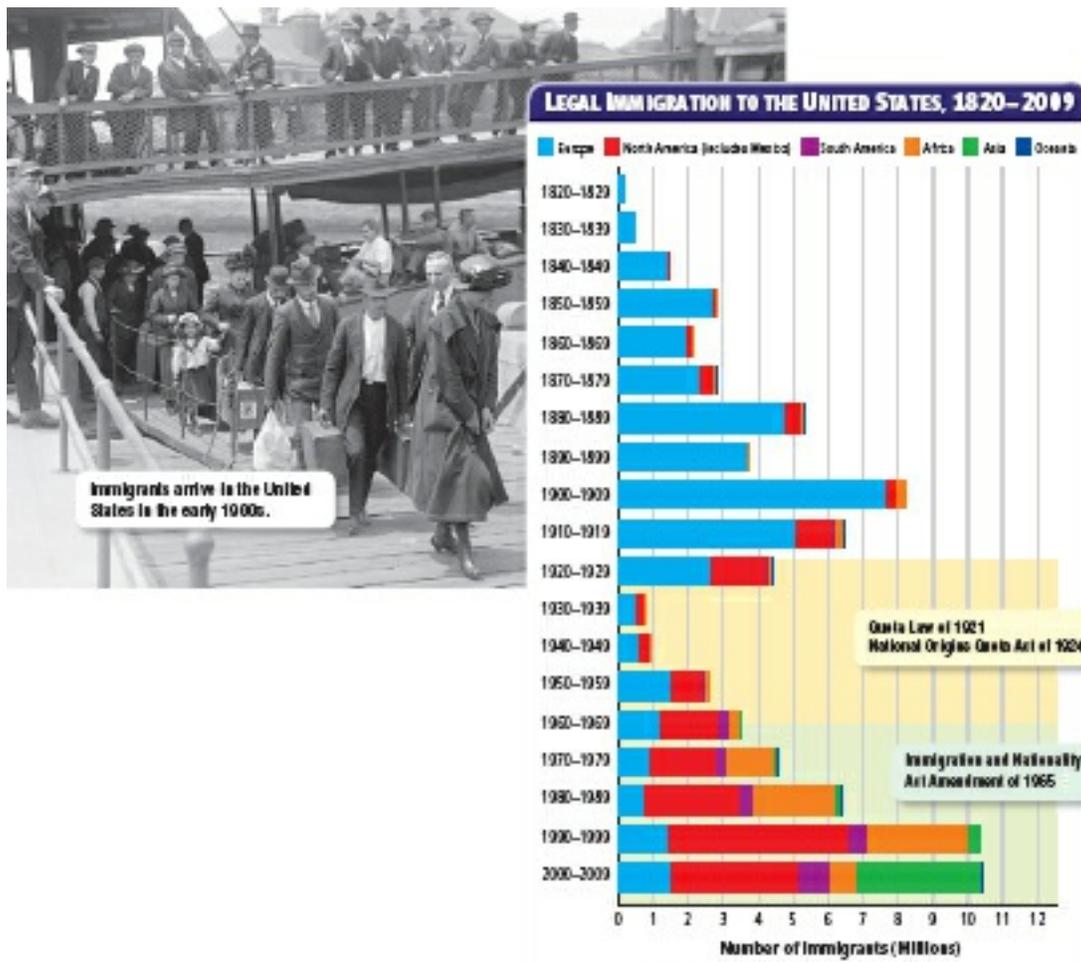
Despite this power, Congress did little to regulate immigration during the first 100 years of the country’s history. With abundant land and resources, immigration was generally encouraged. For example, the U.S.-Mexico border was quite open throughout the 1800s, and many workers and families moved back and forth across the border with little concern about whether or not they had the necessary papers. So many immigrants arrived in our early history that by 1870 about one in seven Americans had been born outside the country.

By the late 1800s however, the country’s population had grown dramatically. With less land available for settlers, tensions between some immigrants and native-born Americans increased. In addition, the major sources of immigration changed. Previously, most immigrants had come from northern and western Europe. By the late 1800s, most immigrants came from southern and eastern Europe. Differences in language and cultural traditions between these new immigrants and the country’s native-born population contributed to rising tensions.

**Restricting Immigration** In 1875 Congress enacted the first major restriction on immigration when it barred entry to criminals. Then, in 1882 Congress passed the Chinese Exclusion Act, effectively ending immigration from China for 10 years.

In the 1920s new laws began to restrict immigration even further. The Quota Law of 1921 and National Origins Quota Act of 1924 restricted immigration by country and established a total number of

immigrants allowed into the United States annually—165,000. Each European country was given an exact number of immigrants that could be admitted. The quotas were based on the national origin of the U.S. population in 1890. The largest group of residents at that time had ancestors from northern and western Europe, so Congress allowed more immigration from those regions.



**Skills Focus** INTERPRETING GRAPHS

How did immigration laws in the 1920s and 1950s change the source and number of legal immigrants to the United States?

The new laws also effectively banned immigration from Asia and Africa and placed heavy restrictions on immigration from Latin America. The result of these new restrictions was a major drop in immigration, because the countries in Europe with the highest quotas did not have enough people who wanted to emigrate to the United States.

The national quota system that was developed in the 1920s remained

in place until Congress passed the Immigration and Nationality Act Amendment of 1965. This law, inspired in part by the civil rights movement, did away with the country-based quota system that had favored immigration from Europe over that from non-European countries. Instead, the new law allowed 290,000 total immigrants annually without regard to national origin, with 120,000 from the Western Hemisphere and 170,000 from the Eastern Hemisphere. The law gave special preference to people with certain job skills and the relatives of U.S. citizens and legal residents.

The 1965 law led to a dramatic increase in immigration. In addition, the national origin of the majority of immigrants changed, as more immigrants arrived from Asia and Latin America. In 1990 the law was updated, and the total number of immigrants allowed was increased to about 675,000 annually.

**Political Asylum and Refugees** The federal government has separate immigration policies for refugees and people seeking political asylum, many of whom come fleeing wars or political persecution in their home country. The United States accepts far more refugees than any other country in the world. It accepted more than 50,000 in 2005.

**READING CHECK Sequencing** How has immigration policy in the United States changed over time?

## **Illegal Immigration**

In addition to legal immigration, many people enter the United States illegally each year. Illegal immigration has been one of the most difficult challenges facing the country. Despite attempts to solve the problem, undocumented immigrants continue to enter the country in large numbers.

**The Situation Today** An unauthorized immigrant, or **undocumented alien**, is someone living in a country without authorization from the government. No one knows exactly how many undocumented aliens there are in the United States, but in 2007 the number was estimated to be about 12 million. If caught, undocumented aliens are subject to **deportation**—the legal process of forcing a noncitizen to leave a country.

The majority of undocumented aliens are from Mexico and Latin America. Most come to work in low-paying jobs because these jobs pay more than many jobs in their home countries. Some undocumented aliens travel back home after working here for a few months at a time or send part of their earnings back to relatives in their home countries. Others try to stay permanently.

## Views on Illegal Immigration

Americans have many different views on how to solve the problem of illegal immigration. Some support increased border security, tougher penalties for employers that hire undocumented aliens, or improved law enforcement. Others support a path to citizenship for undocumented aliens who have been living and working in the country for years. In 2006, as Congress was debating the issue of immigration reform, hundreds of thousands of people marched in cities such as Los Angeles (below) in support of undocumented aliens. *Why do you think the issue of illegal immigration has been so difficult for the government to solve?*



About half of all unauthorized immigrants enter the United States by

crossing the U.S.-Mexico border. Most of the rest enter legally, such as with tourist or student visas but then stay after their visas have expired. Once they are here, undocumented aliens work in such industries as agriculture, construction, and domestic services. Although the federal government makes efforts to apprehend and deport these immigrants, it has been unable to keep track of most of them.

**The Debate over Illegal Immigration** The large number of undocumented aliens in the United States is a concern to many citizens. Some people are concerned that undocumented aliens take jobs away from U.S. citizens and are a drain on government services like schools and hospitals, especially in states such as California, Arizona, Texas, and Florida, where the number of undocumented aliens is high. Others state that it is simply wrong for people to enter this country illegally with the intention of staying permanently.

On the other hand, undocumented aliens and their supporters argue that most are hardworking people who are trying to build a better life for themselves and their families. They resent that undocumented aliens are sometimes viewed as criminals. In addition, they say that undocumented workers contribute to the U.S. economy by paying taxes, buying American goods and services, and filling low-paying jobs that most Americans choose not to do.

**Illegal Immigration Policies** In the early 1900s, the United States began efforts to patrol the nation's borders with an eye toward preventing illegal immigration. This effort eventually led to the creation of the Border Patrol in the 1920s.

In 1954 the Border Patrol took part in a large-scale effort to identify illegal immigrants from Mexico and deport them. The operation resulted in an estimated 1 million undocumented aliens being removed to Mexico. However, the operation also drew many complaints of discrimination against Mexican Americans who were also deported, and it was soon ended.

As illegal immigration continued to rise in later years, the federal

government adopted new policies. In 1986 Congress passed the Immigration Reform and Control Act. This law gave undocumented aliens a one-time amnesty, or general pardon from the government for people who have broken the law. The law also gave undocumented aliens a path to citizenship. An estimated 2.7 million people used this law to become citizens. Another major provision of the law made it illegal for employers to hire undocumented workers, in the hope that reducing job opportunities would decrease illegal immigration. These employer sanctions were rarely enforced, however.

Despite the 1986 law, illegal immigration continued to increase. The federal government responded with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This law increased the size of the Border Patrol, made it easier to deport undocumented aliens, and increased the penalties for smuggling people into the country.

The terrorist attacks of September 11, 2001, led to renewed demands for improved border security. Three of the hijackers had expired visas and were here illegally at the time of the attacks, and two others could have been denied admission to the country based on immigration laws. In yet another attempt to control the nation's borders, the Border Patrol was increased and began to conduct more patrols and deportations. Border security measures, such as fencing and barriers, also increased, especially in large border cities like San Diego and El Paso. In 2006 President George W. Bush ordered more than 6,000 National Guard troops to assist the Border Patrol.

Still, illegal immigration has continued, and despite prodding by the Bush administration, Congress has been unable to pass comprehensive immigration reform. Members of both parties are divided over issues such as whether to allow undocumented aliens to legalize their status or whether to create a guest worker program, as well as how to secure the borders.

## **ACADEMIC VOCABULARY**

**comprehensive** covering completely or broadly

**READING CHECK Summarizing** What policies has the federal government created to deal with illegal immigration?

## Reviewing Ideas and Terms

1. **a. Define** Define the following terms: **jus soli, jus sanguinis, naturalization, denaturalization, expatriation.**
  - b. Explain** What duties and responsibilities do citizens have, and why are they important?
  - c. Evaluate** What do you think about the Supreme Court's rulings that, in most cases, taking someone's citizenship away would be cruel and unusual punishment?
  
2. **a. Recall** When did the United States first make laws restricting immigration?
  - b. Analyze** How did the Immigration Act of 1965 change the nation's immigration policies and society?
  - c. Evaluate** How do you think national immigration policies affect local communities and states?
  
3. **a. Describe** What are some of the basic issues concerning illegal immigration today?
  - b. Rate** What policies toward illegal immigration has the U.S. government created, and why do you think these policies have failed to stop illegal immigration?

## Critical Thinking

4. **Analyze** Copy the chart below and use it to list three key facts

about both citizenship and immigration. Then explain how each fact affects people in the United States.

Citizenship	Immigration

## FOCUS ON WRITING



**5. Expository** The United States is becoming an increasingly diverse society. How might these changes affect our representative democracy? Write a short paper stating your opinion.

CONNECTING TO THE CONSTITUTION

*We the People*  
THE CITIZEN & THE CONSTITUTION

## Civic Participation

**Our system of government depends on the active participation of citizens. Citizens, after all, have the ultimate power and responsibility to govern. This lesson outlines the importance of civic participation in our constitutional democracy.**

**Why should Americans participate in the civic life of the country?**

America's constitutional democracy has often been called an experiment in self-government. Sovereignty resides with the people. How the people use their power directly affects the society in which they live and the vibrancy of their civic institutions. The people also determine which

problems they can solve for themselves and which problems require governmental responses.

Participation in civic life does more than address problems. Participation helps individuals become attached to their communities, regions, states, and the country as a whole. Such attachment is necessary for Americans to develop pride in their communities and country and to understand that they share a common destiny. For many people, civic engagement includes recommitting to the ideals they have set for themselves and understanding how those ideals relate to the fundamental principles of American constitutional democracy.

Those who participate actively in civic life are more likely to vote. They also are more likely to become well-informed voters.



**How is civic participation connected to self-interest?** Many Americans engage in civic activities and vote because they realize it is in their self-interest to do so. Business people, for example, serve on local boards and commissions or run for county commission or city council because they know that healthy communities are good for business. Parents volunteer their time to create and maintain parks because they want safe places for their children to play. Homeowners join neighborhood associations because they care about the value of their property.

Civic engagement has other personal benefits, including:

- acquiring skills, such as organizing groups, speaking and debating in public, and writing letters
- becoming more self-confident
- learning how to affect decisions
- building a reputation as an important member of the community
- making new friends
- developing important contacts



Self-interest is not necessarily a narrow concept. French noble and historian Alexis de Tocqueville (1805–1859) observed that Americans often demonstrate “enlightened” self-interest as well as narrow self-interest. Many Americans sacrifice time, money, and effort to strengthen their communities and their country because they realize that the good of the whole benefits them as individuals.

### **How is civic participation related to advancing the common good?**

Working with others in civic activities frequently makes people aware of other perspectives and leads to a concern for the common good. Commitment to the common good is a central feature of classical republicanism. Concern for the common good requires individuals to see themselves as part of a larger whole and to modify their behavior to serve the needs of the whole.

Civic participation is one of the ways Americans strengthen the network

of interdependence and contribute to the common good. Sometimes acting on behalf of the common good simply requires providing opportunities for others to have a voice in their community. At other times acting on behalf of the common good requires a more significant action, such as voting to increase taxes even though one receives no direct personal benefit from the increase.

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### Reviewing Ideas

1. **Describe** How can civic participation help develop life skills?
2. **Explain** What is the difference between narrow self-interest and enlightened self-interest?

### Critical Thinking

3. **Develop** Imagine that you were asked to speak to a group of citizens about the importance of civic participation. Write a short paragraph outlining three main reasons why citizens should participate in the civic life of their communities.

## Connecting Online

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### Quiz and Review

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Examine key concepts in this chapter.

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#### Activities

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## Comprehension and Critical Thinking

### Section 1

- 1. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: discrimination, prejudice, racism.
- b. Compare and Contrast** How has the ideal of civil rights compared to the reality of civil rights in United States history?
- c. Evaluate** What factors do you think explain why only certain groups have endured widespread discrimination in U.S. history?

### Section 2

- 2. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: equal protection clause, suspect classification, de jure segregation, de facto segregation.
- b. Summarize** What major civil rights laws were passed during

Reconstruction, and what effects did they have?

**c. Evaluate** In your view, what was the most significant aspect of the Court's ruling in the *Brown* decision?

### Section 3

**3. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: civil rights movement, civil disobedience, affirmative action, reverse discrimination.

**b. Analyze** How might the Civil Rights Act of 1964 be viewed as a crowning achievement of the civil rights movement?

**c. Elaborate** How do you think supporters of affirmative action would justify reverse discrimination?

### Section 4

**4. a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: jus soli, jus sanguinis, naturalization, undocumented alien, deportation.

**b. Explain** What factors caused the United States to begin to change its immigration policies in the late 1800s?

**c. Elaborate** What are three factors that make illegal immigration such a difficult issue to solve?

### Critical Reading

*Read the passage in Section 2 that begins with the heading "The Equal Protection Clause." Then answer the questions that follow.*

**5.** Why was the equal protection clause targeted at the states?

**A** States were not upholding rights guaranteed by the Bill of Rights.

**B** States refused to recognize the equal status of women.

**C** States were discriminating against newly freed slaves.

**D** States applied the strict scrutiny test to all claims of discrimination.

**6.** Why has the equal protection clause been a vital tool in the fight for civil rights?

**A** because the Supreme Court has interpreted it to require the fair treatment of all groups

**B** because it was so effective at protecting the civil rights of newly freed slaves

**C** because it requires that people be equal in all respects

**D** because it helped overturn the Fourteenth Amendment

## RESPONSIBILITIES OF LEADERSHIP



7. One of the most basic civil rights, and a duty of citizenship, is **voting**. Find out what steps you would need to take to register to vote in your community, including the location of your polling place. Then gather information about the next election. What issues or candidates will be on the ballot? Share the information you gather with the class.

8. Identify and research a **civil rights issue** discussed in this chapter—for example, illegal discrimination. Locate and analyze primary and secondary sources that support an argument on this issue. Evaluate these sources and use them to construct and support your own persuasive argument on the issue.

## CONNECTING TO THE CONSTITUTION

9. Take the activity above a step further. Students in your school may be eligible to register to vote. As a service learning project, work with your school to organize a voter registration drive. Contact your local chapter of the League of Women Voters for help in organizing and publicizing the event. Reflect upon the experience by writing an article for your school or local newspaper on the outcome of the drive. What constitutional principles does a voter registration drive endorse?

10. Pericles was an Athenian statesman who helped develop democracy in ancient Greece. Pericles once said “We ... do not call

a man who takes no part in public life quiet or unambitious; we call such a man useless.” Do you agree or disagree with this statement? Write a short letter to Pericles explaining why you agree or disagree.

**ANALYZING PRIMARY SOURCES**

**Photograph** This photograph was taken in 1968 in Memphis, Tennessee. In the photo, striking sanitation workers are blocked from a demonstration route by members of the National Guard.



11. **Analyzing** Why do you think the protesters are wearing signs that say “I Am a Man”?

12. **Drawing Conclusions** What about this photograph symbolizes the struggle for civil rights?

## FOCUS ON WRITING



**Expository Writing** *Expository writing gives information, explains why or how, or defines a process. To practice expository writing, complete the assignment below.*

### Writing Topic: Civil Rights and the Law

**13. Assignment** Based on what you have read in this chapter, write a paragraph that explains how the struggle for civil rights in U.S. history has been tied to the law and to attempts to change the law.