STATE AND FEDERAL CONSTITUTIONS

Lumen

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CHAPTER OVERVIEW

1: Introducing Government in America

1.1: Introducing Government in America

Objectives

1. Describe the key functions of government and explain why they matter.
2. Define the various aspects of politics.
3. Assess how citizens can have an impact on public policy and how policies can impact people.
4. List the key principles of democracy, theories regarding how it works in practice, and challenges it faces today.
5. Explain the debate in America over the proper scope of government Citizen Engagement.

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Read

- American Government Chapter 1
- Supplemental Reading: Review The Arizona Constitution; Sections 1 and 2

Chapter Summary

Politics and government matter – that is the single most important message of the text. Despite the fact that government substantially affects each of our lives, youth today are especially apathetic about politics and government. Whether because they feel they can't make a difference, the political system is corrupt, or they just don't care, young Americans are clearly apathetic about public affairs. And while political apathy isn't restricted to young people, a tremendous gap has opened up between the young (defined as under age 25) and the elderly (defined as over 65) on measures of political interest, knowledge, and participation. The goal of the text is to assist students in becoming well-informed citizens by providing information and developing critical analytical skills.

Government in Politics

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

Throughout, American Government two fundamental questions about governing serve as themes: How should we govern? What should government do? The chapters that follow acquaint students with the history of American democracy and ask important questions about the current state of democracy in the United States.

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

The Policymaking System

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

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

Three policymaking institutions —Congress, the presidency, and the courts—stand at the core of the political system. They make policies concerning some of the issues on the policy agenda. Translating people's desires into public policy is crucial to the workings of democracy.

Public policy is a choice that government makes in response to some issue on its agenda. Public policy includes all of the decisions and non-decisions of government: policymakers can establish a policy by doing something or by doing nothing, as can be seen in the government's original response of "inaction" to the AIDS crisis.

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

Democracy

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

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

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

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

Regardless of which theory is most convincing, there are a number of continuing challenges to democracy: increased technical expertise, limited participation in government, escalating campaign costs, and diverse political interests. Traditional democratic theory holds that ordinary citizens have the good sense to reach political judgments and that government has the capacity to act upon those judgments. However, it has become increasingly difficult to make knowledgeable decisions as human knowledge has expanded. There is evidence that Americans actually know very little about policy decisions or about who their leaders are.Today, the elite are likely to be those who command knowledge—the experts.

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

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

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

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

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

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

Common Goods

The text discusses the basics of goods that are distributed in the united states. In Fig. 1.3 these goods are further defined in four categories. The four basic political influences put on these goods is outlined demonstrating the complexity of the relationship between goods and services and governance. This complexity has only increased over time, and puts significant pressure on both the US and Arizona Constitution.

Citizen Engagement

The text asks the question if fewer people are engaged in American Politics. This idea of engagement includes many behaviors from citizens voting regularly to participating in a political movement. The overall assertion is that citizen engagement is in the decline, but students should remember that this is an assertion that requires study to decide if you agree or not to the assertion.

Assignments

Discussion

The role of community college students and citizen engagement is clearly a focus of study in the first chapter of the text. What concrete steps should the college take to advocate for citizen engagement? What are the advantages and disadvantages of the college taking a stance on this important issue?

In the next ten years which type of goods outlined in figure 1.3 is the most important to our federal government? Which is the most important to our state government?

Select the **Module 1 Discussion** link to post your response to the topic.

Quiz

- Module 1 Quiz

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1.2: Discussion- Government in America

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CHAPTER OVERVIEW

2: The Constitution

2.1: The Constitution

Objectives

1. Explain the ideas behind the American Revolution and how these ideas shaped the Constitution.
2. Identify the causes of the failure of the Articles of Confederation.
3. Describe the delegates to the Constitutional Convention and the core ideas they shared.
4. Identify three types of issues the delegates to the Constitutional Convention confronted and how the Constitution resolved these issues.
5. Explain the Madisonian system and how it addressed the dilemma of reconciling majority rule with the protection of minority interests.
6. Contrast the Federalists and Anti-Federalists in terms of their background and their positions regarding government.
7. Explain the various routes to formal amendment of the Constitution and how the Constitution changes informally.
8. Explain whether the Constitution establishes a majoritarian democracy and how it limits the scope of government

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Read

- American Government Chapter 2
- Supplemental Reading: US Constitution Preamble
- Supplemental Reading: AZ Constitution Preamble

Chapter Summary

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

The Origins of the Constitution

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

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

American political leaders were profoundly influenced by the writings of John Locke, especially The Second Treatise of Civil Government (1689). The foundation of Locke's philosophy was a belief in natural rights: before governments arise, people exist in a state of nature where they are governed only by the laws of nature. Natural law brings natural rights, including life, liberty, and property. According to Locke, the sole purpose of government was to protect natural rights. Government must be built on the consent of the governed, and it should be a limited government. In particular, governments must provide laws so that people know, in advance, whether or not their acts will be acceptable; government cannot take any person's property without his or her consent.

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

The American Revolution itself was essentially a conservative movement that did not drastically alter the colonists' way of life. Its primary goal was to restore rights that the colonists felt were already theirs as British subjects. They did not feel a need for great

social, economic, or political changes. As a result, the Revolution did not create class conflicts that would cause cleavages in society.

The Government That Failed: 1776–1787

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

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

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

Making a Constitution: The Philadelphia Convention

The delegates who were sent to Philadelphia were instructed to meet, "for the sole and express purpose of revising the Articles of Confederation." However, amendment of the Articles required unanimous consent of the states, so the delegates ignored their instructions and began writing a new constitution. Although the men held very different views, they agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government. James Madison of Virginia (who is often called "the father of the Constitution") was perhaps the most influential member of the convention in translating political philosophy into governmental architecture.

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

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

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

Critical Issues at the Convention

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

The delegates resolved the conflict over representation for the states with the Connecticut Compromise, under which a bicameral legislature would have equal representation for the states in the Senate and representation based on population in the House of Representatives. Although the Connecticut Compromise was intended to maximize equality among the states, it actually gives

more power to states with small populations since it is the Senate that ratifies treaties, confirms presidential nominations, and hears trials of impeachment.

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

The delegates dodged the issue of political equality. A few delegates favored universal manhood suffrage, while others wanted to place property qualifications on the right to vote. Ultimately, they left the issue to the states. Economic issues were high on the policy agenda. The writers of the Constitution charged that the economy was in disarray. Virtually all of them thought a strong national government was needed to bring economic stability to the chaotic union of states that existed under the Articles of Confederation. The delegates made sure that the Constitution clearly spelled out the economic powers of the legislature. Consistent with the general allocation of power in the Constitution, Congress was to be the primary economic policymaker.

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

The Madisonian System

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

Madison and his colleagues feared both majority and minority factions. To thwart tyranny by the majority, Madison believed it was essential to keep most of the government beyond their power. Under Madison's plan, voters' electoral influence was limited and mostly indirect. Only the House of Representatives was to be directly elected. Senators were to be elected by state legislatures (modified by the 17th Amendment in 1913), presidents were to be indirectly elected by an electoral college, and judges were to be nominated by the president.

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

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

Ratifying the Constitution

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

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

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

Changing the Constitution

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

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

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

The Constitution continues to change due to judicial interpretation, changing political practice, technology, and the increasing demands on policymakers. Due to the recent “War on Terror,” power has informally shifted marginally to the executive, as is often the case when the country focuses on national security concerns. This represents informal constitutional change, and may be eventually reversed by Congress, as is often the case.

Understanding the Constitution

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

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

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

Assignments

Discussion

While there are great benefits to a written constitution, there are also significant problems. The words and ideas in the Constitution must have relevance and meaning for generations and realities that are difficult to imagine. The evolution of technologies and new knowledge make this challenge even more complex.

We only have to look at our U.S. Constitution to see where language has two forms of relevance: The first is what is specifically stated. This is the *Constructionist* point of view. The second approach is to intelligently determine what was on their minds as it would be applied to an unforeseen circumstance. This is the *Activist* point of view.

Our history is full of political turmoil as people rarely agree on the correct point of view one should take. After the events of September 11th, 2001, for example, new challenges emerged that were not envisioned by the writers of our constitution. While war was not recently invented, the Web as a battlefront is. Consequently, the U.S. Department of Homeland Security has identified the Web as a genuine area of concern and has needed to use an Activist Approach, to gain authority to secure the Internet.

Outline how technological developments have informally changed the Constitution up until now. In the future, what further changes do you anticipate and why?

Select the **Module 2 Discussion** link to post your response to the topic.

Quiz

- Module 2 Quiz

Written Assignments

Begin working on:

- Constitutional Design Assignment
- Research Paper Assignment

See **Course Information** in the Syllabus module or the Assignments tool for descriptions and requirements of these assignments.

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2.2: Discussion

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CHAPTER OVERVIEW

3: Federalism

3.1: Federalism

Objectives

1. Define federalism and explain its consequences for American politics and policy.
2. Outline what the Constitution says about division of power between national and state governments and states' obligations to each other, and trace the increasing importance of the national government.
3. Characterize the shift from dual to cooperative federalism and the role of fiscal federalism in intergovernmental relations today
4. Assess the impact of federalism on democratic government and the scope of government.

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Read

- American Government Chapter 3
- Supplemental Reading: US Constitution, 10th Amendment
- Supplemental Reading: US Constitution, Article IV
- Supplemental Reading: AZ Constitution, Article VIII

Chapter Summary

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

Defining Federalism

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

Federalism is not the typical way by which nations organize their governments; there are only 11 countries with federal systems. Figure 3.2 of the text outlines the three most commonly seen government organizations. Most governments in the world today are **unitary governments,** in which *all power resides in the central government*. Although American government operates under a federal system at the national level, the *states are unitary governments* with respect to their local governments. In the United States, local governments are legally *"creatures of the states"*: They are created by the states and can be changed (or even abolished) by the states.

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

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

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

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

The Constitutional Basis of Federalism

The Constitution does not refer directly to federalism, and little was said about it at the Constitutional Convention. However, the framers carefully defined the powers of state and national governments. The framers also dealt with a question that still evokes debate: Which level of government should prevail in a dispute between the states and the national government? Advocates of strong national powers generally emphasize the **supremacy clause.** In *Article VI* (the "supremacy clause"), three items are listed as *the supreme law of the land*: the Constitution; laws of the national government (when consistent with the Constitution); and treaties. However, the national government can only operate *within its appropriate sphere* and cannot usurp powers of the states. By contrast, advocates of states' rights believe that the **10th Amendment** means that the national government has only those powers *specifically assigned* by the Constitution.

In *United States v. Darby* (1941), the Supreme Court called the 10th Amendment a *"constitutional truism"* (an assertion only that the states have independent powers of their own and not a statement that their powers are supreme over those of the national government). In 1976, the Court appeared to backtrack on this ruling in favor of national government supremacy (*National League of Cities* v. *Usery*), and then still later overturned the 1976 decision (*Garcia v. San Antonio Metro*, 1985).

Federal courts can order states to obey the Constitution or federal laws and treaties. However, in deference to the states, the *11th Amendment* prohibits individual damage suits against state officials (such as a suit against a police officer for violating one's rights) and protects state governments from being sued against their consent by private parties in federal courts or in state courts or before federal administrative agencies.

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

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

The **Civil War** was a struggle over slavery, but it was also (and perhaps more importantly) a struggle between states and the national government. A century later, conflict erupted once again over states' rights and national power. In ***Brown v. Board of Education*** (1954), the Supreme Court held that school segregation was unconstitutional. Southern politicians responded with **"massive resistance"** to the decision. Throughout the 1960s the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs.

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

Intergovernmental Relations Today

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

One way to understand the changes in American federalism is to contrast dual federalism with cooperative federalism. Before the national government began to assume a position of dominance, the American system leaned toward **dual federalism,** a system under which states and the national government each remain *supreme within their own spheres*. The analogy of **layer cake**

federalism is often used to describe dual federalism because the powers and policy assignments of the layers of government are distinct (as in a layer cake), and proponents of dual federalism believe that the powers of the national government should be interpreted narrowly.

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

Ronald Reagan believed that most policy responsibilities should be left to the states. Reagan opposed federal spending on domestic policies and reduced grants to the state and local governments. When Republicans won Congress in 1994 they placed an emphasis on **devolution,** the transfer of responsibility for policies from the federal government to state and local governments. However, since the mid-1990s Republicans have adopted a pragmatic approach to federalism to accomplish their goals. Several Republican policies now attempt to restrict state power. Americans tend to embrace a pragmatic view of governmental responsibility.

Fiscal federalism involves the pattern of spending, taxing, and providing grants in the federal system. **Grants-in-aid** are the main instrument the national government uses to both aid and influence states and localities. Federal aid amounted to about $640 billion in 2015. **Categorical grants** can be used only for *specific purposes* (or ***categories***) of state and local spending. State and local agencies can obtain categorical grants only by meeting certain qualifications and by applying for the grants. Much federal regulation is accomplished by "strings" that are attached to categorical grants, such as nondiscrimination provisions. The most common type of categorical grant is a **project grant,** awarded on the basis of *competitive applications*. **Formula grants** are distributed according to a formula based on factors such as population, per capita income, and percentage of rural population.

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

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

Understanding Federalism

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

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

While the national government has grown in scope relative to state governments, it has not done so at the expense of state governments. The latter continue to carry out all the functions they have typically performed. The national government has instead grown as it has taken on new responsibilities viewed as important by the public. The ideas of the federal government and the State of Arizona have not always been a harmonious one. At the inception of the Arizona Constitution, there was controversy concerning

the recall of judges. This aspect of the constitution prompted President Taft to veto the first draft of the Arizona Constitution that was presented to him. The federal government does not have recall elections (many states do), but President Taft felt this broad a use of the recall made Arizona depart too much from the federal model. Since the recall of judges was taken out of the second draft that President Taft then accepted only to have it placed back into the Arizona Constitution by a referendum (also not in the US Constitution) shows us that federalism is a highly complex way to organize government.

Assignments

Discussion

How much variation in state level policies – such as that in the area of criminal justice policy – should we be willing to tolerate? Is it an advantage or disadvantage, for example, that 36 states in the Union permit the death penalty for first-degree murder, while 14 states permit a maximum penalty of life in prison?

Select the **Module 3 Discussion** link to post your response to the topic.

Quiz

- Module 3 Quiz

Written Assignments

Continue working on:

- Constitutional Design Assignment
- Research Paper Assignment

See **Course Information** in the Syllabus module or the *A*ssignments tool for descriptions and requirements of these assignments.

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3.2: Discussion- Federalism

How much variation in state level policies – such as that in the area of criminal justice policy – should we be willing to tolerate? Is it an advantage or disadvantage, for example, that 36 states in the Union permit the death penalty for first-degree murder, while 14 states permit a maximum penalty of life in prison?

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CHAPTER OVERVIEW

4: Civil Liberties And Public Policy

4.1: Civil Liberties And Public Policy

Objectives

1. Trace the process by which the Bill of Rights has been applied to the states.
2. Distinguish the two types of religious rights protected by the 1st Amendment and determine the boundaries of those rights.
3. Differentiate the rights of free expression protected by the 1st Amendment and determine the boundaries of those rights.
4. Describe the rights to assemble and associate protected by the 1st Amendment and their limitations.
5. Describe the right to bear arms protected by the 2nd Amendment and its limitations.
6. Characterize defendants' rights and identify issues that arise in their implementation.
7. Outline the evolution of a right to privacy and its application to the issue of abortion.
8. Assess how civil liberties affect democratic government and how they both limit and expand the scope of government.

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Read

- American Government Chapter 4
- Supplemental Reading: US Constitution, Amendments 1 through 9

Chapter Summary

Civil liberties are individual legal and constitutional *protections against the government*. While the Constitution did not address a wide array of civil liberties, there were protections including prohibitions of "bill of attainer", "ex post facto" and "habeas corpus". A much broader enunciation of Americans' civil liberties are established in the Bill of Rights, the courts determine what the Constitution actually means through the cases they decide. Disputes about civil liberties are frequent because the issues involved are complex and divisive.

The Bill of Rights — Then and Now

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

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

The Bill of Rights was written to *restrict the powers of the new central government*. The 1st Amendment establishes the four great liberties: freedom of the press, of speech, of religion, and of assembly. What happens, however, if a state passes a law violating one of the rights protected by the federal Bill of Rights and the state's constitution does not prohibit this abridgment of freedom? In ***Barron v. Baltimore*** (1833), the Supreme Court ruled that the Bill of Rights restrained *only* the national government and not states and cities. It was not until 1925 that the Court relied on the **14th Amendment** to find that a state government must respect some 1st Amendment rights (***Gitlow v. New York***). In *Gitlow*, the Court announced that freedoms of speech and press *"were fundamental personal rights and liberties protected by the due process clause of the 14th Amendment from impairment by the states."*

The Supreme Court gradually applied most of the Bill of Rights to the states, particularly during the era of Chief Justice Earl Warren in the 1960s, developing the concept of the incorporation doctrine. At the present time, only the 2nd, 3rd, and 7th Amendments and the grand jury requirement of the 5th Amendment have not been applied specifically to the states. Not everyone agrees that the 14th Amendment incorporated parts of the Bill of Rights into state laws; in 1985, Edwin Meese (then attorney general) strongly criticized *Gitlow* and called for "disincorporation" of the Bill of Rights.

Freedom of Religion

The **1st Amendment** makes two basic statements about religion and government, commonly referred to as the **establishment clause** and the **free exercise clause.** Sometimes these freedoms conflict, but cases involving these clauses usually raise different kinds of conflicts.

Some nations, like Great Britain, have an *established church* that is officially supported by the government. A few American colonies had official churches, but the religious persecutions that incited many colonists to move to America discouraged any desire for the First Congress to establish a national church in the United States. Debate still continues over what else the First Congress may have intended for the establishment clause. Some people believe that the establishment clause meant only that the government could not favor one religion over another. Thomas Jefferson argued that the 1st Amendment created a **"wall of separation"** between church and state that forbade any support for religion at all.

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

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

Conservative religious groups have had an impact on the political agenda. They devoted much of their time and energies in recent years to the issues of *school prayer and creation science*, and while they lost some battles (such as the battle over teaching *creation science* in the public schools), they have won others (for example, the Court decision that religious scenes could be set up on public property). Thus, in 1992, the Court ruled that a school-sponsored prayer at a public school graduation violated the constitutional separation of church and state. In 2000, the Court held that student-led prayer at football games was also unconstitutional.

The guarantee of *free exercise* of religion is also more complicated than it appears at first glance. The free exercise of religious beliefs sometimes clashes with society's other values and laws. The Supreme Court has consistently maintained that people have an absolute right to *believe* what they want, but the courts have been more cautious about the right to *practice* a belief.

Freedom of Expression

The courts have frequently wrestled with the question of whether **freedom of expression** (like **freedom of conscience**) is an **absolute.** The courts have often ruled that there are instances when speech needs to be controlled, especially when the 1st Amendment conflicts with other rights. In their attempts to draw the line separating *permissible from impermissible speech*, judges have had to *balance* freedom of expression against competing values like public order, national security, and the right to a fair trial.

The courts have also had to decide what kinds of activities constitute *speech* (or press) within the meaning of the 1st Amendment. Certain forms of *nonverbal communication* (like picketing) are considered **symbolic speech** and are protected under the 1st Amendment. Other forms of expression are considered to be *action* and are not protected. The Court has generally struck down **prior restraint** of speech and press (censorship that prevents publication), although the writer or speaker could be punished for violating a law or someone's rights *after* publication (***Near v. Minnesota***, 1931).

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

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

Efforts to define **obscenity** have perplexed the courts for years. Although the Supreme Court has held that, *"obscenity is not within the area of constitutionally protected speech or press"* (***Roth v. United States,*** 1957), it has proven difficult to determine what is legally obscene. The Court tried to clarify its doctrine by spelling out what could be classified as obscene and thus outside 1st Amendment protection in the 1973 case of ***Miller v. California***. Then, Chief Justice Warren Burger wrote that materials were obscene if, taken as a whole, they appealed "to a prurient interest in sex"; that they showed "patently offensive" sexual conduct that was specifically defined by an obscenity law; and that, taken as a whole, they lacked "serious literary, artistic, political, or scientific value."

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

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

Libel and **slander** also raise *freedom of expression* issues that involve *competing values*. If public debate is not free, there can be no *democracy*. Conversely, some reputations will be unfairly damaged in the process if there are not limitations. Libel (the publication of statements known to be false that tend to damage a person's reputation) and slander (spoken defamation) are not protected by the 1st Amendment, but the Court has held that statements about **public figures** are libelous only if made with *malice* and *reckless disregard* for the truth (***New York Times v. Sullivan,*** 1964). The right to criticize the government (which the Supreme Court termed "the central meaning of the 1st Amendment") is not libel or slander.

Wearing an armband, burning a flag, and marching in a parade are examples of **symbolic speech:** actions that do not consist of speaking or writing but that express an opinion. When Gregory Johnson set a flag on fire at the 1984 Republican National Convention in Dallas to protest nuclear arms buildup, the Supreme Court decided that the state law prohibiting flag desecration violated the 1st Amendment (***Texas v. Johnson,*** 1989).

Commercial Speech

Commercial speech (such as advertising) is more restricted than are expressions of opinion on religious, political, or other matters. Similarly, radio and television stations are subject to more restrictions than the print media (justified by the fact that only a limited number of broadcast frequencies are available). The Federal Trade Commission (FTC) decides what kinds of goods may be advertised on radio and television and regulates the content of such advertising. The FTC attempts to ensure that advertisers do no make false claims for their products, but "truth" in advertising does not prevent misleading promises. Nevertheless, commercial speech on the airwaves is regulated in ways that would clearly be impossible in the political or religious realm.

The Federal Communications Commission (FCC) regulates the content, nature, and very existence of radio and television broadcasting. Although newspapers do not need licenses, radio and television stations do. The state of Florida passed a law requiring newspapers in the state to provide space for political candidates to reply to newspaper criticisms. The Supreme Court, without hesitation, voided this law (***Miami Herald Publishing Company v. Tornillo,*** 1974). Earlier, in ***Red Lion Broadcasting Company v. Federal Communications Commission*** (1969), the Court upheld similar restrictions on radio and television stations, reasoning that such laws were justified because only a limited number of broadcast frequencies were available.

Freedom of Assembly

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

Right to Bear Arms

Gun control has been very controversial. Many national, state, and local laws have been passed to regulate firearms. The National Rifle Association has invested millions of dollars to fight gun control. Surprisingly, the Supreme Court has rarely dealt with the issue. In 2008, the Supreme Court ruled in *District of Columbia that the 2nd Amendment protects an individual right to possess a*

firearm unconnected with service in a militia. In 2010 in McDonald v. Chicago, the Court extended the 2nd Amendment's limits on restricting an individual's right to bear arms to state and local gun control laws. Despite this ruling, the 2nd Amendment is not unlimited. Regulations such as restrictions on concealed weapons, limiting possession by felons and the mentally ill, forbidding firearms in certain areas, and restricting use are permitted.

Defendants' Rights

The 1st Amendment guarantees the freedoms of religion, speech, press, and assembly. Most of the remaining rights in the Bill of Rights concern the rights of people accused of crimes. These rights were originally intended to protect the accused in *political* arrests and trials. Today, the protections in the 4th, 5th, 6th, and 8th Amendments are primarily applied in criminal justice cases. Moreover, the Supreme Court's decisions have *extended most provisions of the Bill of Rights to the states* as part of the *general process of incorporation.*

The Bill of Rights covers every stage of the criminal justice system. The **4th Amendment** is quite specific in forbidding **unreasonable searches and seizures.** No court may issue a **search warrant** unless **probable cause** exists to believe that a crime has occurred or is about to occur, and warrants must describe the area to be searched and the material sought in the search. Since 1914, the courts have used the **exclusionary rule** to prevent illegally seized evidence from being introduced in federal courts. In 1961, the Supreme Court incorporated the exclusionary rule within the rights that restrict the states as well as the federal government (***Mapp v. Ohio***).

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

Under the **5th Amendment** prohibition against forced **self-incrimination,** suspects cannot be compelled to provide evidence that can be used against them. The burden of proof rests on the police and the prosecutors, not the defendant. ***Miranda v. Arizona*** (1966) set guidelines for police questioning of suspects, whereby suspects must be informed of their constitutional rights. The more conservative Rehnquist Court made some *exceptions* to the *Miranda* rulings, but the Court made clear its continued support for the Miranda ruling in ***Dickerson v. U.S.*** (2000).

Although the **6th Amendment** has always ensured the **right to counsel** in *federal courts*, this right was not incorporated to state courts until recently. In 1932, the Supreme Court ordered states to provide an attorney for indigent defendants accused of a *capital crime* (***Powell v. Alabama***), and in 1963, the Court extended the same right to everyone accused of a *felony* (***Gideon v. Wainwright***). The Court later ruled that a lawyer must be provided for the accused *whenever imprisonment could be imposed* (***Argersinger v. Hamlin***, 1972). The 6th Amendment also ensures the right to a **speedy trial** and an **impartial jury**, but most cases are settled through **plea bargaining** rather than through trial by jury. In recent times the Supreme Court has against judicial procedures enacted by the Bush administration used against "detainees" and others accused of terrorism.

The **8th Amendment** forbids **cruel and unusual punishment,** but it *does not define* the phrase. Most of the constitutional debate over cruel and unusual punishment has centered on the *death penalty*. In ***Furman v. Georgia*** (1972), the Court first confronted the question of whether the death penalty is inherently cruel and unusual punishment. A divided Court overturned Georgia's death penalty law because its imposition was "freakish" and "random" in the way it was arbitrarily applied (particularly with regard to factors such as race and income). Thirty-five states passed new laws that were intended to be less arbitrary. In recent years, the Court has come down more clearly on the side of the death penalty. A divided Court rebuffed the last major challenge to the death penalty in ***McCleskey v. Kemp*** (1987), when it refused to rule that the penalty violated the equal protection of the law guaranteed by the 14th Amendment. However, the number of death sentences issued has been sharply declining in the last decade due to DNA testing and public concerns about wrongful sentences.

The Right to Privacy

Today's technologies raise key questions about *ethics* and the Constitution. Although the Constitution does not specifically mention a **right to privacy,** the Supreme Court has said that it is implied by several guarantees in the Bill of Rights. Questions involving a right to privacy have centered on such diverse issues as abortion rights, the drafting of state laws to define death, technological developments like in-vitro fertilization, and the right to die. Supporters of privacy rights argue that the 4th Amendment was

intended to protect privacy. Opponents claim that the Supreme Court was inventing protections not specified by the Constitution when it ruled on constitutionally protected "rights of privacy."

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

Justice Harry Blackmun's majority opinion in ***Roe v. Wade*** (1973) followed the practice of medical authorities in dividing pregnancy into three equal *trimesters*. *Roe* forbade any state control of abortions during the first trimester; permitted states to allow regulated abortions to protect the mother's health in the second trimester; and allowed the states to ban abortion during the third trimester except when the mother's life was in danger. In 1989, a clinic in St. Louis challenged the constitutionality of a Missouri law that forbade the use of state funds or state employees to perform abortions, but the Court upheld the law in ***Webster v. Reproductive Health Services*** (1989). In 1992, the Court changed its *standard for evaluating restrictions on abortion* from one of *"strict scrutiny"* of any restraints on a *"fundamental right"* to one of *"undue burden"* that permits considerably more regulation (***Planned Parenthood v. Casey***). In 2000, the Court held in ***Sternberg v. Carhart*** that Nebraska's prohibition of "partial birth" abortions was unconstitutional because it placed an undue burden on women seeking an abortion by limiting their options to less safe procedures and because the law provided no exception for cases where the health of the mother was at risk. Beginning in 1994, the Supreme Court strengthened women's access to health clinics, while Congress passed the Freedom of Access to Clinic Entrances Act, which made it a federal crime to intimidate abortion providers or women seeking abortions.

Understanding Civil Liberties

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

The rights guaranteed by the 1st Amendment are essential to a democracy. Likewise, the rights guaranteed by the 4th, 5th, 6th, and 8th Amendments protect all Americans, but they also make it harder to punish criminals. Ultimately, it is the courts that decide what constitutional guarantees mean in practice: Although the federal courts are the *branch of government least subject to majority rule*, the courts *enhance democracy by protecting liberty and equality from the excesses of majority rule*.

Assignments

Discussion

The **USA PATRIOT Act** (reauthorized by Congress in 2006 with a few changes), the **Foreign Intelligence Surveillance Act of 2008**, and actions carried out by the National Security Agency and George W. Bush administration raised new questions about the competing interests of national security and civil liberties. What are these interests and what issues of civil liberties are at stake? How should the Court reconcile these competing issues? Has the War on Terrorism overstepped appropriate boundaries of civil liberties?

Select the **Module 4 Discussion** link to post your response to the topic.

Quiz

- Module 4 Quiz
- Midterm Exam

Written Assignments

Continue working on:

- Constitutional Design Assignment
- Research Paper Assignment

See **Course Information** in the Syllabus module or the *A*ssignments tool for descriptions and requirements of these assignments.

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4.2: Discussion- Civil Liberties and Public Policy

The **USA PATRIOT Act** (reauthorized by Congress in 2006 with a few changes), the **Foreign Intelligence Surveillance Act of 2008**, and actions carried out by the National Security Agency and George W. Bush administration raised new questions about the competing interests of national security and civil liberties. What are these interests and what issues of civil liberties are at stake? How should the Court reconcile these competing issues? Has the War on Terrorism overstepped appropriate boundaries of civil liberties?

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CHAPTER OVERVIEW

5: Civil Rights And Public Policy

5.1: Civil Rights And Public Policy

Objectives

1. Differentiate the Supreme Court's three standards of review for classifying people under the equal protection clause.
2. Trace the evolution of protections of the rights of African Americans and explain the application of nondiscrimination principles to issues of race.
3. Relate civil rights principles to progress made by other ethnic groups in the United States.
4. Trace the evolution of women's rights and explain how civil rights principles apply to gender issues.
5. Show how civil rights principles have been applied to seniors, people with disabilities, and gays and lesbians.
6. Trace the evolution of affirmative action policy and assess the arguments for and against it.
7. Establish how civil rights policy advances democracy and increases the scope of government.

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Read

- American Government Chapter 5

Chapter Summary

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

The Struggle for Equality

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

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

The delegates to the Constitutional Convention came up with a plan for government rather than guarantees of individual rights, and the word *equality* does not even appear in the original Constitution. The only place in which the idea of equality clearly appears in the Constitution is in the **14th Amendment,** which prohibits the states from denying *"equal protection of the laws"* to any person. It was not until the mid-twentieth century that the 14th Amendment was used to assure rights for disadvantaged groups, but the equal protection clause gradually became the vehicle for more expansive constitutional interpretations.

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

African Americans' Civil Rights

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

The delegates to the Constitutional Convention did their best to avoid facing the divergence between slavery and the principles of the Declaration of Independence. During the slavery era, any public policy of the slave states or the federal government had to

accommodate the property interests of slave owners. The Union victory in the Civil War and the ratification of the **13th Amendment** ended slavery. After the Civil War ended, Congress imposed strict conditions on the former Confederate states before they could be readmitted to the Union. Many African American men held state and federal offices during the ten years following the war. As soon as they regained control following Reconstruction, White Southerners imposed a code of *"Jim Crow laws"* that required African Americans to use separate public facilities and school systems.

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

The Supreme Court decision in ***Brown v. Board of Education*** (1954) really marks the beginning of the era of civil rights. In a landmark decision, the Court held that school segregation was *inherently unconstitutional* because it violated the 14th Amendment's guarantee of *equal protection*. The modern **civil rights movement** began in 1955 when Rosa Parks refused to give up her seat in the front of a Montgomery, Alabama, bus (where only Whites were permitted to sit). The boycott that followed her arrest is often seen as the beginning of the African American civil rights movement. Sit-ins, marches, and civil disobedience were key strategies of the civil rights movement.

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

The early Republic limited **suffrage** primarily to property-holding White males. The **15th Amendment** (1870) guaranteed African Americans the right to vote, but full *implementation* did not occur for another century. States used various methods to circumvent the 15th Amendment, including literacy tests with grandfather clauses, **White primaries,** and **poll taxes**.

The **Voting Rights Act of 1965** prohibited any government from using voting procedures that denied a person the vote on the basis of race or color. Poll taxes in federal elections were prohibited by the **24th Amendment** (1964), and poll taxes in state elections were invalidated by the Supreme Court two years later (***Harper v. Virginia State Board of Elections***).

The Rights of Other Minority Groups

The civil rights laws that African American groups pushed for have benefited members of other minority groups such as American Indians, Asians, and Hispanics. The United States is heading toward a *minority majority* status, when minority groups will outnumber Caucasians of European descent. Hispanic Americans will soon displace African Americans as the largest minority group.

Like Native Americans, Hispanic Americans benefit from the nondiscrimination policies originally passed to protect African Americans. Hispanic Americans are the largest minority group. ***Hernandez v. Texas*** (1954) extended protections to Hispanics. Asian Americans are the fastest growing minority group; their representation in the American population rose from 0.5 percent to four percent from 1960 to 2000. There are more than 1.2 million persons of Arab ancestry in the United States. Since the terrorist attacks of September 11, 2001, Arab, Muslim, Sikh, and South Asian Americans, and those perceived to be members of these groups, have been the victims of increased numbers of bias-related assaults, threats, vandalism, and arson.

Women and Public Policy

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

The feminist movement seemed to lose momentum after winning the vote, possibly because the vote was about the only goal on which all feminists agreed. Public policy toward women continued to be dominated by *protectionism* (which also protected male workers from female competition), and state laws tended to reflect and reinforce the traditional family roles. Alice Paul, the author

of the original Equal Rights Amendment (ERA), was one activist who claimed that the real result of protectionist law was to perpetuate gender inequality.

Before the advent of the contemporary feminist movement, the Supreme Court upheld virtually all cases of sex-based discrimination. In ***Reed v. Reed*** (1971), the Court ruled that any "arbitrary" sex-based classification violated the equal protection clause of the 14th Amendment (marking the first time the Court applied the 14th Amendment to a case involving classification by sex). Five years later, ***Craig v. Boren*** established a "medium scrutiny" standard: Gender discrimination would be presumed to be neither valid nor invalid. The courts were to show less deference to gender classifications than to more routine classifications, but more deference than to racial classifications. The Supreme Court has now ruled on many occasions against gender discrimination in employment and business activity. Some of the litigants have been *men seeking equality with women* in their treatment under the law.

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

Women now comprise 14 percent of the armed forces and compete directly with men for promotion. Statutes and regulations prohibit women from serving in combat, but the Persian Gulf War demonstrates that policy and practice are not always the same, since women piloted helicopters at the front and some were taken as prisoners of war.

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

Other Groups Active under the Civil Rights Umbrella

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

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

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

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

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

Affirmative Action

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

Some groups have claimed that affirmative action programs constitute **"reverse discrimination."** In ***Regents of the University of California v. Bakke*** (1978), the Supreme Court rejected a plan at the University of California at Davis that set aside 16 out of a total of 100 places in the entering class for "disadvantaged groups." The Court objected to the use of a quota of positions for

particular groups, but the Court said that a university could use race or ethnic background as one component in the admissions procedure. However, in 1995, in ***Adarand Constructors v. Pena***, the Court held that federal programs that classify people by race, even for an ostensibly benign purpose such as expanding opportunities for minorities, should be presumed to be unconstitutional.

In 1996, California voters passed Proposition 209, which banned state affirmative action programs based on race, ethnicity, or gender in public hiring, contracting, and education admissions. Opponents immediately filed a lawsuit in federal court to block enforcement of the law, claiming that it violated the 14th Amendment. Ultimately, the U.S. Supreme Court will have to resolve the issue, but there is little question that support for Proposition 209 represents a widespread skepticism about affirmative action programs. A federal court of appeals placed a similar ban on universities in Texas, Oklahoma, and Mississippi, while another court upheld racial preferences at the University of Michigan in 2002, agreeing that there was a compelling interest in promoting racial diversity on campus. In ***Gratz v. Bollinger*** (2003), however, the Court struck down the University of Michigan's system of undergraduate admissions in which every applicant from an underrepresented racial or ethnic minority group was automatically awarded 20 points of the 100 needed to guarantee admission.

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

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

Understanding Civil Rights and Public Policy

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

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

Assignments

Discussion

In every state there is a powerful Judiciary. This group of men and women are charged by the state to make critical decisions that can authorize a search, remove a bill passed by the Legislature, or put a person to death. As with other branches of government, it is the Arizona Constitution that limits and controls the power of the Judiciary.

Review the **Crime Victim's Bill of Rights** (Article 2, Section 2.1 of the Arizona Constitution) and elucidate how it impacts the power of the Judiciary in **Arizona**?

Select the **Module 5 Discussion** link to post your response to the topic.

Quiz

- Module 5 Quiz

Written Assignments

Continue working on:

- Constitutional Design Assignment
- Research Paper Assignment

See **Course Information in** the Syllabus module or the Assignments tool for descriptions and requirements of these assignments.

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5.2: Module 5 Discussion- Civil Rights and Public Policy

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CHAPTER OVERVIEW

6: Congress

6.1: Congress

Objectives

1. Characterize the backgrounds of members of Congress and assess their impact on the ability of members of Congress to represent average Americans.
2. Identify the principal factors influencing the outcomes in congressional elections.
3. Compare and contrast the House and Senate, and describe the roles of congressional leaders, committees, caucuses, and staff.
4. Outline the path of bills to passage and explain the influences on congressional decision making.
5. Assess Congress's role as a representative body and the impact of representation on the scope of government.

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Read

- American Government Chapter 11
- Supplemental Reading: Review the Constitution of the State of Arizona, Article IV

Chapter Summary

The framers of the Constitution conceived of Congress as the center of policymaking in America. Although the prominence of Congress has fluctuated over time, in recent years Congress has been the true center of power in Washington. In addition to its central role in policymaking, Congress also performs important roles of representation.

Congressional tasks become more difficult each year. At the same time, critics charge Congress with being responsible for enlarging the scope of government, and public opinion is critical of the institution. Why would individuals want to serve in Congress? And are the critics' claims correct?

The Representatives and Senators

Despite public perceptions to the contrary, *hard work* is perhaps the most prominent characteristic of a member of Congress' job. The typical representative is a member of about six committees and subcommittees; a senator is a member of about 10. There are also attractions to the job. Most important is *power*: members of Congress make key decisions about important matters of public policy. They also receive a substantial salary and "perks."

The Constitution specifies only that members of the House must be at least 25 years old, American citizens for seven years, and must be residents of the states from which they are elected. Senators must be at least 30 years old, American citizens for nine years, and must be residents of the states from which they are elected.

Members come mostly from occupations with high status and usually have substantial incomes. Law is the dominant prior occupation, with other elite occupations also well represented. Women and other minorities are substantially underrepresented. Although members of Congress obviously cannot claim **descriptive representation** (representing their constituents by mirroring their personal, politically relevant characteristics), they may engage in **substantive representation** (representing the interests of groups).

Although women have proven themselves able to compete with men for seats in Congress, women are underrepresented. Fewer women than men become major party nominees for office as women report they are less ambitious to run for office and more sensitive than men to their perceptions of the odds of winning.

Congressional Elections

The most important fact about congressional elections is that **incumbents** usually win. Not only do more than 90 percent of the incumbents seeking reelection to the House of Representatives win, but most of them win with more than 60 percent of the vote. Even when challengers' positions on the issues are closer to the voters' positions, incumbents still tend to win. Voters are not very aware of how their senators and representatives actually vote.

Even though senators have a better-than-equal chance of reelection, senators typically win by narrower margins than House members. One reason for the *greater competition in the Senate* is that an entire state is almost always more diverse than a congressional district and thus provides more of a base for opposition to an incumbent.

Despite their success at reelection, incumbents have a strong feeling of vulnerability. They have been raising and spending more campaign funds, sending more mail to their constituents, traveling more to their states and districts, and staffing more local offices than ever before.

Members of Congress engage in three primary activities that increase the probability of their reelections: advertising, credit claiming, and position taking. Most congressional **advertising** takes place between elections and takes the form of *contact with constituents*. New technologies are supplementing traditional contacts with sophisticated database management, emails, automated phone calls, and so on. **Credit claiming** involves *personal and district service*, notably through **casework** and **pork barrel** spending. Members of Congress must also engage in **position taking** on matters of public policy when they vote on issues and when they respond to constituents' questions about where they stand on issues.

When incumbents do face challengers, they are likely to be *weak opponents*. Seeing the advantages of incumbency, potentially effective opponents often do not want to risk challenging members of the House.

Candidates spend enormous sums on campaigns for Congress. In the 2011–2012 election cycle, congressional candidates spent nearly $2 billion dollars to win the election. In the House races in 2012, the typical incumbent outspent the typical challenger by a ratio of 2 to 1. Spending is greatest when there is no incumbent and each party feels it has a chance to win. In open seats, the candidate who spends the most usually wins.

Although most of the money spent in congressional elections comes from individuals, about one-fourth of the funds raised by candidates for Congress come from **Political Action Committees (PACs).** PACs seek *access* to policymakers. Thus, they give most of their money to incumbents, who are already heavily favored to win. Critics of PACs are convinced that PACs are not trying to elect but to buy influence.

Prolific spending in a campaign is no guarantee of success. Money is important for challengers, however. The more they spend, the more votes they receive. Money buys them name recognition and a chance to be heard.

At the base of every electoral coalition are the members of the candidate's party in the constituency. Most members of Congress represent constituencies in which their party is in the majority. It is reasonable to ask why anyone challenges incumbents at all. An incumbent tarnished by scandal or corruption becomes instantly vulnerable. Incumbents may also be redistricted out of their familiar turfs.

However, an incumbent tarnished by scandal or corruption becomes vulnerable. Voters *do* take out their anger at the polls. Redistricting can also have an impact. Congressional membership is reapportioned after each federal census, and incumbents may be redistricted out of their familiar base of support. When an incumbent is not running for reelection and the seat is **open,** there is greater likelihood of competition. Most of the turnover of the membership of Congress is the result of vacated seats, particularly in the House.

Finally, major political tidal waves occasionally roll across the country, leaving defeated incumbents in their wake. This is especially likely when national issues dominate the elections, as occurred in 1994 and 2006.

The high reelection rate of incumbents brings stability and policy expertise to Congress. At the same time, it also may insulate them from the winds of political change.

How Congress is Organized to Make Policy

A bicameral legislature is a legislature divided into two houses. The U.S. Congress is bicameral, as is every American state legislature except Nebraska's, which has one house (unicameral).

Making policy is the toughest of all the legislative roles. Congress is *a collection of generalists trying to make policy on specialized topics*. The complexity of today's issues requires more specialization. Congress tries to cope with these demands through its elaborate committee system.

The House and Senate each *set their own agenda*. Both use committees to narrow down the thousands of bills introduced. The House is *much larger* and *more institutionalized* than the Senate. Party loyalty to leadership and party-line voting are more common than in the Senate. One institution unique to the House is the **House Rules Committee,** which reviews most bills coming from a House committee before they go to the full House. Each bill is given a "rule," which schedules the bill on the calendar, allots time for debate, and sometimes even specifies what kind of amendments may be offered. The Senate is *less disciplined* and *less centralized* than the House. Today's senators are more equal in power than representatives are. Party leaders do for Senate

scheduling what the Rules Committee does in the House. One activity unique to the Senate is the **filibuster.** This is a tactic by which opponents of a bill use their right to unlimited debate as a way to prevent the Senate from ever voting on a bill.

Much of the leadership in Congress is really *party leadership*. Those who have the real power in the congressional hierarchy are those whose party put them there. Power is no longer in the hands of a few key members of Congress who are insulated from the public. Instead, power is widely dispersed, requiring leaders to appeal broadly for support.

Chief among leadership positions in the House of Representatives is the **Speaker of the House.** This is the only legislative office mandated by the Constitution. Today the Speaker presides over the House when it is in session; plays a major role in making committee assignments, which are coveted by all members to ensure their electoral advantage; appoints or plays a key role in appointing the party's legislative leaders and the party leadership staff; and exercises substantial control over which bills get assigned to which committees. The Speaker's principal partisan ally is the **majority leader**—a job that has been the main stepping stone to the Speaker's role. The majority leader is responsible for scheduling bills in the House. Working with the majority leader are the party's **whips,** who carry the word to party troops, counting votes before they are cast and leaning on waverers whose votes are crucial to a bill. The Constitution makes the vice president of the United States the president of the Senate; this is the vice president's only constitutionally defined job. The Senate majority leader, aided by the majority whips, is the party's workhorse, corralling votes, scheduling the floor action, and influencing committee assignments. The majority leader's counterpart in the opposition, the minority leader, has similar responsibilities.

The minority party, led by the minority leader, is also organized, poised to take over the Speakership and other key posts if it should win a majority in the House.

The structure of Congress is so complex that it seems remarkable that legislation gets passed at all. Its bicameral division means that bills have two sets of committee hurdles to clear. Recent reforms have decentralized power, and so the job of leading Congress is more difficult than ever. Congressional leaders are not in the strong positions they occupied in the past. Leaders are elected by their fellow party members and must remain responsive to them.

Most of the real work of Congress goes on in committees and subcommittees. **Committees** *dominate congressional policymaking* at all stages. They regularly hold hearings to investigate problems and possible wrongdoing, and to investigate the executive branch. Committees can be grouped into four types: **standing committees** (by far the most important), **joint committees, conference committees,** and **select committees.**

More than 11,000 bills are submitted by members every two years, all of which must be sifted through and narrowed down by the committee process. Every bill goes to a standing committee; usually only bills receiving a favorable committee report are considered by the whole House or Senate. New bills sent to a committee typically go directly to **subcommittee,** which can hold **hearings** on the bill. The most important output of committees and subcommittees is the **"marked-up"** (revised and rewritten) bill, submitted to the full House or Senate for consideration. Members of the committee will usually serve as *"floor managers"* of the bill when the bill leaves committee, helping party leaders secure votes for the legislation. They will also be *cue-givers* to whom other members turn for advice. When the two chambers pass different versions of the same bill, some committee members will be appointed to the conference committee.

Legislative oversight—the process of *monitoring the bureaucracy and its administration of policy*—is one of the checks Congress can exercise on the executive branch. Oversight is handled primarily through hearings. Members of committees constantly monitor how a bill is implemented.

Although every committee includes members from both parties, a majority of each committee's members—as well as its chair—comes from the majority party. **Committee chairs** are the most important influence on the committee agenda. They play dominant—though no longer monopolistic—roles in scheduling hearings, hiring staff, appointing subcommittees, and managing committee bills when they are brought before the full House. Until the 1970s, committee chairs were always selected through the **seniority system;** under this system, the member of the majority party with the longest tenure on the committee would automatically be selected. In the 1970s, Congress faced a revolt of its younger members, and both parties in each house permitted members to *vote* on committee chairs. Today, seniority remains the *general rule* for selecting chairs, but there have been notable exceptions.

The explosion of *informal groups* in Congress has made the representation of interests in Congress a more direct process (cutting out the middleman, the lobbyist). In recent years, a growing number of **caucuses** have dominated these informal groups. Also increasing in recent years is the size of, and reliance of members of Congress on, their personal and committee staffs, along with staff agencies such as the *Congressional Research Service*, the *General Accounting Office*, and the *Congressional Budget Office*.

The Congressional Process

Approximately 11,000 **bills** are introduced in each two-year session of Congress. Most bills are quietly killed off early in the legislative process. In both chambers, party leaders involve themselves in the legislative process on major legislation earlier and more deeply, using special procedures to aid the passage of legislation. In the House, special rules from the Rules Committee have become powerful tools for controlling floor consideration of bills and sometimes for shaping the outcomes of votes. Often party leaders from each chamber negotiate among themselves instead of creating conference committees. Party leaders also use *omnibus* legislation that addresses numerous and perhaps unrelated subjects, issues, and programs to create winning coalitions. In the Senate, leaders have less leverage and *individual* senators have retained great opportunities for influence. As a result, it is often more difficult to pass legislation in the Senate.

Presidents are partners with Congress in the legislative process, but all presidents are also Congress' adversaries in the struggle to control legislative outcomes. Presidents have their own *legislative agenda*, based in part on their party's platform and their electoral coalition. The president's task is to persuade Congress that his agenda should also be Congress' agenda.

Presidential success rates for influencing congressional votes vary widely among presidents and within a president's tenure in office. Presidents are usually most successful early in their tenures and when their party has a majority in one or both houses of Congress. Regardless, in almost any year, the president will lose on many issues.

Parties are most cohesive when Congress is electing its official leaders. For example, a vote for the Speaker of the House is a straight party-line vote. On other issues, the party coalition may not stick together. Votes on issues like civil rights have shown deep divisions within each party. Differences between the parties are sharpest on questions of social welfare and economic policy.

In the last few decades, Congress has become more ideologically polarized and more likely to vote according to the two party lines. As the parties pulled apart ideologically, they also became more homogeneous internally. This has resulted in an increased difficulty in reaching a compromise. The increased ideological distance between the parties is primarily due to the increasingly divergent electoral coalitions. As supporters of each party have matched their partisan and ideological views, they made the difference between the parties more distinctive.

There are a variety of views concerning how members of Congress should fulfill their function of *representation*. The eighteenth-century English legislator Sir Edmund Burke favored the concept of legislators as *trustees*, using their best judgment to make policy in the interests of the people. The concept of representatives as *instructed delegates* calls for representatives to mirror the preferences of their constituents. Members of Congress are actually *politicos*, combining the trustee and instructed delegate roles as they attempt to be both representatives and policymakers.

The most effective way for constituents to influence congressional voting is to elect candidates who match their policy positions, since winners of congressional elections tend to vote on roll calls pretty much as they said they would. On some controversial issues, it is perilous for a legislator to ignore constituent opinion.

Lobbyists—some of them former members of Congress—represent the interests of their organizations. They also can provide legislators with crucial information, and often can give assurances of financial aid in the next campaign. There are more than 12,000 individuals in Washington, representing 12,000 organizations. The bigger the issue, the more lobbyists are involved in it. A 1995 law passed by Congress requires anyone hired to lobby members of Congress, congressional staff members, White House officials, and federal agencies to report what issues they were seeking to influence, how much they were spending on the effort, and the identities of their clients. Congress also placed severe restrictions on the gifts, meals, and expense-paid travel that public officials may accept from lobbyists.

Understanding Congress

The central legislative dilemma for Congress is combining the faithful *representation of constituents* with the making of *effective public policy*. Supporters see Congress as a forum in which many interests compete for a spot on the policy agenda and over the form of a particular policy. Critics wonder if Congress is so responsive to so many interests that policy is too uncoordinated, fragmented, and decentralized. Some observers feel that Congress is so representative that it is incapable of taking decisive action to deal with difficult problems.

In a large democracy, the success of democratic government depends on the quality of representation. Congress clearly has some undemocratic and unrepresentative features: its members are an American elite; its leadership is chosen by its own members; voters have little direct influence over the people who chair key committees or lead congressional parties. There is also evidence to

support the view that Congress is representative: Congress does try to listen to the American people; the election does make a difference in how votes turn out; which party is in power affects policies; linkage institutions do link voters to policymakers.

The legislative branch of government provides some of the same aspects of function we see in the US Congress, however, there are distinct differences. Please review AZ Constitution Article IV, Sec 1 and you will quickly see the power to create laws and debate are divided between the techniques noted above and also by public initiative and referendum. This creates three different paths for laws to be created. First, the traditional framework of committee and debate in a bicameral legislative system. The second is a system of debate in the legislature with a referral for a vote of the people to (referendum). Third, there is an initiative that is brought to law by first petition then voted on by the citizens of Arizona at large. In addition, laws that are brought by petition and referendum do not need the signature of the Governor, nor are they subject to a veto. They are subject to judicial review. Anther notable feature of the Arizona Legislature is having only one session per year unless brought to special session by the Governor. As such, members of the legislature are more part-time employees. That and the geographic realities of Arizona being a state as opposed to the whole country enables members to be more ties to their communities.

Assignments

Discussion

Some argue that Congress is too responsive to constituents and especially to organized interests, while others argue that Congress is too insulated from ordinary citizens. Evaluate the evidence for each view from throughout your readings.

Select the **Module 6 Discussion** link to post your response to the topic.

Quiz

At the end of Chapter 11, select the **Module 6 Quiz** link.

Written Assignments

- The Constitutional Design Assignment is due. For the exact date, see the **Schedule of Work**.
- Continue working on Research Paper Assignment

See **Course Information in** the Syllabus module or the Assignments tool for descriptions and requirements of these assignments.

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6.2: Discussion- Congress

Some argue that Congress is too responsive to constituents and especially to organized interests, while others argue that Congress is too insulated from ordinary citizens. Evaluate the evidence for each view from throughout your readings.

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CHAPTER OVERVIEW

7: The Presidency

7.1: The Presidency

Objectives

1. Characterize the expectations for and the backgrounds of presidents and identify paths to the White House and how presidents may be removed.
2. Evaluate the president's constitutional powers in relation to the constitutional power of the Governor of Arizona.
3. Describe the roles of the vice president, cabinet, Executive Office of the President, White House staff, and First Lady.
4. Assess the impact of various sources of presidential influence on the president's ability to win congressional support.
5. Analyze the president's powers in making national security policy and the relationship between the president and Congress in this arena.
6. Identify the factors that affect the president's ability to obtain public support.
7. Characterize the president's relations with the press and news coverage of the presidency.
8. Assess the role of presidential power in the American democracy and the impact of President Taft's veto of the original Arizona Constitution.

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Read

- American Government Chapter 12
- Supplemental Reading: Review the Constitution of the State of Arizona, Article V
- Supplemental Reading: Review the US Constitution

Chapter Summary

This chapter examines *how presidents exercise leadership* and looks at *limitations* on executive authority. Americans expect a lot from presidents (perhaps too much). The myth of the president as a powerhouse distorts the public's image of presidential reality.

Presidents operate in an environment filled with checks and balances and competing centers of power. Other policymakers with whom they deal have their own agendas, their own interests, and their own sources of power. To be effective, the president must have highly developed political skills to mobilize influence, manage conflict, negotiate, and build compromises. Political scientist Richard Neustadt has argued that presidential power is *the power to persuade*, not to command.

The Presidents

Throughout *American Government*, the authors have pointed out the American political culture's strong belief in limited government, liberty, individualism, equality, and democracy. These values generate a distrust of strong leadership, authority, and the public sector in general. Americans are of two minds about the presidency. On the one hand, they want to believe in a powerful president, one who can do good. On the other hand, Americans dislike a concentration of power. Although presidential responsibilities have increased substantially in the past few decades, there has been no corresponding increase in presidential authority or administrative resources to meet these new expectations. Americans are basically individualistic and skeptical of authority.

Most presidents reach the White House through the electoral process. About one in five presidents assumed the presidency when the incumbent president either died or (in Nixon's case) resigned. Almost one-third of twentieth-century presidents have been "accidental presidents." Once in office, presidents are guaranteed a four-year term by the Constitution, but the **Twenty-Second Amendment,** passed in 1951, limits them to two such terms.

Removing a discredited president before the end of a term is a difficult task. The Constitution prescribes the process through **impeachment,** which is roughly the political equivalent of an indictment in criminal law. (The term "impeachment" refers to the formal accusation, *not* to conviction.) Only two presidents have been impeached. Andrew Johnson narrowly escaped conviction in 1868 on charges stemming from his disagreement with radical Republicans. In 1998, the House voted two articles of impeachment against President Clinton on party-line votes. The public clearly opposed the idea, however, and the Senate voted to acquit the president on both counts in 1999. In 1974, the House Judiciary Committee voted to recommend the impeachment of Richard Nixon as a result of the **Watergate** scandal. Nixon escaped a certain vote for impeachment by resigning.

Impeachment for the Governor is much the same as for the President. This is only one of two methods where a Governor can be removed from office. Arizona also has a procedure for recalling any elected officer, including the Governor.

The **Twenty-Fifth Amendment** clarified some of the Constitution's vagueness about presidential disability and succession. The amendment permits the vice president to become acting president if the vice president and the president's cabinet determine that the president is disabled or if the president declares his own disability, and it outlines how a recuperated president can reclaim the office. Provision is also made for *selecting a new vice president* when the office becomes vacant. In the event of a vacancy in the office of vice president, the president nominates a new vice president, who assumes the office when both houses of Congress approve the nomination.

Presidential Powers

The Constitution says remarkably little about presidential power: "The executive power shall be vested in a president of the United States of America." However, the contemporary presidency differs dramatically from the one the framers of the Constitution designed in 1787. The executive office they conceived of had more limited authority, fewer responsibilities, and much less organizational structure than today's presidency. There is little that presidents can do on their own, and they share executive, legislative, and judicial power with the other branches of government. *Institutional balance* was essential to delegates at the Constitutional Convention.

Today there is *more to presidential power than the Constitution alone suggests*, and that power is *derived from many sources*. During the 1950s and 1960s it was fashionable for political scientists, historians, and commentators to favor a powerful presidency. Historians rated presidents from strong to weak and there was no question that "strong" meant good and "weak" meant bad. By the 1970s, many felt differently. The Vietnam War was unpopular. Lyndon Johnson and the war made people reassess the role of presidential power. In his book, *The Imperial Presidency*, historian Arthur Schlesinger, an aide of John Kennedy's, argued that the presidency had become too powerful for the nation's own good. The role of the president changed as America increased in prominence on the world stage, and technology also helped to reshape the presidency. Presidents themselves have taken the initiative in developing new roles for the office. Various presidents enlarged the power of the presidency by expanding the president's responsibilities and political resources.

Running the Government: The Chief Executive

One of the president's most important roles is *presiding over the administration of government*. The Constitution merely tells the president to "take care that the laws be faithfully executed." Today, the federal bureaucracy includes more than four million civilian and military employees and spends more than $4 trillion annually.

One of the resources for controlling the bureaucracy is the presidential power to *appoint top-level administrators*. New presidents have about 500 high-level positions available for appointment (cabinet and sub-cabinet jobs, agency heads, and other non-civil service posts), plus 2,500 lesser jobs. In recent years, presidents have paid close attention to appointing officials who will be *responsive to the president's policies*. Presidents also have the power to *recommend agency budgets* to Congress—the result of the Budgeting and Accounting Act of 1921.

Neither politicians nor political scientists have paid much attention to the vice presidency. Once the choice of a party's "second team" was an afterthought; now it is often an effort to placate some important symbolic constituency.

Although the group of presidential advisors known as the **cabinet** is not mentioned in the Constitution, every president has had one. Today, 14 secretaries and the attorney general head executive departments and constitute the cabinet. In addition, individual presidents may designate other officials (such as the ambassador to the United Nations) as cabinet members.

The **Executive Office of the President** (established in 1939) is a loosely grouped collection of offices and organizations. Some of the offices are created by legislation, while others are organized by the president. The Executive Office includes three major policy-making bodies—the **National Security Council,** the **Council of Economic Advisers,** and the **Office of Management and Budget**—plus several other units serving the president.

The **White House staff** includes the key aides the president sees daily—the chief of staff, congressional liaison people, press secretary, national security advisor, and a few other administrative political assistants. Presidents rely heavily on their staffs for information, policy options, and analysis. Each president organizes the White House to serve his own political and policy needs, as well as his decision-making style.

Despite heavy reliance on staff, it is the president who sets the tone for the White House. They all organize the White House to serve their own political and policy needs and their own decision-making style. The First Lady has no official government position, yet she is often at the center of national attention.

Presidential Leadership of Congress: The Politics of Shared Powers

The president is *a major shaper of the congressional agenda*, and the term **chief legislator** is frequently used to emphasize the executive's importance in the legislative process. Presidents' most useful resources in passing their own legislation are their party leadership, public support, and their own legislative skills.

The Constitution also gives the president power to **veto** congressional legislation. If Congress adjourns within 10 days after submitting a bill, the president can simply let it die by neither signing nor vetoing it. This process is called a **pocket veto**. The presidential veto is usually effective; only about 4 percent of all vetoed bills have been overridden by Congress since the nation's founding. Thus, even the threat of a presidential veto can be an effective tool for persuading Congress to give more weight to the president's views.

While the Governor of Arizona also has veto powers, there is an additional constitution power over the legislature. Article V of the Arizona Constitution gives the Governor the ability to call the legislature into special session.

One way for the president to improve the chances of obtaining support in Congress is to increase the number of fellow party members in the legislature. The phenomenon of **presidential coattails** occurs when voters cast their ballots for congressional candidates of the president's party because those candidates support the president. Most recent studies show a diminishing connection between presidential and congressional voting, however, and few races are determined by presidential coattails.

Presidents who have the *backing of the public* have an easier time influencing Congress. Members of Congress closely watch two indicators of public support for the president—*approval in the polls* and *mandates in presidential elections*.

Public approval is the political resource that has the most potential to turn a situation of stalemate between the president and Congress into one that is supportive of the president's legislative proposals. Widespread support gives the president leeway and weakens resistance to presidential policies, while lack of support strengthens the resolve of those inclined to oppose the president and narrows the range in which presidential policies receive the benefit of the doubt.

An electoral *mandate*—the perception that the voters strongly support the president's character and policies—can be a powerful symbol in American politics. It accords *added legitimacy and credibility* to the newly elected president's proposals. Merely winning an election does not provide presidents with a mandate. It is common after close elections to hear claims—especially from the other party—that there was "no mandate." Even large electoral victories carry no guarantee that Congress will interpret the results as mandates, especially if the voters also elect majorities in Congress from the other party.

Presidents influence the legislative agenda more than any other political figure. No matter what a president's skills are, however, the "chief legislator" can rarely exercise complete control over the agenda. Presidents are rarely in a position to create—through their own leadership—opportunities for major changes in public policy. They may, however, use their skills to exploit favorable political conditions to bring about policy change. In general, presidential legislative skills must compete with other, more stable factors that affect voting in Congress, such as party, ideology, personal views and commitments on specific policies, and constituency interests.

The President and National Security Policy

Constitutionally, the president has the leading role in American defense and foreign policy (often termed *national security*). The Constitution allocates certain powers in the realm of national security that are exclusive to the executive. For example, the president alone extends *diplomatic recognition* to foreign governments (and the president can also terminate relations with other nations). The president has the sole power to negotiate *treaties* with other nations, although the Constitution requires the Senate to approve them by a two-thirds vote. Presidents negotiate *executive agreements* with the heads of foreign governments; unlike treaties, executive agreements do not require Senate ratification.

As the leader of the Western world, the president must try to lead America's allies on matters of economics and defense. Presidents usually conduct diplomatic relations through envoys, but occasionally they engage in personal diplomacy. As in domestic policymaking, the president must rely principally on *persuasion* to lead.

Because the Constitution's framers wanted civilian control of the military, they made the president the commander in chief of the armed forces. Although only Congress is constitutionally empowered to declare war and vote on the military budget, Congress long

ago became accustomed to presidents making short-term military commitments of troops or naval vessels. In 1973 Congress passed the **War Powers Resolution** (over President Nixon's veto). It required presidents to consult with Congress, whenever possible, before using military force, and it mandated the withdrawal of forces after 60 days unless Congress declared war or granted an extension. Congress could at any time pass a concurrent resolution (which could not be vetoed) ending American participation in hostilities. All presidents serving since 1973 have deemed the law an unconstitutional infringement on their powers, and there is reason to believe the Supreme Court would consider the law's use of the **legislative veto** (the ability of Congress to pass a resolution to override a presidential decision) to be a violation of the doctrine of separation of powers. In recent years, presidents have committed U.S. troops to action without seeking congressional approval.

Questions continue to be raised about the relevance of America's 200-year-old constitutional mechanisms for engaging in war. Some observers are concerned that modern technology allows the president to engage in hostilities so quickly that opposing points of view do not receive proper consideration. Others stress the importance of the commander in chief having the flexibility to meet America's global responsibilities and to combat international terrorism.

As chief diplomat and commander in chief, the president is also the country's *crisis manager*. A **crisis** is a sudden, unpredictable, and potentially dangerous event. Most occur in the realm of foreign policy; quick judgments are often needed despite sketchy information.

With modern communications, the president can instantly monitor events almost anywhere. Because situations develop more rapidly today, there is a premium on rapid action, secrecy, constant management, consistent judgment, and expert advice. Because Congress usually moves slowly, the *president has become more prominent* in handling crises.

Although the president is the dominant force behind national security policy today, Congress also has a central constitutional role in making policy. The allocation of responsibilities for such matters is based upon the founders' apprehensions about the concentration and potential for abuse of power. The founders *divided the powers of supply and command*. Congress can thus refuse to provide the necessary authorizations and appropriations for presidential actions, while the chief executive can refuse to take actions favored by Congress. The role of Congress has typically been *oversight of the executive* rather than initiation of policy.

Power From the People: The Public Presidency

Perhaps the greatest challenge to any president is *to obtain and maintain the public's support*. Because presidents are rarely in a position to command others to comply with their wishes, they must *rely on persuasion*. The necessity of public support leads the White House to employ *public relations techniques* similar to those used to publicize products. Much of the energy the White House devotes to public relations is aimed at increasing the president's *public approval*. The reason is simple: the higher the president stands in the polls, the easier it is to persuade others to support presidential initiatives. Contrary to the conventional wisdom, citizens seem to focus on the president's efforts and stands on issues rather than on personality ("popularity") or simply how presidential policies affect them (the "pocketbook"). Job-related personal characteristics of the president, such as integrity and leadership skills, also play an important role in influencing presidential approval.

Commentators on the presidency often refer to it as a "bully pulpit," implying that presidents can *persuade or even mobilize the public* to support their policies if they are skilled enough communicators. Presidents frequently do attempt to obtain public support for their policies with speeches over the radio or television or speeches to large groups. All presidents since Truman have had *media advice* from experts on such matters as lighting, makeup, stage settings, camera angles, and even clothing.

Mobilization of the public may be the ultimate weapon in the president's arsenal of resources with which to influence Congress. The modern White House makes extraordinary efforts to control the context in which presidents appear in public and the way they are portrayed by the press. The fact that presidents nevertheless are frequently low in the polls is persuasive testimony to the *limits of presidential leadership of the public*.

The President and the Press

The press has become the *principal intermediary between the president and the public*, and relations with the press are an important aspect of the president's efforts to lead public opinion. It is the mass media that provides people with most of what they know about chief executives and their policies.

Presidents and the press tend to come into conflict with each other. Presidents want to control the amount and timing of information about their administration, while the press wants immediate access to all the information that exists. The person who most often deals directly with the press is the president's *press secretary*. The best known direct interaction between the president and the

press is the *presidential press conference*. Despite their visibility, press conferences are not very useful means of eliciting information. Presidents and their staffs can anticipate most of the questions that will be asked and prepare answers to them ahead of time, reducing the spontaneity of the sessions. Moreover, the large size and public nature of press conferences reduce the candor with which the president responds to questions.

Bias is the most politically charged issue in relations between the president and the press. However, a large number of studies have concluded that the news media are not biased *systematically* toward a particular person, party, or ideology. To conclude that the news contains little explicitly partisan or ideological bias is not to argue that the news does not distort reality in its coverage of the president. Some observers believe that news coverage of the presidency often tends to emphasize the negative. On the other hand, one could also argue that the press is inherently biased *toward* the White House. A consistent pattern of favorable coverage exists in all major media outlets, and the president is typically portrayed with an aura of dignity and treated with deference. In fact, the White House can largely control the environment in which the president meets the press.

Understanding the American Presidency

Concerns over presidential power are generally closely *related to policy views*. Those who oppose the president's policies are the most likely to be concerned about too much presidential power. Aside from acting outside the law and the Constitution, there is little prospect that the presidency will be a threat to democracy. The Madisonian system of checks and balances remains intact.

An interesting example of this was the veto of Arizona's original constitution. The Enabling Act of 1910 charted the course for Arizona to become a state. With the feelings concerning the "Progressive Movement in the political arena, the Enabling Act gave President Taft a role in the acceptance of Arizona's statehood that the Article IV of the U.S. Constitution did not. Furthermore, President Taft's decision to veto the first submitted constitution demonstrates that presidential power is both constructionist and activist in nature. Please review the Taft Veto Message where he articulates the objection of subjecting judges to recall, and you can see the limits of the 10th Amendment of the U.S. Constitution in so far as authority to act is concerned. Of course, the removal of objectionable aspects of the Arizona Constitution lead President Taft to sign the bill and Arizona became a state on February 12, 1912.

This system of presidential power is especially evident in an era characterized by divided government in which the president is of one party and a majority in each house of Congress is of the other party. In the past generation, the public has chosen a number of presidents who reflected their ideology and congresses that represented their appetite for public service. It has been the president more often than Congress who has objected to government growth.

Assignments

Discussion

Describe the constitutional process of removing a president from office. Is this process appropriate or would you recommend changes? Explain.

Select the **Module 7 Discussion** link to post your response to the topic.

Quiz

At the end of Chapter 12, select the **Module 7 Quiz** link.

Written Assignment

Continue working on:

- Research Paper Assignment

See **Course Information in** the Syllabus module or the Assignments tool for descriptions and requirements of these assignments.

7.2: Discussion- The Presidency

Describe the constitutional process of removing a president from office. Is this process appropriate or would you recommend changes? Explain.

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CHAPTER OVERVIEW

8: The Courts

8.1: The Courts

Objectives

1. Identify the basic elements of the American judicial system and the major participants in it.
2. Outline the structure of the federal court system and the major responsibilities of each component.
3. Explain the process by which judges and justices are nominated and confirmed.
4. Describe the backgrounds of judges and justices and assess the impact of background on their decisions.
5. Outline the stages of the judicial process at the Supreme Court level and the development of judicial review and assess the major factors influencing decisions and their implementation.
6. Assess the role of un-elected courts and the scope of judicial power in American democracy.

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Read

- American Government Chapter 13
- Review the Constitution of the State of Arizona, Article VI
- Review the US Constitution

Chapter Summary

Although the scope of the Supreme Court's decisions is broad, the actual number of cases tried in our legal system is tiny, compared to lower federal courts and state and local courts. This means that a great deal of judicial policymaking occurs in courts other than the Supreme Court. This chapter describes how the court systems are structured, how judges are selected, and the influence of the courts on the policy agenda in the United States.

The Nature of the Judicial System

The judicial system in the United States is an **adversarial** one in which the courts provide an arena for two parties to bring their conflict before an impartial arbiter (a judge). The system is based on the theory that justice will emerge out of the struggle between two contending points of view.

There are two basic kinds of cases, criminal and civil. In *criminal law*, an individual is charged with violating a specific law; criminal law provides punishment for crimes against society (or public order). *Civil law* does not involve a charge of criminality. Instead, it concerns a dispute between two parties and defines relationships between them. The vast majority of cases (both civil and criminal) involve state law and they are tried in state courts.

Every case is a dispute between a *plaintiff* and a *defendant*—the former bringing some charge against the latter. The task of the judge or judges is to apply the law to the case; in some cases, a **jury** is responsible for determining the outcome of a lawsuit. **Litigants** (the plaintiff and the defendant) must have **standing to sue,** which means they must have a serious interest in the case. **Class action suits** permit a small number of people to sue on behalf of all other people similarly situated. Because they recognize the courts' ability to shape policy, interest groups often seek out litigants whose cases seem particularly strong. At other times groups do not directly argue the case for litigants, but support them instead with ***amicus curiae*** ("friend of the court") **briefs** that attempt to influence the Court's decision, raise additional points of view, and present information not contained in the briefs of the attorneys for the official parties to the case.

There are a number of limitations on cases that federal courts will hear. Federal judges are restricted by the Constitution to deciding **"cases or controversies."** Two parties must bring a case to them (a case involving an actual dispute rather than a hypothetical question). Courts may decide only **justiciable disputes,** which means that conflicts must be capable of being settled *by legal methods*.

The Structure of the Federal Judicial System

The Constitution is vague about the federal court system. Aside from specifying that there will be a Supreme Court, the Constitution left it to Congress' discretion to establish lower federal courts of general jurisdiction. In the Judiciary Act of 1789, Congress created a system of *constitutional courts* on the basis of this constitutional provision.

The basic judicial structure has been modified several times. At the present time, there are 12 federal courts of appeal, 91 federal district courts, and thousands of state and local courts (in addition to the Supreme Court).

Congress has also established some *legislative courts* (such as the Court of Military Appeals, the Court of Claims, and the Tax Court) for specialized purposes, based on Article I of the Constitution. These **legislative courts** are staffed by judges who have fixed terms of office and who lack the protections of judges on constitutional courts against removal or salary reductions.

Courts of **original jurisdiction** are those where a case is first heard, usually in which trials are held. Courts with **appellate jurisdiction** hear cases brought to them on appeal from a lower court. Appellate courts do not review the factual record, only the legal issues involved.

The entry point for most litigation in the federal courts is one of the 91 district courts. The 675 district court judges usually preside over cases alone, but certain rare cases require that three judges constitute the court. Jurisdiction of the district courts extends to federal crimes; civil suits under federal law; diversity of citizenship cases where the amount exceeds $75,000; supervision of bankruptcy proceedings; review of the actions of some federal administrative agencies; admiralty and maritime law cases; and supervision of the naturalization of aliens.

However, approximately 98 percent of all criminal cases in the United States are heard in state and local court systems, not in federal courts. Even so, only a small percentage of the persons convicted in district courts actually have a trial. Most charged with federal crimes enter guilty pleas as part of a bargain to receive lighter punishment (“*plea bargaining*”). Most *civil suits* are also handled in *state and local* courts; the vast majority of suits are *settled out of court* without a trial.

U.S. courts of appeal are *appellate* courts empowered to review final decisions of district courts; they also have the authority to review and enforce orders of many federal regulatory agencies. The United States is divided into *12 judicial circuits*, including one for the District of Columbia. There is also a special appeals court called the **U.S. Court of Appeals for the Federal Circuit** (established in 1982), which hears appeals in *specialized cases*, such as those regarding patents, copyrights and trademarks, claims against the United States, and international trade.

About 75 percent of the more than 57,000 cases heard in the courts of appeal come from the district courts. Each court of appeals normally hears cases in panels consisting of three judges, but each may sit *en banc* (with all judges present) in particularly important cases. Decisions are made by *majority vote* of the participating judges.

The U.S. **Supreme Court** is the only court specifically established within Article III of the Constitution. The size of the Court is not set in the Constitution, and it was altered many times between 1801 and 1869; the number has remained stable at nine justices since that time. All nine justices sit together to hear cases and make decisions.

The Supreme Court has *both original and appellate jurisdiction*. Very few cases arise under original jurisdiction, which is defined in *Article III* of the Constitution. Almost all the cases come from the appeals process; appellate jurisdiction of the Court is set by *statute*. Cases may be appealed from both federal and state courts. The great majority of cases come from the lower federal courts. Unlike other federal courts, it controls its own agenda.

The Politics of Judicial Selection

Federal judges are constitutionally guaranteed the right to serve for life “during good behavior.” Federal judges may be removed only by *impeachment*, which has occurred only seven times in two centuries. No Supreme Court justice has ever been removed from office, although Samuel Chase was tried (but not convicted by the Senate) in 1805.

Although the *president nominates* persons to fill judicial posts, the *Senate must confirm* each by majority vote. The customary manner in which the Senate disposes of state-level federal judicial nominations is through **senatorial courtesy**. Because of the strength of this informal practice, presidents usually check carefully with the relevant senator or senators ahead of time. The president usually has more influence in the selection of judges to the federal courts of appeal than to federal district courts. Individual senators are in a weaker position to determine who the nominee will be because the jurisdiction of an appeals court encompasses several states. Even here, however, senators of the president’s party from the state in which the candidate resides may be able to veto a nomination.

Although on the average there has been an opening on the Supreme Court every two years, there is a substantial variance around this mean. Presidents have failed 20 percent of the time to get Senate confirmation of their nominees to the Supreme Court—a percentage much higher than that for any other federal position. When the **chief justice’s** position is vacant, presidents usually nominate someone from outside the Court; but if they decide to elevate a sitting associate justice, he or she must go through a new

confirmation hearing. Nominations are most likely to run into trouble under certain conditions. Presidents whose parties are in the minority in the Senate or who make a nomination at the end of their terms face a greatly increased probability of substantial opposition. Equally important, opponents of a nomination usually must be able to question a nominee's competence or ethics in order to defeat a nomination.

The Backgrounds of Judges and Justices

Judges serving on federal district and circuit courts are not a representative sample of the American people. They are all lawyers, and they are overwhelmingly white males. Federal judges have typically held office as a judge or prosecutor, and often they have been involved in partisan politics.

Like their colleagues on the lower federal courts, Supreme Court justices share characteristics that qualify them as an elite group. All have been lawyers, and all but four have been white males. Typically, justices have held high administrative or judicial positions; most have had some experience as a judge, often at the appellate level; many have worked for the Department of Justice; and some have held elective office. A few have had *no* government service. The fact that many justices (including some of the most distinguished ones) *have not had any previous judicial experience* may seem surprising, but the unique work of the Supreme Court renders this background much less important than it might be for other appellate courts.

Partisanship is an important influence on the selection of judges and justices: only 13 of 112 members of the Supreme Court have been nominated by presidents of a different party. *Ideology* is as important as partisanship—presidents want to appoint to the federal bench people who share their views. Presidential aides survey candidates' decisions (if they have served on a lower court), speeches, political stands, writings, and other expressions of opinion. They also turn for information to people who know the candidates well. Presidents are typically pleased with the performance of their nominees to the Supreme Court and through them have slowed or reversed trends in the Court's decisions. Nevertheless, it is not always easy to predict the policy inclinations of candidates, and presidents have been disappointed in their nominees about one-fourth of the time.

The Courts as Policymakers

The first decision the Supreme Court must make is *which cases to decide*: unlike other federal courts, the Supreme Court *controls its own agenda*. Approximately 8,000 cases are submitted annually to the U.S. Supreme Court (but only about one percent are accepted for review).

The nine justices meet in *conference* at least once each week. The first task in conference is for the justices to consider the chief justice's *discuss list* and decide which cases they want to hear. Most of the justices rely heavily on their *law clerks* to screen cases. If four justices agree to grant review of a case (the "rule of four"), it can be scheduled for oral argument or decided on the basis of the written record already on file with the Court. The most common way for the Court to put a case on its docket is by issuing a **writ of *certiorari*** to a lower federal or state court—a formal document that orders the lower court to send up a record of the case for review.

An important influence on the Supreme Court is the **solicitor general.** As a presidential appointee and the third-ranking official in the Department of Justice, the solicitor general is in charge of the appellate court litigation of the federal government. By avoiding frivolous appeals and displaying a high degree of competence, they typically earn the confidence of the Court, which in turn grants review of a large percentage of the cases they submit.

The Supreme Court decides *very few cases*. In a typical year, the Court issues fewer than 100 (recently about 80) *formal written opinions* that could serve as precedent. In a few dozen additional cases, the Court reaches a *per curiam decision*—a decision without explanation (usually unsigned); such decisions involve only the immediate case and have no value as precedent because the Court does not offer reasoning that would guide lower courts in future decisions.

The second task of the weekly conferences is to *discuss cases* that have been accepted and argued before the Court. Beginning the first Monday in October and lasting until June, the Court hears **oral arguments** in two-week cycles. Unlike a trial court, justices are familiar with the case before they ever enter the courtroom. The Court will have received written **briefs** from each party. They may also have received briefs from parties who are interested in the outcome of the case but are not formal litigants (known as ***amicus curiae***—or "friend of the court"—briefs).

The chief justice presides in conference. The chief justice calls first on the senior associate justice for discussion and then the other justices in order of seniority. If the votes are not clear from the individual discussions, the chief justice may ask each justice to vote. Once a *tentative vote* has been reached (votes are not final until the opinion is released), an *opinion* may be written.

The written **opinion** is the legal reasoning behind the decision. The *content of an opinion may be as important as the decision itself*. Tradition requires that the chief justice—if he voted with the majority—assign the **majority opinion** to himself or another justice in the majority; otherwise, the opinion is assigned by the senior associate justice in the majority.

Concurring opinions are those written to support a majority decision but also to stress a different constitutional or legal basis for the judgment. ***Dissenting opinions*** are those written by justices opposed to all or part of the majority's decision. Justices are free to write their own opinions, to join in other opinions, or to associate themselves with part of one opinion and part of another.

The vast majority of cases are settled on the principle of ***stare decisis*** ("let the decision stand"), meaning that an earlier decision should hold for the case being considered. Lower courts are expected to follow the **precedents** of higher courts in their decision making. The Supreme Court may overrule its own precedents, as it did in ***Brown v. Board of Education*** (1954) when it overruled ***Plessy v. Ferguson*** (1896) and found that segregation in the public schools violated the Constitution.

Policy preferences do matter in judicial decision making, especially on the nation's highest court. When precedent is not clear, the law is less firmly established. In such cases, there is more leeway and judges become more purely political players with room for their values to influence their judgment.

The most contentious issue involving the courts is the role of *judicial discretion*; the Constitution itself does not specify any rules for interpretation. Some have argued for a jurisprudence of **original intent** (sometimes referred to as **strict constructionism**). This view, which is popular with conservatives, holds that judges and justices should determine the intent of the framers of the Constitution and decide cases in line with that intent. Advocates of strict constructionism view it as a means of constraining the exercise of judicial discretion, which they see as the *foundation of the liberal decisions* of the past four decades. Others assert that the Constitution is subject to multiple meanings; they maintain that what appears to be deference to the intentions of the framers is simply *a cover for making conservative decisions*.

Judicial implementation refers to how and whether court decisions are translated into actual policy, thereby affecting the behavior of others. The implementation of any Court decision involves many actors besides the justices, and the justices have no way of ensuring that their decisions and policies will be implemented.

The courts both *reflect* and *help to determine* the national *policy agenda*. Until the Civil War, the dominant questions before the Court regarded the strength and legitimacy of the federal government and slavery. From the Civil War until 1937, questions of the relationship between the federal government and the economy predominated; the courts traditionally favored corporations, especially when government tried to regulate them. From 1938 to the present, the paramount issues before the Court have concerned personal liberty and social and political equality. In this era, the Court has enlarged the scope of personal freedom and civil rights, and has removed many of the constitutional restraints on the regulation of the economy. Most recently, environmental groups have used the courts to achieve their policy goals.

John Marshall, chief justice from 1801 to 1835, established the Supreme Court's power of **judicial review** in the 1803 case of ***Marbury v. Madison*** (the so-called *"midnight judges"* case). In a shrewd solution to a political controversy, Marshall asserted for the courts *the power to determine what is and is not constitutional* and thereby established the power of judicial review. By in effect reducing its own power—the authority to hear cases such as Marbury's under its original jurisdiction—the Court was able to assert the right of judicial review in a fashion that the other branches could not easily rebuke.

Understanding the Courts

Powerful courts are unusual; very few nations have them. The power of American judges raises questions about the compatibility of unelected courts with a democracy and about the appropriate role for the judiciary in policymaking.

In some ways, the courts are not a very democratic institution. Federal judges are not elected and are almost impossible to remove. Their social backgrounds probably make the courts the most elite-dominated policymaking institution. However, the courts are not entirely independent of popular preferences. Even when the Court seems out of step with other policymakers, it eventually swings around to join the policy consensus (as it did in the New Deal era).

There are strong disagreements concerning the appropriateness of allowing the courts to have a policymaking role. Many scholars and judges favor a policy of **judicial restraint** (sometimes called *judicial self-restraint*), in which judges play minimal policymaking roles, leaving policy decisions to the legislatures. Advocates of judicial restraint believe that decisions such as those on abortion and school prayer go well beyond the "referee" role they feel is appropriate for courts in a democracy. On the other side are proponents of **judicial activism,** in which judges make bolder policy decisions, even breaking new constitutional ground with a

particular decision. Advocates of judicial activism emphasize that the courts may alleviate pressing needs, especially of those who are weak politically or economically.

Judicial activism or restraint should *not be confused* with *liberalism or conservatism*. In the early years of the New Deal, judicial activists were conservatives. During the tenure of Earl Warren, activists made liberal decisions. The tenure of the conservative Chief Justice Warren Burger and several conservative nominees of Republican presidents marked the most active use of judicial review in the nation's history. The problem remains of reconciling the American democratic heritage with an active policymaking role for the judiciary. The federal courts have developed a doctrine of **political questions** as a means to avoid deciding some cases, principally those that involve conflicts between the president and Congress.

One factor that increases the acceptability of activist courts is *the ability to overturn their decisions*. The president and the Senate determine who sits on the federal bench (a process that has sometimes been used to reshape the philosophy of the Court). Congress can begin the process of amending the Constitution to overcome a constitutional decision of the Supreme Court, and Congress could even alter the appellate jurisdiction of the Supreme Court to prevent it from hearing certain types of cases. If the issue is one of **statutory construction** (in which a court interprets an act of Congress), the legislature routinely passes legislation that *clarifies existing laws*—and, in effect, overturns the courts.

Assignments

Discussion

What role should original intent have in how the Supreme Court interprets the Constitution and laws of Congress? Should original intent be the most important criterion?

Select the **Module 8 Discussion** link to post your response to the topic.

Quiz

- Module 8 Quiz
- Final Exam

Written Assignments

The Research Paper Assignment is due. For the exact date, see the **Schedule of Work**.

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- American Government Chapter 13. **Provided by**: OpenStax. **Located at**: https://cnx.org/contents/W8wOWXNF@15.12:CN-o5yvT@2/Introduction. **License**: *CC BY: Attribution*

8.2: Discussion- The Courts

What role should original intent have in how the Supreme Court interprets the Constitution and laws of Congress? Should original intent be the most important criterion?

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CHAPTER OVERVIEW

9: Syllabus

9.1: Sample- Read Me First!

Welcome to the online version of National and State Constitutions.

This page will introduce you to the course. However, you should read this entire Syllabus module carefully during the first days of the semester to gain a full understanding of what the course entails.

Using this Course

- Make sure you can navigate this course and understand the contents at the beginning of the semester. It is particularly important to carefully review the **Syllabus** and **Course Information** in this module. Read it carefully – twice.
- Once you have reviewed the material in the Orientation Module and reviewed the accompanying video, select the **Course Contract** link and verify your understanding.
- There is no need to purchase any texts in this course! We are using “Online Educational Resources”. These resources are reached by selecting the link on the syllabus and following the accompanying instructions. This course is reading intensive, so it is imperative that you stay on schedule for all your reading assignments. If you procrastinate, it will be VERY difficult to successfully participate in discussions or do well on the quizzes.
- Every time you login to this course, check the **News** widget on the **Course Home** for any course news. Assignment or deadline changes and other important information will be communicated as News items.

An interactive or media element has been excluded from this version of the text. You can view it online here: http://pb.libretexts.org/sf/?p=24

Course Orientation

Students are encouraged to communicate with the instructor as much as they need, but they are expected to know basic computer skills and this course essentials before taking this course. For students new to Web learning or this course (the course management system) you must learn how things work and feel comfortable with the system and your own skills. Feel free to email the instructor any questions or concerns you may have about this course.

Step One

You should watch the video “Course Introduction” as a top priority. In this video, the general outline of the course and essential information to successfully complete the course will be provided.

Step Two

The next step in the orientation process is to understand the Web environment is not the same as a traditional class. There are real advantages and some limitations to the web environment. In order to have a successful experience, you must be an “active learner.” This starts by looking around the course. **You should select all the tools in the navbar above and get familiar with how the different parts of the course look**. For those of you who have experienced Web learning already, you need to ensure you have an understanding for how this class works. Just as in a traditional class, the teacher may use the same tool in a different manner. This course will not simply present itself to you. You will need to explore it and proactively ask questions when you are not sure. The sooner you get over the this course learning curve, the sooner you can focus on what we are here for – Political Science 210.

Step Three

Here is an overview of the course. There are 8 modules in this course. Each module has a reading assignment from either the text, the **Links** tool, or links that are contained in the content pages. All Module discussions have an open-ended question. You will answer these questions in the **Discussions** area of the course. Each Module also has a Module quiz. Students will also need to take a Midterm and Final exam to complete the course.

Step Four

This is not a “self paced” course. Students need to note the dates in the course syllabus. Pay special attention to the **Schedule of Work** you will find together in the Syllabus module. Regardless of the reason, late work will have a 10% per day penalty per day. All work in Module 8 must be submitted on the due date to be available for credit in the course.

Step Five

All materials used in this course are accessed from the web. The link to the text can be found on the Course Syllabus. For students who do not have their own access to the Web, you can come to any of the Pima Community College campus Computer Commons and utilize the resources at no charge.

Step Six

This course uses a *threaded discussion* system. The threaded discussion takes the place of lecture interaction. It is a series of communications where class members address the discussion questions posted by the instructor. Each module has one main question.

An interactive or media element has been excluded from this version of the text. You can view it online here: http://pb.libretexts.org/sf/?p=24

The threaded discussion postings are organized in a manner where the entire class can review how the topics are being addressed. Students are expected to review all discussion postings in the course and respond to ideas or opinions posted by other students. Students should note that postings are simply an exploration of a given topic, as in a classroom discussion, with a diversity of opinions and thoughts which are not necessarily correct. However, the purpose of discussions is to understand the diversity of perspectives on a given topic and to enrich our views.

Students need to first review the Introduction page for each Module. Then review the discussion pages related to the topic you are studying. When you are ready, go the Discussion in the navbar above to write your contribution.

Discussion postings are graded based on the **Discussion Rubric**. **Once the date for the module has expired, I will remove the ability to make further postings and grading will then be completed**

Step Seven

Each module has a quiz. This is taken “open-book.” Students may submit the quiz for grade up to three times and will receive credit for the highest grade achieved. The quiz is graded immediately by this course. You also can see your grades in the **Grades** tool in the navbar above. If you cannot access your score after submitting your quiz, please contact your instructor.

Students are encouraged to keep a copy of their quiz work. Since the Midterm and Final exams are from the same test bank, it will be handy to use as part of your reviewing for those tests. The Midterm and Final exams will be taken the same as the quizzes (although the Final has a time limit). These tests contain 60 and 75 questions respectively. This course will randomly select the exam questions, many of which students will have already seen in the module quizzes.

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9.2: Sample- Schedule Of Work – Fall

Before you start this course, you should review the following Schedule of Work carefully. If you decide this is not the course for you, it is your responsibility to drop by the dates in the academic calendar. If you are on financial aid, or have grants, you should check with Financial Aid before changing your class load.

Module 0

Due: XX/XX (Week 1)

- Course Contract must be signed electronically
- Introduction discussion
- Add Period: XX/XX

Module 1

Due: XX/XX (Week 2)

- *American Government Chapter 1*
- Discussion 1

Due: XX/XX (Week 3)

- Quiz 1

Module 2

Due: XX/XX (Week 4)

- American Government Chapter 2
- US Constitution (Preamble)
- AZ Constitution (Preamble)
- Discussion 2

Due: XX/XX (Week 5)

- Quiz 2
- Drop/Refund/Audit Deadline for 16-week classes: XX/XX

Module 3

Due: XX/XX (Week 6)

- American Government Chapter 3
- US Constitution (Article IV and 10th Amendment)
- Discussion 3

Due: XX/XX (Week 7)

- Quiz 3

Module 4

Due: XX/XX (Week 8)

- American Government Chapter 4
- US Constitution (Amendments 1 through 9)
- Discussion 4

Due: XX/XX (Week 9)

- Quiz 4
- Midterm Exam

Module 5

Due: XX/XX (Week 10)

- American Government Chapter 5
- Discussion 5

Due: XX/XX (Week 11)

- Quiz 5

Module 6

Due: XX/XX (Week 12)

- American Government Chapter 11
- Review the Constitution of the State of Arizona
- Discussion 6

Due: XX/XX (Week 13)

- Quiz 6
- AZ History & Government Assignment
- Student Withdrawal Deadline Date: XX/XX

Module 7

Due: XX/XX (Week 14)

- American Government Chapter 12
- Review the Constitution of the State of Arizona and the US Constitution
- Discussion 7

Due: XX/XX (Week 15)

- Quiz 7

Module 8

Due: XX/XX (Week 16)

- American Government Chapter 13
- Review the US Constitution and the Arizona Constitution
- Discussion 8
- Quiz 8

Due: XX/XX (Final Exam Week)

- Research Paper
- Course Evaluation
- Final Exam

9.3: Sample- Schedule of Work – Spring

Schedule of Work

Before you start this course, you should review the following Schedule of Work carefully. If you decide this is not the course for you, it is your responsibility to drop by the dates in the academic calendar. If you are on financial aid, or have grants, you should check with Financial Aid before changing your class load.

Module 0

Course Contract must be signed electronically
Dates: 01/14 – 01/20

Introduction discussion
Dates: 01/14 – 01/20

Add Period
Dates: 01/14 – 01/22

Module 1

Discussion 1
Dates: 01/21 – 02/03

Quiz 1
Dates: 01/21 – 02/03

Module 2

Discussion 2
Dates: 02/04 – 02/13

Quiz 2
Dates: 02/04 – 02/13

Drop/Refund/Audit Deadline for 16-week classes
Date: 01/28

Module 3

Discussion 3
Dates: 02/14 -02/27

Quiz 3
Dates: 02/14 -02/27

Module 4

Discussion 4
Dates: 02/28 – 03/13

Quiz 4
Dates: 02/28 – 03/13

MIDTERM EXAM
Dates: 03/14 – 03/22

Module 5

Discussion 5
Dates: 03/23 – 04/03

Quiz 5
Dates: 03/23 – 04/03

Module 6

Discussion 6
Dates: 04/04 – 04/17

Quiz 6
Dates: 04/04 – 04/17

AZ History & Government Assignment
Dates: 04/04 – 04/17

Student Withdrawal Deadline for 16-week classes
Date: 04/04

Module 7

Discussion 7
Dates: 04/18 – 05/01

Quiz 7
Dates: 04/18 – 05/01

Module 8

Discussion 8
Dates: 05/02 – 05/08

Quiz 8
Dates: 05/02 – 05/08

Research Paper
Dates: 05/02 – 05/08

Course Evaluation
Dates: 05/02 – 05/08

FINAL EXAM
Dates: 05/10 – 05/13

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9.4: Sample- Schedule of Work – Summer

Before you start this course, you should review the following Schedule of Work carefully. If you decide this is not the course for you, it is your responsibility to drop by the dates in the academic calendar. If you are on financial aid, or have grants, you should check with Financial Aid before changing your class load.

Module 0

Course Contract must be signed electronically
Dates: 05/28 – 06/02

Introduction discussion
Dates: 05/28 – 06/02

Add Period
Dates: 05/28 – 06/03

Module 1

Discussion 1
Dates: 05/28 – 06/02

Quiz 1
Dates: 05/28 – 06/02

Drop/Refund/Audit Deadline for 8-week classes
Date: 06/03

Module 2

Discussion 2
Dates: 06/03 – 06/09

Quiz 2
Dates: 06/03 – 06/09

Module 3

Discussion 3
Dates: 06/10 -06/16

Quiz 3
Dates: 06/10 -06/16

Module 4

Discussion 4
Dates: 06/17 – 06/23

Quiz 4
Dates: 06/17 – 06/23

MIDTERM EXAM
Dates: 06/24 – 06/30

Module 5

Discussion 5
Dates: 06/24 – 06/30

Quiz 5
Dates: 06/24 – 06/30

Module 6

Discussion 6
Dates: 07/01 – 07/07

Quiz 6
Dates: 07/01 – 07/07

AZ History & Government Assignment
Due Date: 07/07

Student Withdrawal Deadline for 8-week classes
Date: 07/05

Module 7

Discussion 7
Dates: 07/08 – 07/14

Quiz 7
Dates: 07/08 – 07/14

Module 8

Discussion 8
Dates: 07/15 – 07/21

Quiz 8
Dates: 07/15 – 07/21

Research Paper
Due Date: 07/21

Course Evaluation
Dates: 07/15 – 07/21

FINAL EXAM
Dates: 07/15 – 07/21

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9.5: Sample- Discussion Rubric

There are 8 discussion topics in the **Discussions** area that are counted as part of your grade. Each unit discussion is worth up to 50 points for a semester total of 400 points, or **39% of your total grade** (see **Syllabus** for detailed grading rules in this course).

Discussion posts must be submitted through this course by the dates and times listed in the Schedule of Work. **No late posts will be accepted.**

In order to be eligible to earn full points, you must answer the discussion question using at least two references (you may reference information from your textbooks). **All posts must reflect critical analysis and the use of parenthetically referenced research with page numbers or websites**. Use of online academic sources is appropriate, but Wikipedia is **not allowed**.

You must make at least four quality comments on two different days. Remember that quality does not necessarily mean long; also, avoid using short statements such as, "I agree" to respond to a comment. Responses should be reflections of your understanding of the materials you have read. Points will be deducted for misspelled words and improper grammar. Take advantage of this Discussion Rubric as a guideline to help you create quality discussion postings.

Guidelines on posting: First, post your response to the module discussion questions in the Discussion section of this course. In the days after your posting, you must read your classmates' responses and respond to three (3) or more of those postings. Respond at least two or three times per week so the instructor sees your online participation throughout the week (and that you are not posting all your responses on only one day).

Hints for success: Do the required activities (e.g., readings, videos) the week before or early in the week of the module discussion. You will have background information necessary to carry on interesting and informed discussions. Participate actively and thoughtfully in the discussions during the week.

Quality of Initial Post

Exceeds Expectations	Meets Expectations	Almost Meets Expectations	Does Not Meet Expectations	Not Submitted / No Participation
Initial comment fully addresses all aspects of the discussion. Comment includes many personal or professional experiences. Demonstrates excellent critical thinking skills through multiple examples and ideas. Excellent discussion of course readings or other resources if appropriate. **13 points possible**	Initial comment addresses most aspects of the discussion. Comment includes some personal or professional experience. Demonstrates adequate critical thinking through some examples and ideas. Good discussion of course readings or other resources if appropriate. **10 points possible**	Initial comment addresses part of the discussion or assigned readings. Comment includes minimal personal or professional experience. Demonstrates minimal critical thinking with minimal examples and ideas. Minimal discussion of course readings or other resources if appropriate. **8 points possible**	Initial comment minimally addresses discussion. Comment does not include personal or professional experience. Does not demonstrate critical thinking. No discussion of course readings or other resources if appropriate. **5 points possible**	No postings submitted OR posting(s) submitted after the due date. **0 points**

Quality of Response Postings

Exceeds Expectations	Meets Expectations	Almost Meets Expectations	Does Not Meet Expectations	Not Submitted / No Participation

Exceeds Expectations	Meets Expectations	Almost Meets Expectations	Does Not Meet Expectations	Not Submitted / No Participation
Responses are highly reflective, insightful and add to the discussion in a meaningful way. **13 points possible**	Responses are reflective, insightful and add to the discussion in a meaningful way. **10 points possible**	Responses are minimally reflective or insightful and do not significantly add to the discussion in a meaningful way. **8 points possible**	Responses are present but are not reflective or insightful and don't add to the discussion in a meaningful way. **5 points possible**	No postings submitted OR posting(s) submitted after the due date. **0 points**

Organization of All Posts

Exceeds Expectations	Meets Expectations	Almost Meets Expectations	Does Not Meet Expectations	Not Submitted / No Participation
Information is exceptionally well-organized; spelling and grammar are correct and complete sentences are used. Proper citations are effectively used. **12 points possible**	Information is well-organized; 1-2 spelling and/or grammar mistakes are evident. Complete sentences are used. Proper citations are used. **10 points possible**	Organization is scattered; 3-5 spelling and/or grammar mistakes are evident. Some incomplete sentences used. Citations are used. **7 points possible**	Information is not well-organized; more than 5 spelling and/or grammar mistakes are evident. Incomplete sentences used. No citations. **5 points possible**	No postings submitted OR posting(s) submitted after the due date. **0 points**

Posting Quantity and Timeliness of All Posts

Exceeds Expectations	Meets Expectations	Almost Meets Expectations	Does Not Meet Expectations	Not Submitted / No Participation
Initial posting and at least three responses. All postings made on at least two different days before the due date. **12 points possible**	Initial posting and two responses. All postings made on at least two different days before the due date. **10 points possible**	Initial posting and two responses. All postings made on the same day on or before the due date. **7 points possible**	Initial posting and one or no responses. All postings made on or before the due date. **5 points possible**	No postings submitted OR posting(s) submitted after the due date. **0 points**

9.6: Sample- Course Contract

I have thoroughly read the Read Me First document, the Course Syllabus, Course Information, and Course Work Schedule on Desire2Learn and understand the course requirements. Further, I have reviewed the procedures for using the discussion, instructional video, and quiz/exam features of the site. I understand the policy for late work. I understand this is not a self paced course and attendance is taken weekly.

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9.7: Introduction Discussion

Just like a traditional, face-to-face class, you have the opportunity to introduce yourself. Class introductions will enable all of us to share something about ourselves and why we are in this class together at this time.

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Index

Glossary

Sample Word 1 | Sample Definition 1

Detailed Licensing

Overview

Title: State and Federal Constitution (Lumen)

Webpages: 42

All licenses found:

- Undeclared: 100% (42 pages)

By Page

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  - Front Matter - *Undeclared*
    - TitlePage - *Undeclared*
    - InfoPage - *Undeclared*
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