

# **U.S. Government**

## **A Look Inside**

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## CRITICAL THINKING IN THE SOCIAL SCIENCES

In this brief chapter about critical thinking this author makes no claims that what is written in the following pages is universally accepted. There **is** no universally accepted definition of critical thinking and there is no generally accepted list of critical thinking attributes or characteristics. There is, however, some basic agreement among many who think and write about critical thinking regarding both the definition of critical thinking and the traits or attributes of a critical thinker. The following is an attempt to apply these concepts to the social sciences in general, and more specifically to Political Science and U.S. Government.

One can look at critical thinking from at least two perspectives. One is looking at it as a process. This involves looking at the different steps or sequences that one would take in applying critical thinking to solving a problem. The second perspective is to examine the traits, attributes or characteristics of a critical thinker. In this chapter I will start off with traits or characteristics of critical thinkers and then explain a procedure that one can use to apply critical thinking to problem solving.

In the opinion of this author there are five major attributes or qualities that critical thinkers must possess. They are intellectual humility, an attitude of skepticism and questioning, awareness of bias, intellectual courage and metacognition.

### **Intellectual Humility**

Intellectual humility is the ability to admit that the knowledge one possesses on almost all topics is incomplete and possibly incorrect, at least in part. Critical thinkers assume that they are ignorant about many things. They understand that their knowledge and wisdom is limited by the time they live in, the people they have met, their own intelligence and many other factors. Excessive pride in one's knowledge is often the mother of ignorance. People who think that they know answers usually don't look for alternative explanations.

It may seem odd, but one should take pride in the ability to admit that he or she is ignorant about many topics. Wisdom (or critical thinking) begins with appreciating how little we know.

A logical extension of this line of reasoning is that **little critical thinking is possible without substantial knowledge or information that is specific to the subject**. One might possess a PHD in sociology but have very little knowledge of economics. This person would find it difficult to evaluate the merits of supply-side economic theory. An economist is not an expert on automobiles or raising children or U.S. policies towards China. A renowned psychologist will not be able to explain the behavior of a particular person without knowing quite a bit about this

person. One cannot expect to make an informed decision about the merits of a political issue or any issue unless one has substantial information and understanding of subject involved. It is impossible to think critically about a topic that one knows little about. For this reason, social scientists place a high value on research—the cure for much ignorance.

What happens with many of us (and probably all of us some of the time) is that we come to conclusions or opinions without taking into consideration factors that we are unaware of or haven't fully appreciated or understood. We then start defending these opinions and become defensive when others disagree. We become defenders of positions rather than truth seekers. We become debaters rather than critical thinkers.

Critical thinkers understand that the knowledge they possess on virtually all topics in the social sciences is incomplete and therefore they are open to new ideas and are respectful of the opinions of others.

### **Skepticism/Questioning**

Skepticism is an intellectual trait that often comes with age and training, but it is an ability that can be improved at any age. It is the mental state that does not accept information received from most sources as being completely true or accurate. To be skeptical means to be doubtful as to whether the information one receives is completely accurate. It also means understanding that the information given to us by others is always going to be biased and incomplete to some extent.

This begins with the "knowledge" that we ourselves possess. All of us cannot possibly be completely correct about our religious beliefs, for example. Most of us have very different beliefs on many religious topics. Therefore, many of our religious beliefs are probably wrong or at least somewhat so. The same is true in politics, raising children, and our beliefs about abortion, drugs, and sexual practices. Some of us must be wrong; therefore one must be skeptical about many of the deep-seated beliefs and values we hold dear. **YOU AND I ARE OFTEN WRONG.** Believe it. Assume it.

If we are often wrong, so are others. Information in newspapers and books is frequently incorrect, at least partially. This author has often found incorrect information in textbooks and in scholarly articles published in the most respected journals and newspapers. Needless to say, if one trusts what our politicians say to be the whole, unadulterated truth, then one is not a critical thinker. Parents are often wrong; "experts" who have doctorates completely disagree at times. Teachers are sometimes wrong, so are priests and ministers, doctors and lawyers, scientists and philosophers.

Simply put, just because you read it in the newspaper, saw it on CNN or heard it from your teacher, doesn't mean it's true. Don't assume that the information you receive is exactly correct or aptly applied in context. This does not mean that one should doubt **all** information from **all** sources. Life is too short to question everything. If your mother tells you that she

cooked dinner, you can probably be sure she did. On the other hand if she tells you that God favors Republicans or Democrats...

In the social sciences there isn't one person or one book that has all the answers. One cannot trust a particular newspaper or news program to be right all the time. Determining to what extent one can trust particular people or sources is a life-long process.

Skepticism and questioning are logical partners. Critical thinkers are wary of easy, pat, or traditional answers and find questions that they think are unanswered. If the important questions are not asked, or are ignored, then new, creative solutions or answers will never be found. **The future may well belong more to those who ask the right questions than to those who are good at finding answers.**

The key is the identification of the important questions. Once one has identified the major points of an argument or the important assumptions of a position then one can start finding the key questions. These questions can seldom be answered completely; in the social sciences, in particular, one must often be satisfied with some amount of uncertainty.

Critical thinkers question—themselves, their colleagues, experts, textbooks, accepted doctrine. They welcome questions about their own opinions. They are deliberately, consciously, open-minded. They are skeptical about most opinions, especially their own.

## **Bias**

The third quality that a critical thinker in the social sciences must possess is the awareness that **everyone** is biased and prejudiced in some form. It should be understood here that the words "bias" and "prejudice" are used in the academic sense, meaning preferences, inclinations, or predispositions. To be biased simply means that we are predisposed to think in a certain way. Not all biases or prejudices are negative. For example, if a woman falls in love with an Ethiopian man named Mohamed, the way she looks at all Ethiopians and all people named Mohamed will be affected in a positive way. She will be biased by her experiences and feelings. Every experience changes how we see things. Every experience we have prejudices us in some way.

Humans can never be completely objective. We are always affected by what we have been taught, by what we have experienced. We are subjective. It doesn't make sense to ask if opinions or observations are objective or subjective. **All** of our observations and those of others are to some extent subjective or biased. What we need to be asking is to what extent is the information we receive biased and in what ways?

There are many types of biases. Four important ones are self-interest, cultural bias, national bias, and personal bias. Each deserves a few words of explanation.

### Self Interest

In the social sciences, and particularly in Political Science, it is axiomatic that people favor whatever is in their perceived self-interest. College students easily see the benefits of reductions in tuition or tax credits for college courses. Businesspersons tend to believe that the government places unnecessary restrictions on business activities and overtaxes private enterprise. Senior citizens generally see increases in social security payments as positive. U.S. citizens find it easy to believe that the United States is the best country in the world. Young women usually favor tough laws against sexual harassment, while business owners and male supervisors often look upon such laws with something less than total enthusiasm. Republicans and Democrats are inclined to believe positive things about their party and negative things about the other political parties. Critical thinkers need to be aware of the natural bias that we humans have to favor ideas and beliefs that are in our own perceived self-interest. (Please note the word “perceived.” What we believe or perceive to be in our self-interest may in actuality not be.)

This is particularly true in how we explain our own behavior or that of loved ones. We have a natural tendency to rationalize, that is, to explain what we do in the best possible light. As a parent I tell myself at times that I shouldn't clean up so much, it would be better for my children to learn this all-important value. Of course the more my children clean up the less I have to do. If my students are not doing well in my classes there is the tendency to blame the students. After all, if it isn't the students' fault then....As a manager of a youth soccer team I am frequently surprised at how great parents think their children are—versus how good I think they are. Of course I have a very realistic view of my children 😊

The easiest way to predict the positions of political parties is to understand what is in the perceived self-interest of the people who tend to support that party. For example, Democrats tend to be more supportive of spending money on public education and most public school teachers tend to support the Democratic Party. Republicans tend to be more supportive of military spending; people in the military and military contractors tend to support the Republican Party.

In short, we tend to view things that we believe favor us in a positive light. So do others. We must examine very carefully policies or beliefs that we perceive beneficial to ourselves and do the same for other people. **Generally we tend to believe what we want to believe** and usually we want to believe things that favor us or make us feel better about ourselves.

### Cultural Bias

All of us have been biased by the general culture that we live in. A culture is a group of deep-seated beliefs, values, and customs that have been transmitted by past generations. It is a way of thinking, of valuing. Different cultures teach distinct ways that men, women, children, mothers, fathers, and others should be treated. In the USA, men and women are viewed primarily as social and political equals-- in the 21st Century. This was not generally true during the 18<sup>th</sup>, 19<sup>th</sup> and most of the 20<sup>th</sup> Century. Today women are not considered equal to men by most people in India, China, Iran, Saudi Arabia and many other countries. In the main U.S. culture, monogamy is the law as well as the cultural norm. This is not so in Morocco or Iraq. The USA stresses individualism. The Japanese stress group values. Cultures teach different values relative to sexual relations, drug use, abortion, homosexuality, honesty, and many other subjects.

We have been taught to see things in certain ways by our culture. Culture is a subtle form of brainwashing, of indoctrination. It is impossible to completely undo its effects. Often we are not aware of the powerful effects that our culture has on us until we are exposed to other cultures or ways of thinking. For example, reading these words will probably make little impression on you unless you have lived in another culture or experienced other people of different cultures for a long or intense time period.

Language is part of a culture. It is not only a vehicle for communication; each language has a view of the world inherent in it. English, for example, is a very straightforward, practical, egalitarian language. Most other languages have many different ways of saying the word "you." There is "you" that people of inferior status use to address their social superiors or elders. There is a "you" for close friends, a "you" that should be used for professional meetings and introductions. Lovers have a special "you," as do mothers and fathers for their children. Two Japanese or Vietnamese may need to talk with each other for a half hour before they know how to address each other. In English, we just say "you"-- simple, time saving, direct, and equal. The predominant culture in the United States tends to consider all humans as possessing the same intrinsic value. Our "you" expresses this sentiment. It is part of the way our culture looks at humans.

Most languages think of almost all *things* as having a gender. For example, in Spanish, one's nose is feminine (la nariz) while one's foot is masculine (el pie). A house is feminine and a tree is masculine. In English, we don't have male and female things; we just have "things." In this sense our language objectifies "things." Other cultures look at homes and trees, for example, as a more organic part of life.

You and I are also part of sub-cultures. We are from a specific area of the country, from a particular ethnic group or groups. We have been brought up in a certain religion or a certain non-religion. In short, there are types of people who have brought us up and whom we think of as "us." Sub-cultures can be very different. Think of the sub-cultures of Florida —African Americans, Puerto Ricans, Mexicans, Haitians, Jews, Cubans, Indians, White Southerners and others. We may have the same overall culture, but our sub-cultures are often very different. This means that we *think*, *value*, and *believe* differently. These values and ways of thinking are

put into our heads much like chefs stuff portabella mushrooms with crabmeat stuffing. We didn't choose the culture. It was fed (given) to us.

Cultures create bias. They create preferences, prejudices, ways of thinking and believing. Critical thinkers understand that their cultures have taught them beliefs and values that may make a lot of sense, little sense or nonsense.

### Personal Bias

We are also products of a personal culture--a way of thinking that was given to us by our parents and those who raised us. Each family has its own special customs and values. For example, your parents may be strong Republicans, ardent conservationists, and fishing enthusiasts. They may have taught you the value of saving your money, treating your elders with respect and the importance of cleanliness. Or not. But your family was certainly different than mine. This means that even though we may come from the same area, be of the same ethnic group, and go to the same church, we will have somewhat different values and biases because of our family. Again, we didn't choose our relatives and we didn't choose the people who raised us, yet they had (have) a great influence on how we think and what we view as important.

### National Bias

All of us are members of a particular country or nation-state. Usually we identify with this country, its government, and the people in it. We want to believe good things about our country and our people. They are usually considered an extension of ourselves. Countries, organizations, or individuals who seem to be opposed to our country are usually easily disliked and certainly mistrusted. Also, each country has a different media, a different history, and a different government that try to tell us how wonderful it is and how lucky we are to be from this country. Nationalism is created, learned. If you were Bolivian you would think very differently about the United States. And very differently about Bolivia.

In one of the latest military conflicts that the United States has been involved in (Iraq) France and Germany, two traditional allies, did not support the Bush administration's actions in the United Nations. Many people in all three countries have taken their government's position as their own and felt offended that other people and other countries took different positions. In fact, there were many negative things said and written in all three countries.

Many politicians try to take advantage of this tendency that we have to think of nations as "us" and "them." Critical thinkers need to be aware of this bias. It contributed to fascism and other historical disasters. The word "we" in the context of nationalism can lead to a collective closing of the mind—a blindness to the humanity and wisdom of others.



In summary **there is no such thing as an “objective” person. We are all subjective.** No human has an objective opinion of any social issue. We come into every situation with beliefs, values, and customs that affect our view. Generally we did not choose the biases that we have. They were created by the people who raised us, the country and area inside that country we are from. We are biased by the times we live in, by the people we encounter at school at work and in other areas. We are clearly biased by our own self-interest, although we frequently deny this. Mostly we did not choose these values or biases (remember biases can be positive, negative or somewhere in between.) We can be certain, however, that we are biased and that our biases are not the same as those of other people.

Critical thinkers are aware of these biases. In attempting to form opinions on different issues, our biases and the biases of others must be taken into account. Discovering one’s biases and trying to compensate for them is a life-long process.

### **Intellectual Courage**

This attribute of a critical thinker is the ability to think, and then voice and act on thoughts or beliefs that are unpopular. It is the capability to challenge beliefs that one holds dearly or that one’s group or country accepts—often without question. It is the courage to question commonly accepted convictions or dogma in the face of ridicule or at the cost of great personal anguish. One of Albert Einstein's most famous quotes was this, "Great spirits have always found violent opposition from mediocre minds. The latter cannot understand it when a man does not thoughtlessly submit to hereditary prejudices but honestly and courageously uses his intelligence."

It is often said that it takes courage to act on one’s true beliefs. While there is truth in this, it takes often takes more courage to **doubt** the beliefs taught by one’s parents, family, friends, and country. **It is usually more difficult to choose beliefs and values than it is to act on them.** Although we normally think that we chose the values and beliefs we hold dear, in truth they have usually been given to us by our family, friends, or culture. We can see very easily that *others* are conditioned to think in certain ways. It is much more difficult to see this in ourselves. We understand that a child born to Hindu parents, in a Hindu village in India would grow up to be a Hindu. We understand that a Palestinian child brought up in a Palestinian refugee camp by parents who hate Israelis would grow up to hate Israelis. We see that these people did little to choose their beliefs, but we think that they should try to rise above their current situations and try to see the value of other religions, other cultures. In reality these people are **us**. It is we who must understand how conditioned we are. Our circumstances are different from the people mentioned above, but the indoctrination was (is) there. Our task is to recognize the indoctrination and rise above it. This often means spending substantial time and energy thinking and researching; it is much easier to simply go along with what we have been taught.

In early November of 2001 there was a controversy caused by Bill Mahr, the host of a late-night television show in the United States called *Politically Incorrect*. Mahr said that the suicide bombers who flew the planes into the World Trade Center and the Pentagon weren't cowards "since they had been willing to die for a cause." He went further saying: "...we have been the cowards. Lobbing cruise missiles from two thousand miles away. That's cowardly. Staying in the airplane when it hits the building, say what you want about it. Not cowardly..." His comments created a great deal of public anger. Because of this a number of advertisers said they would no longer have their products advertised on his show and some network affiliates of ABC refused to carry his program. It took intellectual courage on the part of some Americans to entertain the possibility that Mahr could have been correct, at least in part.

Can someone who is willing to give his or her life for a cause be a coward? They certainly were not cowards in the physical sense, since they gave up their lives consciously, voluntarily. Perhaps, though, they were cowardly in the sense that they did not question what they were taught. Possibly they did not have the courage to doubt their superiors, friends, and associates. Were they brave enough to doubt themselves? It is not possible to know the answers to these questions with total certainty, but they are the kind of questions that we **must** ask.

Critical thinkers cannot shy away from unpopular, uncomfortable questions. They question the actions and beliefs of their parents, their country, their friends, their teachers and themselves. They have the courage to voice their opinions even when they know they may be publicly criticized.

## Metacognition

Metacognition involves all the traits and skills of critical thinking. Perhaps the best short definition of it is "thinking about thinking." Another definition would be the conscious and deliberate monitoring and regulating of one's thinking. In the Social Sciences this is one of our ultimate goals. We want to be aware of **why** we are thinking in a certain way. We want to make ourselves aware of **how** we and others have reached conclusions or have the opinions we do. We want to pay attention to the methods we use to analyze or interpret information. In short, we wish to inform and improve our thinking by being conscious of the thinking procedures that we employ. This is metacognition.

For example, you have an opinion about the use of marijuana. Metacognition involves analyzing **why** you have this opinion. How is it that you came to the conclusion that marijuana should or should not be legalized? What biased you? Have you carefully researched the topic? Are you afraid to change your opinion because it would make your past statements about marijuana (and therefore you) look foolish? Were you exposed to a culture that pushed you

towards this belief? Do you have direct experience to validate your beliefs? Did you take the word of some “expert” like a teacher, minister or parent?

Metacognition involves stepping outside of ourselves (figuratively, of course) and watching ourselves think. One starts with the realization that in major part most of **what** we believe and **how** we think has been determined by factors that we had little control over. Metacognition means that we pay attention to the processes that we use when we think or when we attempt to solve a problem. It means that we are aware of the methodology we are using when we try to answer important questions.

Suppose, for example, that a friend of yours calls you and tells you that she just had an argument with her boyfriend about the United States giving foreign aid to African countries to help them fight the AIDS epidemic. She thinks that we should spend the money here in the United States to solve our own problems; her boyfriend believes that the United States should greatly increase our financial assistance to the African countries that are most affected. She says she wants to come over to talk to you about this issue. She trusts your opinions and wants to know what you think. She wants you to help her examine her thinking.

As stated above, metacognition involves considering all the other traits of critical thinkers as one watches oneself think. To start off, one might use intellectual humility. What do you know about AIDS? Do you know how serious the problem is in Africa? Does what happens in Africa affect us in the USA? If so, how much and in what ways? How badly is the money needed? How likely is it that our financial assistance will do what it is supposed to do?

Being aware of your ignorance, you decide to find some information. You know your U.S. government teacher is generally knowledgeable about these topics so you decide to call him. He doesn't have much time to talk since he is on his way to a meeting, but he briefly tells you that he is in favor of much more financial assistance and gives you his reasons. They sound like sensible reasons, but you know that your teacher is a liberal. He is clearly biased, so you are somewhat skeptical of his opinion. You therefore begin to do some research on the Internet. You find many articles written by Africans who see this as a major international issue. You find articles written by Libertarians and conservatives in the USA who recommend that Africans learn to deal with their problems and we should worry about our own. You are considering the biases of all of these people while you are reading their words.

You come to the tentative conclusion that the USA should increase financial assistance to those African countries that are most in need and to international organizations that are in the forefront of combating the AIDS epidemic. A thought then occurs to you. If the United States should contribute more money to this cause, what about you? Shouldn't you contribute to one or more of these international organizations? You don't have a lot of money and any contribution you make will hurt. You think why shouldn't the government use your tax dollars to do this? Isn't that what taxes are for?

Then you start to wonder if you are copping out. Is it easier for you to believe that tax money should be used because you don't want to make the sacrifice? Because it will make it more

difficult for you to buy the new computer you are saving for? You wonder if you have the courage to face the logical consequences of your own beliefs.

You are metacogitating.

How about that for a word? Put it into your word-processing software and watch it cogitate.

### **The Critical Thinking Process**

There is a five-step process that I recommend when using critical thinking to evaluate an argument or a belief presented either verbally or in writing. These are the steps.

1. Identify the major point(s) of the argument or belief.
2. Summarize clearly the logic or reasons presented in support of the major point(s).
3. Identify the major assumptions that underlie the logic or reasons supporting the major point.
4. Analyze (research) the major assumptions and the reasoning behind the major points.
5. Identify the major questions that need to be addressed before one can know with confidence that the arguments or reasoning is sound.

Each step requires some explanation.

### **Identifying the Major Point**

The first step in using critical thinking to evaluate an argument is clearly articulating the major point of the argument or belief. Sometimes the major point is clear, other times not, but it must be identified before one can start the process. Usually it can be stated in a few words. Here are a few examples: "The death penalty is good." "Abortion is wrong." "The United States should spend more money on education." "The United States cannot defeat terrorism by only using military options." "Homosexuals should be allowed to marry legally."

In conversations, the major point is often stated at the beginning. In editorials, it is usually contained in the title. In essays, it should be found in the first paragraph and repeated in the last paragraph. In a long essay or editorial there are often several important points, but usually one is the key.

## Summarizing the Logic or Reasoning

The second step involves summarizing the major arguments or evidence presented in support of the major point. This can be challenging for many reasons. If a person is listening to a verbal argument or belief the reasons are often given at different times and in the reverse order of importance. In a written essay, the usual form is to mention the least important supporting argument first and the most important one last. In conversations, the order of importance is often not easily ascertained and can only be found by careful questioning. In any case, the supporting arguments must be stated and understood as clearly as possible. They are the essence of the argument or the belief.

## Identifying the Major Assumptions

The third step is perhaps the most important. It is discovering the assumptions that have been made in the argument or position that is being analyzed. This is at the core of critical thinking. What does the speaker or writer assume? Most beliefs or arguments have a few basic assumptions that underlie them. Many of these assumptions are neither clearly stated nor easily understood. Identifying these assumptions is of utmost importance.

Many assumptions are hidden, even from the person who is presenting the argument. For example, many people assume that if a country has elections where the voters are not coerced and the votes are counted honestly that a democratic government is the result. In this argument some assumptions are obvious. The writer assumes that democratic governments allow voters to vote freely and that if these votes are counted honestly then a democratic government is the result. A major hidden assumption here is that these are the **only** two factors that determine if a country has a democratic government. It is assumed **that other factors are not important.**

Many United States politicians observed elections in El Salvador in the early 1980's and saw that Salvadoran citizens were not prevented or coerced in voting, and observed that the voting results were counted more or less honestly. Therefore, they declared that the government that was elected by this process was democratic and legitimate. The U.S. government then supported this government and gave it, and the military that supported it, over a billion dollars in aid. Many of the opposition groups that fought this government and its military declared themselves to be socialist or Marxist. Clearly then, it would seem the U.S. administration was correct in supporting this democratic government.

In fact, the government and the military in El Salvador systematically murdered almost anyone who spoke against them. Reporters were shot; union organizers tortured and killed; priests, nuns, teachers and others were assassinated if they spoke against the military or the government. The government controlled the newspapers, television and radio. The only thoughts or statements that they allowed to be printed, shown or spoken in the media were those that the military permitted. Voters did not have real choices because true opposition was not allowed to run or was not allowed to explain their viewpoints.

The United Nations did an investigation in El Salvador to find out what really happened. Their findings were that the military and its supporters in the government had **murdered** approximately 10,000 people in El Salvador during the time that the United States was supplying billions of dollars in aid.

Precisely because assumptions are often hidden, critical thinking must be imaginative. One must look as much at what has been ignored as at what has been considered. Key assumptions are often not stated and the person who is making them is often completely unaware of them. An example might be of a person who believes abortion is wrong. When questioned why he believes this, his answer is that it is against God's will. When asked how he knows this, he says that it is in the Bible. When pushed further he says that his minister read him passages from the Bible that the minister interpreted as being against abortion.

There are many assumptions that this person made. He assumed that his minister interpreted the Bible correctly, that the minister correctly applied the interpretation to abortion, and that other sections of the Bible did not contradict the particular sections that the minister was referring to. He also assumed that the particular version of the Bible was the only correct one, and that this version was correctly translated into English. There are, of course, other assumptions here. In this case not all of the assumptions can be researched adequately. One must choose the ones that are most crucial and that actually can be researched. In the case above, and in many other cases, research will not produce a definitive answer, but it should uncover much information and create a greater appreciation of the complexity of the issues involved.

This leads us to the final step in the critical thinking process.

### **Analyzing the Assumptions and Reasoning**

The final step in the critical thinking process involves analyzing the assumptions and making a judgment on the reasoning of the author. It should be understood at the outset that most stated assumptions are rarely completely correct or incorrect. Most

assumptions make some sense; frequently the errors come in over generalizing or ignoring the influence of factors not considered. Finding ignored factors takes imagination, but imagination is aided by information. As you research, you will see things that you did not think of before which will then lead you to other ideas.

The key here is research. The word is used in a broad sense. Research can be asking only one person some particular questions. If you are having difficulties with your plumbing, it makes sense to ask a plumber before you start ripping out the pipes in your home. Research can involve asking many people through various means. People with medical problems often benefit from consulting with several specialists. If one wants to build a dream home it makes sense to talk to realtors, builders, architects, and specialists in insulation, air-conditioning and so on. Unfortunately, research in the social sciences often means painstakingly looking for information in different databases on the Internet. Clearly, the skill that one possesses and the time one devotes to the research are important factors. But critical thinkers understand that little critical thinking can be done without substantial information specific to the topic at hand. Finding information, then, is crucial to analyzing assumptions.

There are a few common mistakes in assumptions and reasoning in the social sciences that one should be aware of.

One frequent assumption that people make is to think that others have the same understanding of the words or terms used. "Welfare" is such a word. If you ask people to list the programs that they consider as welfare, you will find that there is a wide variation. The same can be said of the words "conservative," "liberal", "Christian," or "American." Often the military of one country calls its actions "defensive," and the actions of other countries as "offensive." Such was the case in the Cuban missile crisis in 1961, for example. The Soviet government termed the installation of nuclear missiles in Cuba as a "defensive" tactic. The U.S. government considered it offensive. In an example earlier in this essay there was a debate over the word "coward." The subject of this essay, critical thinking, is a term that means different things to different people. Most people think that critical thinking is something that should be taught in schools and practiced by all people. But since there is little agreement over what the term really means there is therefore little agreement over what should be taught. Such misunderstandings over terms are common. One must not assume that people have the same understanding of terms or words.

Another problem concerns overgeneralizations. Overgeneralizations are essentially misstatements. Usually an overgeneralization ascribes or attributes something to a group that is only true of some of group. For example, one often hears that conservatives in the United States oppose abortion. In reality, many conservatives do support some kinds of abortions. Many support abortions when the female has been raped; others support abortion to save the life of the mother. Others simply are pro-choice; they think abortion, in the early stages at least, should be left up to the pregnant woman. Pennsylvania Senator Arlen Specter, a Republican for many years, was

conservative, but he was pro-choice. One could more accurately say that most Evangelical Christians in the South oppose most kinds of abortions. This is a generalization that is broadly true. It is not an overgeneralization.

Another common assumption that people make regarding social issues is that there is one or two simple things that need to be done to solve the “problem.” This oversimplification of the problem leads to oversimplification regarding the solutions.

Usually there are many factors that contribute to a given situation; very seldom is there just one. Also, frequently the factors that cause certain phenomena act upon each other in various ways. Consider, for example, the following factors: poverty, ignorance, illness, illegitimacy, malnutrition, and feelings of hopelessness. All of these factors interrelate. In a sense they all contribute to creating the others. At a given point in time, one factor might be more causal than others. For example, poor children might well be malnourished; they are then likely to be ill frequently. Sick, malnourished children often do poorly in school, become dropouts, have children without being married, and feel that they will never be able to succeed. They then find it difficult to provide good nutrition, decent guidance or motivation to their children. Their problems are often reproduced in the next generation.

It would be incorrect to say that only poverty causes malnutrition. Many factors can cause malnutrition. It would be incorrect to say that only ignorance causes poverty; there are many factors that can lead to poverty. One could say that poverty can be a contributing factor to malnutrition or that ignorance is often a factor related to poverty.

Below are a few statements that offer a single causal explanation for situations or conditions that are far more complex.

WE HAVE DISCIPLINE PROBLEMS IN SCHOOLS BECAUSE PARENTS DO NOT TEACH THEIR CHILDREN RESPECT AT HOME.

WE HAVE SO MUCH CRIME IN THE UNITED STATES BECAUSE PENALTIES ARE TOO LENIENT.

PEOPLE WHO ARE ON WELFARE ARE TOO LAZY TO WORK.

STUDENTS WHO GET LOW GRADES DO NOT STUDY.

WE HAVE SO MANY ABORTIONS IN THE UNITED STATES BECAUSE IT'S SO EASY TO HAVE AN ABORTION.

THE DIVORCE RATE IS SO HIGH IN THE UNITED STATES BECAUSE PEOPLE ARE TOO SELFISH TO WORK ON MARITAL PROBLEMS.



## THE REASON THAT SO MANY BLACK MEN ARE IN PRISON IS BECAUSE OF DISCRIMINATION.

The healthcare bill passed by the Democratic Congress in 2010 is a disaster.

All of the above statements probably have some truth in them, but they are judgments that ignore many factors that might contribute to understanding the issues.

Another frequent assumption is to ascribe causation to correlation. A relationship is causal if one factor directly brings about another, that is, the second factor could not have and would not have occurred if not for the first. As stated above, almost never is there a single cause for social phenomena.

A correlation is simply a relationship. Two things occur at the same time, or one after the other, but one does not cause the other, rather they both may be caused by other, non-related factors.

Some people say that welfare programs have caused single-parent families. They often point to statistics that show a large increase in single-parent families amongst poor people, especially black Americans, at the same time that welfare spending was increased in the United States. Some welfare programs, especially Aid to Families with Dependent Children, required that the parent be unmarried in order to qualify. Others, like Food Stamps, are income dependent; meaning that one's income must be low enough to qualify. A single woman does not have a husband's income to include in her application and therefore would be more likely to receive benefits. Some people argue that in order to receive more welfare benefits, many women do not marry or decide to divorce.

A critical thinker is wary of simple explanations or assumptions. What else could have contributed to an increase in single-parent families? Many people believe that there was a significant change during the Sixties and Seventies in the United States and other countries concerning sexual conduct and marriage. It became more acceptable to have sex outside of marriage; society also became more tolerant of divorce. The women's movement encouraged women to find jobs, to become more independent, more self-sufficient. Another social phenomenon was occurring at the same time. Many African Americans were moving out of the South and out of rural areas and into big cities. As more poor people were moving to the cities, at the same time many well-paying, low-skill jobs were moving out of the city to the suburbs or being phased out by technology. Therefore, more poor people, especially black men, could not find jobs that paid much over minimum wage, making them more likely to be poor and less likely to be good marriage prospects.

In short, there are many possible factors that could have led to the increase in single-parent families. It is possible that the birth control devices that became increasingly available in the Sixties and Seventies had an effect on beliefs concerning sexual

practices. Were the advancements in basic science responsible for the discoveries in birth control? Is it possible that the relationship between the increase in single-parent families and the concurrent increase in welfare programs is largely or mostly co relational? Were they both caused primarily by other factors? Was one partly causal of the other? These are some questions that a critical thinker might ask.

Another assumption common in the social sciences is that the numbers one sees or reads are exactly correct. **One should not assume that the numbers found in newspapers, books or quoted on television or the radios are correct.**

This writer has encountered many mistakes that supposedly reputable authors have made using numbers. Don't trust teachers, or newspapers or textbooks to be correct always. Often they are not. In the spring of 1997 I was reviewing two US Government textbooks; one said that the U.S. Senate had sixteen standing committees; the other said there were seventeen. They were both printed the same year (1997). One might assume that something as simple as this wouldn't be missed. But it was. (I used the Internet and checked the home page of the U.S. Senate. It said there were sixteen.)

I found that an article that I was using in one of my classes said that foreign aid was only 0.012% of our budget. They misplaced the period. They meant to say 1.2% of our budget. (I just found a website that stated that it is less than 1%.)

Frequently errors are made in reference to public opinion polls. The first mistake is to assume that the numbers cited in a poll are exactly representative of the general public. If a poll is done with scrupulous methodology, it still has a margin of error. For example, many polls say that they have a margin of error of + or - 3pts and a confidence level of 95%. This means that the numbers given in the poll have a probability of being correct 95% of the time within a range of + or - 3pts. If a person says that 52% of Americans are in favor of cutting Medicaid spending, because that is what a recent poll found, he is not being careful. The pollsters themselves would not say this. The only thing that is certain is that 52% of the people polled had this opinion. If the population being polled at the time was all adults over 18 in the United States, one might reasonably conclude that a similar percentage of this population would have answered the poll's questions in the same way.

Secondly, poll figures are always indicative of people's opinions in the past. For example, in early July of 2002, George Bush's approval ratings-- (percentage of people polled who thought he was doing a good or excellent job as President) were slightly over 60% in several polls. Many authors then stated in magazines and newspapers that Bush's approval ratings had slipped to 60% (from a high of almost 90% just after the occurrence of 9/11/2001). By the time articles appeared in periodicals, the polls were over a week old. Public opinion can change rapidly. What was true a week ago may well not be true today. Issues that are perennial or long-standing such as opinions on abortion or capital punishment generally do not change quickly. However, issues that the public knows little about, such the situation in Afghanistan, or the economy, or

terrorism often show significant changes in public opinion in short periods of time. This is also true of approval ratings. They can change rapidly.

Often numbers that are quoted as exact are not. Nobody knows exactly how many people live in the United States today. If someone says that there are 308 million people in the USA, he almost has to be wrong. The Christian Science Monitor stated this in an article written in 2010: "The total number of people living in the US as of April 1 this year was 308,745,538." What the paper should have said is that the U.S. Census Bureau counted this many people living in the USA in April of 2010. There are always people missed in a census. How many are missed is impossible to know with certainty.

If a Senator says that his bill will reduce spending on Medicaid by ten billion dollars over the next five years, he is saying something he cannot possibly know. It will not be exactly ten billion dollars, and it may well be considerably more or less. No one knows how many people will apply for and be accepted for Medicaid payments over the next five years. Who can predict with precision what type of illnesses these people will have or what type of medical procedures will be available or how much these treatments might cost? One can **project** future savings; one cannot **know** exactly what they will be.

If someone says that the infection rate for HIV went down by 10% last year; he or she almost has to be incorrect. Reporting HIV infections is not exact. Many become infected and do not know it. If you read in the Orlando Sentinel that HIV infections have gone down by 10% the only thing you can say for sure is that the Sentinel **reported** 10%; you do not know if the Sentinel was correct. You cannot use the number with any certainty in any other way. Critical thinkers view numbers cautiously.

Critical thinking involves checking the **source** of statistics or numbers. For example, one might be wise to doubt statistics provided by the AFL-CIO on the job satisfaction of union and non-union labor. The national Chamber of Commerce likewise wouldn't generate much confidence if they commissioned a study on the same topic. One might expect that academics would be trustworthy in their use of numbers. Unfortunately this is often not so. An article in the Orlando Sentinel on Friday, May 17, 1996 stated that a sociologist named Lenore J. Weitzman: "reported that women's households suffered a 73 percent drop in their standard of living in the first year after divorce, while men's households enjoyed a 42 percent rise." The paper then cited another professor who took the same numbers and found that women's households had suffered a 27 percent decrease, while men's had increased by 10 percent. The second study came some two years after the original book came out. According to the Sentinel, the original statistics were cited in 175 newspaper articles, 348 social science articles, 250 law review articles, 24 appellate and Supreme Court cases and President Clinton's 96 budget.

One finds with disappointing regularity that people do not add, subtract or multiply correctly. These are simple operations, but often mistakes are made. These people are very possibly incorrect in their use of numbers simply because they are not careful. Often, however, mistakes are made because a person **wants** the numbers to say

something. Their mistakes may not be conscious or completely deliberate, but one tends to find that the mistakes made have a marked tendency to support what the authors believe or wish to convince others of.

A critical thinker treats numbers with respect and does not assume the numbers written or used by others are correct.

Finally, one should not assume that the reasons given by a particular person in explanation of his actions are correct.

In politics, the reasons given for support or opposition to a given program are often a form of rationalization. A Republican Congressperson representing a wealthy suburban constituency is likely to support a cut in welfare payments and food stamps. If you ask him why, he might well say that there is evidence of fraud in these programs and that these programs foster laziness and dependency, things that are destroying what America stands for. There is probably an element of truth in what he says. However, it is very possible that since very few people in his district benefit directly from welfare and food stamps they see little need for it and vote for people who share their ideas.

A Congresswoman representing Harlem is likely to support affirmative action programs and say that they have greatly contributed to creating opportunity for ethnic minorities and women. Again, there is probably truth in what she says. However, it is very likely that many people she represents have directly benefited from affirmative action programs and it is clearly in their direct economic interest that these programs continue to exist.

Business groups believe if they can pay lower wages and less taxes they can make increased profits, employ more people, invest in new business ventures and increase production. Unions believe that if employees are paid good salaries, the workers will work harder, spend more money, and therefore increase business productivity and sales. This will then enable businesses to hire more workers at higher salaries.

In summary, a critical thinking analysis of a position involves identifying the major point(s) to the argument, explaining the reasoning supporting the major point, identifying the major assumptions, analyzing these assumptions through research and identifying relevant questions that are still unanswered.

## Communicating about Sensitive Political Matters

Citizens use different methods to convince government officials to use scarce resources in their interests. The success that one has in politics, as well as in our daily lives, depends greatly on our intrapersonal communications skills. The purpose of the following essay is to discuss ways of enhancing one's ability to discuss important, and often emotional political topics with others. It is designed to make you more effective at getting others to listen to you; to allow you to express your point of view in such a way that others will clearly understand what you wish to say and not be offended by the way you say it. It is also intended to improve your ability to understand what others wish to communicate to you.

There are certain behaviors that further effective intrapersonal communication in political discussions and others that impede or hinder it. We will look first at things one should do to promote effective communication.

The first rule of effective communication is simple. Be polite. Most of us want to prove an offensive person wrong. We will often want to disagree with an impolite person and look for ways to disparage or put down what he or she says.

The most important part of politeness is **listening**. If you wish people to listen to your thoughts, you have to pay a price. **YOU MUST LISTEN IN ORDER TO BE HEARD**. Listening doesn't mean hearing; it means actually paying attention and asking questions to clarify meanings. If you think that what the other person is saying doesn't make much sense, ask questions. Make sure you know exactly what it is that you disagree with before you attempt to persuade him or her to your point of view. Listening is one of the greatest complements one can pay to a person. It is often **reciprocated**. Dean Rusk, one of the more famous U.S. Secretaries of State said, "One of the best ways to persuade others is with your ears — by listening to them." Karl Menninger, a founder of the famous Menninger Foundation for Psychiatry had this to say: "Listening is a magnetic and strange thing, a creative force. The friends who listen to us are the ones we move toward. When we are listened to, it creates us, makes us unfold and expand."

Secondly, it is extremely important to state opinions as opinions, and feelings as feelings, not as if they were truths. You and I are experts on our feelings and opinions. We are expert in little else. People who act like they are revealing eternal truths to the ignorant masses are usually ineffective communicators. Who wants to listen to someone's sermon on the way things really are?

We must first understand that our beliefs are just that: beliefs not absolute facts. In the social sciences a workable definition of a fact would be this: A fact is something that exists or has existed that has been **verified almost unanimously by many people with different biases using different means of verification**. For example, it is a fact that Bill Clinton was the president of the United States in 1996. It is not a fact that he did a good or bad job as president. It was a fact that Sadaam Hussein was President of Iraq in 1996. It was not a fact that he was a brutal dictator, or that he was the principal cause of the Gulf War. In the social sciences very few things are considered to be facts; many things are opinions. Some opinions have a high probability of being correct or true. Others are very logical and seem sensible. But they are still opinions and must be stated as such.

If you state something as if it were a fact, you might well consider it to be so. Your mind is likely to be closed on the topic. If you wish to find out if you are open-minded on a given topic, listen to yourself. If you consistently state your opinions as facts it is a good indication that your mind is closed. Use words like "I think" or "the way I see it" instead. Speak for yourself. No need to reveal all of life's mysteries to the rest of us.

Thirdly, be specific whenever possible. Say exactly and clearly what you mean. Generalize with great care. **This is not to say that generalizing is wrong**. Generalizations are often necessary. In fact, much of what we learn in school and outside should allow us to make careful generalizations. Without them, we would be reduced to talking about specific individuals or specific events and be unable to apply what we have learned in one situation to others. Absolute generalizations, however, are particularly offensive because they lump all people or things or events into an undifferentiated glob.

Careful thinking and speaking requires specificity. Often particular examples or details are needed. Almost all U.S. citizens would agree that we should eliminate waste in government. But what does this mean? In reality, it means next to nothing without examples and details. Most people are generally in favor of or opposed to the death penalty. But such a position means little without details. Many citizens are in favor of the death penalty only for certain crimes, under certain conditions and for people of certain ages. Those who are opposed to the death penalty have specific reasons that need to be explained in detail to make sense. A position on gun control is often meaningless unless one explains the type of weapon, the conditions for use, and the specific limitations and means of enforcement. Being against drugs is largely nonsense unless one states what types of drugs (aspirin?) one is opposed to and why.

Finally, a good general practice to follow if one wishes to be an effective communicator is to complement others on what they have said before one starts mentioning disagreements. There

are usually many points made in a discussion of social issues. If one states agreements first, others are more likely to listen to points of disagreement. If you think that another person has said something that makes a lot of sense, say so. That person is much more likely to listen to a person who is wise enough to recognize how smart he is.

Closely linked to this is clearly identifying points of disagreement. Ask specific questions about the perceived disagreement. To a person who says that anyone who kills another person deserves the death penalty ask questions like these. What about children? Soldiers? The mentally impaired? Crimes of passion? One might ask if that person is willing to have some innocent people put to death because of errors in the process. To a person who says he opposes gun control ask him about machine guns, child ownership, people from other countries, or those with prison records or who are mentally ill? Ask him if he thinks the same gun laws make sense in rural areas as compared to urban environments. One must understand clearly the points of disagreement before a fruitful discussion can take place. If one reacts emotionally to something that is not clear, one risks alienating the other person unnecessarily and the result is likely to be an argument rather than a productive discussion.

The major point here is **effectiveness**, not political correctness. All of us want to be listened to, to let others know what we think, need or desire. We want to be better students, better employers, lovers, friends, and relatives. Communication is key to all of these roles.

There are other things that effective communicators avoid.

First, and most important, is to avoid name-calling or pejorative (negative) categorization. Clearly if you call someone foolish or selfish or other such names the effect will be to offend. Do **not** say such things as, "that's stupid" or "that's crazy" or "that's ridiculous." That is, don't use these words unless you wish to start an argument. If you are looking for an argument rather than an effective discussion, then by all means use these terms. You will have lots of arguments. Few people will want to talk to you.

Do **not** use these words: "You are wrong." At least not if you wish to have a productive discussion. These words are offensive almost inherently. People are not "wrong." Their opinions may be incorrect or mistaken, but a person is not "wrong." You and I are free to disagree with what others say or do. Clearly, people make mistakes of opinion, but if we personalize the discussion the result is likely to be an argument. Statements such as, "that's ridiculous," or "that's total nonsense," are almost as offensive.

Effective communicators avoid oversimplification and overgeneralization. They seldom use words like "all" "none" "always" "never" "completely" "everyone" "no one" "totally" and other absolutes. There is very little one can say about "all" Republicans or Democrats, for example, except that they are Republicans or Democrats. In order to know that people on welfare are lazy one would have to know all people on welfare in all countries in the world. One would also need to know that the listeners have the same understanding of the words "welfare" and "lazy." One of the most egregious example of this is politicians starting off a statement by saying "Americans." The word "American" is inexact in itself. Does one mean everyone in the United

States at this moment? All the people in the Americas? More importantly, who is qualified to speak for all of us, whoever “we” may be? Who is qualified to talk about all Moslems or Jews or Cubans or Afghans? The use of oversimplification or overgeneralization is often a sign of sloppy, lazy thinking. It seldom leads to fruitful discussions since people are likely to be pointing out exceptions or incidents where the generalization or simplification does not apply.

Perhaps the most common abuse of overgeneralization or oversimplification is to state (and therefore think) opinions in good-bad, black-white or either-or terms. The danger here is oversimplifying a complex situation into only two alternatives or options. Although some situations can be so reduced, many cannot. Some examples might be:

Obama’s economic policies don’t work.

It was either right to send the U.S. military to Afghanistan or it was wrong.

The death penalty has to be good or bad, take your pick.

In the first statement, does the speaker mean all of Obama’s economic policies? Those relating to inflation, unemployment, interest rates, tax cuts? Is the writer thinking about the short term, the long run? Work for whom? The rich? The poor? Everybody at all times? What?

Regarding the second and third statements: right or wrong in what way, to whom, and at what time?

In conclusion, it is my opinion that an educated person realizes that on most subjects he or she has received incomplete, biased information, and therefore comes to tentative, careful conclusions and states them as such. By learning to speak carefully, and with precision you should have more productive conversations, antagonize fewer people, and be more effective.



# Origins

## Introduction

Government is, amongst other things, an agreement. It's an agreement, often unstated, that the people of a particular place share. Many believe that the basis for the government of the United States of America is the Constitution. To a certain extent this is true, but the Constitution is only words on paper. To a large degree, the Constitution was a reflection of the values and beliefs of the some of the people who founded this country. These values and beliefs have been passed down to us. Over the years, the values and philosophies of the people of this country have changed somewhat, affecting our government in fundamental ways. What follows is an attempt to describe the core ideas and values that produce, in a broad sense, the government of the United States of America. It is a look inside. If you wish a more academic term, "political culture," will do. But culture is simply a way of thinking that has been handed down to us by our past-- our living, and non-living relatives.

There are many values and beliefs that support our current governmental system. There are five, however, that this writer considers absolutely essential to understanding our government. The value placed on freedom, individualism, and equality were original values that the founding fathers had when they wrote the Constitution. The belief that human beings are primarily concerned with self-interest was the fundamental philosophy behind the creation of the check and balance system of the Constitution and the establishment of a capitalistic or free enterprise system. Much later, pushed by the Women's and Civil Rights movements, and supported by the Supreme Court in its interpretation of the Fourteenth Amendment, came the belief in equality of opportunity.

## Freedom

"From every mountainside let freedom ring." This familiar refrain in the song "America" by Samuel Francis Smith touches home for most citizens of the United States. It is the most cherished value. Most, but certainly not all, of the people who founded this country came here looking for freedom. The freedom that they sought was not much different from what we seek and demand from our government today. We expect to be free to express our opinion, to be able follow our religion or conscience, to go where we want, to do what we wish as long as what we are doing is not significantly harming the freedom or wellbeing of our fellow citizens.

In this sense, we wish to be free from **government** control. We don't want government officials telling us what to do or telling us what we can't do. And when we think of freedom, we think of it as our **individual** right, not only our right as a citizen, but our right as human beings. The poet Robert Frost had an interesting way of saying it. "I hold it to be the inalienable right of anybody to go to hell in his own way."

We also think of freedom in an **economic** sense. Many of our distant and not-so-distant relatives came to the United States seeking the freedom to own their own land, their own homes and businesses. The British settlers who came over to America three or four centuries ago left a country where the average person could not expect to own land. Nobles owned most of the land. The average man could only hope to rent. For most of those who wrote the Constitution the right to own property was probably the most important freedom that they wished to protect. James Madison, recognized as the chief architect of the U.S. Constitution said this: "Government is instituted to protect property of every sort. . . This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*."

Freedom to start a business, freedom to become wealthy or to fail miserably is still one of the basic values of the United States. Although the topic of capitalism will be dealt with in more detail later in this course, it should be noted here that the individual **freedom** to seek profit, to work when and where one chooses and to purchase what one wants is the philosophic basis of this economic system.

In short, there is a fundamental agreement amongst most of the citizens of the United States in the importance of individual freedom. What we don't agree upon is what that means in specific, concrete instances. Should a citizen be allowed to burn a US flag in a public place? Should a high-school student be allowed to sit down while everyone else in her public school stands up and pledges allegiance to the flag? Should a seventeen-year-old be free to send and receive pornographic materials over the Internet? As the saying goes, the devil is in the details.

And speaking of details, I find it appropriate to state here that our country started out with a large segment of our population in slavery. There wasn't much freedom for them. Even after slavery was officially abolished, real economic and political freedom for much of our black population remained an unfulfilled promise until the last generation. Even now, the prejudices that we've inherited from our past have not been totally eliminated.

It is also appropriate to mention that the original native population of the United States was not given much freedom. Most were killed or herded onto reservations.

Finally, women were not afforded real economic or political freedom in most of the United States until the twentieth century.

## **Individualism**

In the United States we begin with the concept that each **individual** has certain rights that government, even a democracy, cannot take away. Thomas Jefferson, in the Declaration of Independence used the word "inalienable" here. For Jefferson, and many Americans after him, the first responsibility of government is to protect the basic rights that we, as humans, all possess.

A famous Dutch psychologist named Geert Hofstede studied different cultural dimensions of various countries. One of the cultural traits he examined was individualism. His research found this:

*“There are only seven (7) countries in the Geert Hofstede research that have Individualism (IDV) as their highest Dimension: USA (91), Australia (90), United Kingdom (89), Netherlands and Canada (80), and Italy (76).*

*The high Individualism (IDV) ranking for the United States indicates a society with a more individualistic attitude and relatively loose bonds with others. The populace is more self-reliant and looks out for themselves and their close family members.”*

[http://www.geert-hofstede.com/hofstede\\_united\\_states.shtml](http://www.geert-hofstede.com/hofstede_united_states.shtml)

It is significant that we **start** from the perspective of the individual and end up with the welfare of the country being served. Most other countries, especially Asian nations, begin with the concept that the individual exists to serve the community or the whole nation. The end result is often quite different. Because of this emphasis on individual rights, we have, amongst other things, the Fifth Amendment, which in effect tells the government that individuals do not have to prove their innocence; in fact they don't even have to answer a policeman's questions. We have an individual right of freedom of speech.

We often think of responsibilities in this sense as well. In most countries it is accepted that the government has the responsibility to take care of all of its citizens. In the United States the philosophy is often that each individual has the responsibility to take care of him or herself and also to take care of his or her family members. There is a great deal of dislike for welfare programs in this country. Compared to most Western European countries and our neighbor to the north, Canada, the United States has always given out relatively less in social welfare programs. Our emphasis on individuals taking care of themselves is a great part of this. Again, Canada and most Western European countries have national health coverage. They think that the government should provide for the basic health care needs of the people. The United States may well get to that point one day, but we will do so only after much howling about individual responsibility.

Finally, much of our economic system is based on the concept of **individuals** pursuing their own self-interest. Much of the motivation for hard work is based on money for individual effort. Many corporations and institutions are now trying to emphasize reward for group effort, but our

focus remains on the individual—how to get him or her to work harder, or how to please his or her individual wants as consumers.

Referring again to the work done by Geert Hofstede:

*“The next lowest ranking Dimension for the United States is Power Distance (PDI) at 40, compared to the world Average of 55. This is indicative of a greater equality between societal levels, including government, organizations, and even within families. This orientation reinforces a cooperative interaction across power levels and creates a more stable cultural environment.”* (It should be noted that a low score on this index indicates greater cultural feelings of equality.)

[http://www.geert-hofstede.com/hofstede\\_united\\_states.shtml](http://www.geert-hofstede.com/hofstede_united_states.shtml)

It should be noted here that protections for individual rights are found primarily in the first ten amendments to the US Constitution, called the Bill of Rights. The writers of the Constitution did not find it necessary to include protections for individual rights. They were more concerned with creating a strong national government that could protect the country from invasion and would foster an environment that would help economic growth. But they soon found out when they took the Constitution back to their states to be ratified that the people were afraid of a powerful government and demanded that their individual rights be protected. They had to promise the people that the first order of business of the new government would be to pass a bill of rights similar to the one created by Thomas Jefferson in Virginia.

They kept their promise.

## Political Equality

Equality is simply assumed by most of us in the United States. If asked, we will readily admit that there are people who are wealthier and better educated than us. There are people who are better looking, better dressed, better athletes. However, if you asked US citizens if they thought it reasonable that better educated, or more wealthy and successful people should have more political rights than others, they would likely look at you as if you had grown horns on your head. In the United States it is assumed that we have **equal rights**, that we should be treated equally under the law, because we believe that all human beings are fundamentally

equal. After the Preamble, Thomas Jefferson's first words in the Declaration of Independence were these: "We hold these truths to be self-evident; that all men are created equal..."

Equality in this sense is philosophic and political. All citizens are considered equal in the United States in two ways. First, in their basic humanity, and second, in the fact that we are all **citizens** who have rights to be treated no better, and certainly no worse, than any other citizen.

Perhaps the best expression of this value in our Constitution is found in the 14<sup>th</sup> Amendment, which uses these words: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In Article one of the Constitution, Section 10 these words appear: "No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state."

In the United States we are often contemptuous of any kind of title. In most countries and most languages one's title is usually presented when one is introduced in any setting. If one is a doctor, a lawyer, a teacher, an engineer or even a college graduate that title comes first and then the name. In the USA if one says, "I am Professor Smith" when he or she is asked their name this would be considered ostentatious, or silly. We don't like titles. We like to think of ourselves as equals. Even though we know in many ways we are not equals, we do tend to believe that in the most basic sense, that of being a human with equal rights and equal intrinsic worth, we are equal.

Clearly, we have not treated ourselves equally over the years. Anyone with a scintilla of understanding of US history knows that we have discriminated against many of our fellow citizens. We have not always lived up to our beliefs. But they have served as guides and motivators. We are still becoming, still trying to fulfill these values.

## **Self-Interest**

Another belief that underlies the U.S. political and economic systems is that humans are primarily motivated by self-interest. This was a belief that the Puritans brought over from Great Britain. It stemmed from the Christian belief in the Original Sin—the sin that most Christians believe Adam and Eve committed in the Garden of Eden. According to this belief, Adam and Eve were perfect beings who knew God directly and loved all creation until they sinned. After this sin the nature of man changed. Humans became weak and selfish. It wasn't that man was

evil, or incapable of being good and loving, but rather that humans were easily tempted, inclined to look out for themselves first and all others afterwards.

This belief was the central philosophy behind the structure of the Constitution of the United States. The writers expected all humans to pursue their own self-interest first. **They created a system designed in such a way that each individual in government and each part or branch of the government would, in seeking their own self-interest, serve the public good.** In fact, this is how democracy is supposed to work. Those individuals who wish to be our representatives will need to serve us. It is in the self-interest of elected politicians that our country is secure, that our economy remains strong, that the crime rate is low and our schools are efficient. If these things occur, politicians get re-elected and receive more power. If not, they are likely to lose their jobs as well as the respect of their fellow citizens. Ask George H. Bush...or Jimmy Carter.

This is also a fundamental part of the philosophy of capitalism. It is assumed that individuals, and by extension, businesses, will work hardest for their own self-interest. If everybody works very hard, the result will be a productive economy. Adam Smith, the Scottish economist who in **The Wealth of Nations** explained the theory behind capitalism it this way: "It is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves not to their humanity but to their self-love, and never talk to them of our necessities but of their advantage."

Clearly, however, the reason that the waitress smiles so much while she serves you is because you are such a good-looking, wonderful person....

## Equality of Opportunity

This last value to be discussed is partly an extension of the ideal of equality that was mentioned previously. But it is also a product of US history. In World War II the United States fought Germany led by Adolph Hitler who preached racism. In our own war rhetoric, we found ourselves railing against the evils of the racism that Hitler promoted and used to slaughter millions of Jews and other non-Germans.

When the war was over, it was apparent to many US citizens, especially black or African Americans that racism was alive and well in the United States. It was especially galling for many black citizens to come home after risking their lives for their country and find themselves being treated as inferior people by their fellow citizens. A movement that began slowly in the 50s with the Supreme Court's decision in *Brown v. the Board of Education*, gathered momentum in the 1960's and culminated with the Civil Rights Acts of 1965 and 1968 and subsequent Supreme Court decisions.

While the political happenings were complex, the ideas were not. **All citizens should have an equal chance or opportunity to succeed economically and politically.** It is clear that racial,

religious and gender discrimination violates this ideal. Equal opportunity links politics to economics. If money can be used to buy political power then clearly the poor do not have an equal opportunity to justice. Racial discrimination in the United States contributed to intergenerational economic discrimination. Poor, uneducated black parents could not give their children the same opportunities to succeed economically.

Equality of opportunity is based on the premise that **U.S. citizens should succeed or fail based on their own individual efforts and talents**, not on the wealth or power of their parents and certainly not on their race, religion or gender.

Creating equality of opportunity is difficult. It often conflicts with other values. Should parents be able to transfer all their wealth to their children? If so, then clearly some children will start out as billionaires and others as paupers. Some will have political connections and influence because of the wealth and influence of their parents. Others will start out with nothing.

In the United States we have compromised on this issue as we have on many others. We do tax large estates or inheritances, but allow much of the wealth to be passed down from generation to generation. We make up for this in part by attempting (we are certainly not completely successful here) to tax the wealthy at a higher rate than the middle class, which is taxed at a higher rate than the poor. Some of the tax money is spent for programs that benefit everyone about the same (highways, airports, defense, criminal justice system) and some tax money is spent on programs designed to provide better opportunity and treatment for the poor (Medicaid, Project Head Start, food stamps, welfare.)

Probably the greatest investment in equal opportunity in the United States is the commitment to public education. Here there has been a clear effort to provide equal opportunity for all in recent years. Soon it appears possible that most students will have free tuition for college in addition to a guaranteed free education through grade 12. The quality and equality of education provided to the citizens of the United States is perhaps the biggest and best investment in equal opportunity for this country.

Equality of opportunity is not as universally accepted as the values and beliefs stated earlier in this essay. The application of this belief has proved to be politically explosive. In order for children of poor, uneducated parents to have an equal opportunity it has been necessary to spend more public money to help them with remedial educational programs. It has been necessary to spend more public monies to ensure that these people receive adequate nutrition and medical care. To ensure that women and ethnic minorities are not discriminated against it has been necessary to punish offending employers and businesses. Perhaps the most controversial programs that attempted to remedy the effects of historical discrimination were affirmative action programs, many of which actually gave preference to women and ethnic minorities in hiring and promotion.

Nevertheless, equal opportunity is a value that most US citizens agree with, at least verbally. Watch this video to give you an idea about how wealth is distributed in the USA.

[http://www.youtube.com/watch?v=QPKKQnijnsM&feature=youtube\\_gdata\\_player](http://www.youtube.com/watch?v=QPKKQnijnsM&feature=youtube_gdata_player)

# The Federalists Paper #51

There were no notes taken at the Constitutional Convention in 1787. The members thought it wise to not allow members to take notes and to meet in complete secrecy in order to allow individuals to freely express their opinions. However, after the convention there was a mighty struggle in the thirteen states over ratification of the Constitution. In the state of New York the struggle was intense. The major issue in the debates was the power of the government created by the new constitution. Many felt that this government would be too powerful and end up taking away the freedoms the settlers had just fought so hard to gain.

In a series of editorials or essays called **The Federalists Papers**, James Madison, Alexander Hamilton and John Jay (the most influential of the writers of the Constitution) outlined Constitution and the reasoning behind its structure in New York newspapers. Easily the most important and best known is the Federalist #51; in it Madison describes the philosophy behind the U.S. Constitution. Please note that this author put in the [brackets] and the words placed in **bold**. The words in brackets are synonyms; the words placed in bold are to make sure that you focus on these parts.

Again, one should understand that the major concern that the Federalists 51 addresses is that the newly created government would become too powerful.

## The Federalists Paper #51

To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the



Constitution? **The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.** Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, **it is evident that each department [branch] should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others.** Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

**It is equally evident, that the members of each department [branch] should be as little dependent as possible on those of the others, for the emoluments [salaries] annexed to their offices.** Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. **But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.** The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. **Ambition must be made to counteract ambition. The**

**interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.**

A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, **where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights.** These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.

An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several

State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view. First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. **In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.** Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified **in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.**

In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal

system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful.

It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE.

PUBLIUS.

# Explanation of Key Points in Federalist #51

Below you will find explanations of the key points in Federalist #51.

***"The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."***

The chief "exterior provision" that Madison is referring to here is democracy itself. The people, by paying attention to what is happening in government, will control those in power by their votes. This is perhaps the major check of any democratic system. If the people are dissatisfied with what their representatives do, they can vote these people out and put in new representatives who will do what the majority wishes. But Madison and the other writers of the Constitution had little faith in the knowledge or wisdom of the common man. Because of the communications systems of the day it was very difficult to follow what the government was doing, even if one was educated and observant. Because of this, the writers felt it necessary to create a government which would control itself. The "interior structure" that Madison refers to here is essentially the checks and balances system. As will be repeated later, the operating principle of the system is to use each part to control the other parts by seeing that it was in its self-interest to do so.

***"it is evident that each department [branch] should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others."***

Simply put, this means that if each branch was to be independent of the others it was necessary that no branch be selected by the others. If one branch selected another branch the two would essentially be the same. This happens in most democracies that have a parliamentary system such as Canada and the United Kingdom. In these countries whichever party controls the House of Commons selects the Prime Minister, who runs the executive branch of government. Thus, there are two separate branches, but the same people control both branches. In the United States, the President is elected independently of the Congress and thus is not beholden to it. Similarly, the House and Senate are elected separately, which means that they are not controlled either by the President or by each other. The exception to this is the judiciary, whose judges are nominated by the President and confirmed by the Senate. The judiciary, however, is given protection from the other branches by the fact that

they have a life time term of office. They can be chosen by the President and the Senate, but it is very difficult to fire them (impeachment process).

Each branch is independent of the other two for its power and each branch **represents different interests**. The President should represent the country as a whole. Senators represent their states; members of the House of Representatives represent the people in their districts, and the federal courts represent the U.S. Constitution. So, what we have is different branches, representing different people and interests with different powers and terms of office. All of this is designed to break up power and insure that each branch would be serving different masters or constituencies, thus making it difficult for any group of people or any interest group to control the entire national government.

***"It is equally evident, that the members of each department [branch] should be as little dependent as possible on those of the others, for the emoluments [salaries] annexed to their offices."***

This means that each branch should be independent in regards to its salary. If one branch could control the salary of the other two it would have a great deal of power over them. Congress has the power to increase the salaries of all three branches, but the Constitution does not allow it to reduce the salaries of judges or presidents while they are in office.

***"But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others."***

The above statement goes to the heart of the philosophy behind the Constitution. Each branch is given the motivation to check the other two because if one branch became more powerful the other two would have relatively less. Thus, acting in its own self-interest, each branch tries to curb any attempt by the other branches to increase their power.

Each branch is given specific powers to check the other two. There are many, but a few of the major checks the three have are as follows. The President can check the Congress by his power of veto. He checks the Judiciary by nominating all judges. Congress can impeach and remove from power any president or judge. The courts have the power of judicial review which essentially means that they can declare any law passed by Congress or any act of the President to be unconstitutional.

***"Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."***

This passage is the most famous in all of the Federalist Papers. It contains the basic philosophy behind the Constitution. Underlying the Constitution is a philosophy of human nature. The men who wrote the Constitution were products of their times and of their religion. Christianity had taught that after the Garden of Eden all humans changed. They became weak and self-centered--capable of great love, but also of evil. To a large extent the Writers accepted this viewpoint. They saw humans as primarily motivated by self-interest. They were capable of great sacrifice and love for others, but this could not be counted on. The people who wrote the U.S. Constitution assumed that men in government would seek their own self-interest. They designed a system that would use this very quality to check itself and in the end serve the interests of the public. Thus, "ambition must be made to counteract ambition." Self-interest will be used to check self-interest. It is in the self-interest of all the branches to check the others, therefore we can count on them to do so. We are thus protected from the ambition of one branch by the ambition of the others.

The framers understood that the job of any government was to create laws and institutions to govern citizens for their own good. However, a key feature of the government created by the Constitution was that it was designed to check government itself. This is perhaps the most unique feature of the government created by the framers.

***"where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights."***

This is really a restatement of the above principle. Public rights are protected from an abusive government because of the check and balance system. This system is based on the understanding that individuals in government would seek their own self-interest, but in doing so would check the self-interest of others. It is in the self-interest of every Congressperson to protect his or her house from the President, the Judiciary and the other house of Congress. Likewise it is in the self-interest of every president to not allow his office to lose power to the other two branches, thus he can be expected to act against them if they try to increase their power. Judges are motivated by the same desire to check increases in power by the other two.

***In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.***

Here we have the principle of federalism. The power of government is broken into two major levels, the national (federal) government and the state governments. It was expected that each level would be jealous of its powers and do its best to check the abuse of power by the other level. Lest we forget, this was the greatest struggle of all in the United States. We had a civil war primarily over this issue. The Southern states did not accept the authority of the

federal government to abolish slavery and decided to secede from the union. We settled this argument in a bloody fashion-- we killed each other in very large numbers until one side won.

And thus we have the federal system, where power is broken into two levels of government, the national and the states and each level is further broken down into three different branches. All of this is part of the basic design of the Constitution of the United States.

It should be remembered that the major goal of the writers of the U.S. Constitution was not to create an efficient government that could do things quickly, but rather to create a government that would not grow to enslave its citizens. In this sense it has been at least modestly successful.

# **The Constitution of the United States**

## **Preamble**

**We**, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## **Constitution of the United States: Article I**

### **Section 1 - Legislative powers; in whom vested**

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



**Section 2 - House of Representatives, how and by whom chosen Qualifications of a Representative. Representatives and direct taxes, how apportioned. Enumeration. Vacancies to be filled. Power of choosing officers, and of impeachment.**

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the elector in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.
2. No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.
3. *Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.* (The previous sentence was superceded by Amendment XIV). The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.
4. When vacancies happen in the representation from any State, the Executive Authority thereof shall issue writs of election to fill such vacancies.
5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

**Section 3 - Senators, how and by whom chosen. How classified. State Executive, when to make temporary appointments, in case, etc. Qualifications of a Senator. President of the Senate, his right to vote. President pro tem., and other officers of the Senate, how chosen. Power to try impeachments. When President is tried, Chief Justice to preside. Sentence.**

1. The Senate of the United States shall be composed of two Senators from each State, (*chosen by the Legislature thereof,*) (The preceding five words were superceded by Amendment XVII) for six years; and each Senator shall have one vote.
2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary

appointments until the next meeting of the Legislature, which shall then fill such vacancies. (The words in italics were superceded by Amendment XVII)

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

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

5. The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of the President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgement in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgement and punishment, according to law.

#### **Section 4 - Times, etc., of holding elections, how prescribed. One session in each year.**

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall *be on the first Monday in December*, (The words in italics were superceded by Amendment XX) unless they by law appoint a different day.

#### **Section 5 - Membership, Quorum, Adjournments, Rules, Power to punish or expel. Journal. Time of adjournments, how limited, etc.**

1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgement require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

### **Section 6 - Compensation, Privileges, Disqualification in certain cases.**

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

### **Section 7 - House to originate all revenue bills. Veto. Bill may be passed by two-thirds of each House, notwithstanding, etc. Bill, not returned in ten days to become a law. Provisions as to orders, concurrent resolutions, etc.**

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

## **Section 8 - Powers of Congress**

The Congress shall have the power

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:
2. To borrow money on the credit of the United States:
3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:
6. To provide for the punishment of counterfeiting the securities and current coin of the United States:
7. To establish post-offices and post-roads:
8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:
9. To constitute tribunals inferior to the supreme court:
10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:
12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:
13. To provide and maintain a navy:
14. To make rules for the government and regulation of the land and naval forces:
15. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions:
16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:
17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And,
18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

**Section 9 - Provision as to migration or importation of certain persons. Habeas Corpus , Bills of attainder, etc. Taxes, how apportioned. No export duty. No**

**commercial preference. Money, how drawn from Treasury, etc. No titular nobility. Officers not to receive presents, etc.**

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importations, not exceeding 10 dollars for each person.
2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.
3. No bill of attainder or ex post facto law shall be passed.
4. No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken. (Modified by Amendment XVI)
5. No tax or duty shall be laid on articles exported from any state.
6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.
7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
8. No title of nobility shall be granted by the United States: And no person holding any office or profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

**Section 10 - States prohibited from the exercise of certain powers.**

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.
2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.
3. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in a war, unless actually invaded, or in such imminent danger as will not admit of delay.

## **Article II**

**Section 1- President: his term of office. Electors of President; number and how appointed. Electors to vote on same day. Qualification of President. On whom his duties devolve in case of his removal, death, etc. President's compensation. His oath of office.**

1. The Executive power shall be vested in a President of the United States of America. He shall hold office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows:
2. Each State shall appoint, in such manner as the Legislature may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. *The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for each; which list they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.*(The clause in italics was superceded by Amendment XII)
3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.
4. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.
- 5 . In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. (This clause has been modified by Amendment XX and Amendment XXV)
6. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected,

and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

**Section 2 - President to be Commander-in-Chief. He may require opinions of cabinet officers, etc., may pardon. Treaty-making power. Nomination of certain officers. When President may fill vacancies.**

1. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have the power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

**Section 3 - President shall communicate to Congress. He may convene and adjourn Congress, in case of disagreement, etc. Shall receive ambassadors, execute laws, and commission officers.**

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he may receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

**4 - All civil offices forfeited for certain crimes.**

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## **Article III**

### **Section 1- Judicial powers. Tenure. Compensation.**

The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

### **Section 2 - Judicial power; to what cases it extends. Original jurisdiction of Supreme Court Appellate. Trial by Jury, etc. Trial, where**

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. (This section modified by Amendment XI)
2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.
3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

### **Section 3 - Treason defined. Proof of. Punishment of.**

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of



treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

## **Article IV**

### **Section 1 - Each State to give credit to the public acts, etc. of every other State.**

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

### **Section 2 - Privileges of citizens of each State. Fugitives from Justice to be delivered up. Persons held to service having escaped, to be delivered up.**

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
2. A person charged in any state with treason, felony, or other crime, who shall flee justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.
3. No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom *such service or labour may be due.*(This clause superceded by Amendment XIII)

### **Section 3 - Admission of new States. Power of Congress over territory and other property.**

1. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, without the consent of the legislatures of the states concerned, as well as of the Congress.
2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

## **Section 4 - Republican form of government guaranteed. Each State to be protected.**

The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

## **Article V**

### **Constitution: how amended; proviso.**

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

## **Article VI**

### **Certain debts, ect. declared valid, Supremacy of Constitution, treaties, and laws of the United States, Oath to support Constitution, by whom taken. No religious test.**

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.
2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.
3. The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## **: Article VII**

### **What ratification shall establish constitution.**

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

# **Amendments to the United States Constitution**

## **I - Freedom of Speech, Press, Religion and Petition**

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

## **II - Right to keep and bear arms**

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

## **III - Conditions for quarters of soldiers**

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

## **IV - Right of search and seizure regulated**

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

## **V - Provisions concerning prosecution**

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

## **VI - Right to a speedy trial, witnesses, etc.**

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

## **VII - Right to a trial by jury**

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

## **VIII - Excessive bail, cruel punishment**

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

## **IX - Rule of construction of Constitution**

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

## **X - Rights of the States under Constitution**

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

## **XI - Judicial Powers Construed**

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

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

## **XII - Manner of Choosing a President and Vice-President**

This Amendment altered Article 2 Section 1 Part 2

Passed by Congress December 9, 1803. Ratified July 27, 1804.

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

3. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such numbers be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

### **XIII - Slavery Abolished**

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

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
2. Congress shall have power to enforce this article by appropriate legislation.

### **XIV - Citizen rights not to be abridged**

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

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

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.
5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

## **XV - Race no bar to voting rights**

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

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
2. The Congress shall have the power to enforce this article by appropriate legislation.

## **XVI - Income taxes authorized**

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

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

## **XVII - U.S. Senators to be elected by direct popular vote**

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

1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.
2. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the Executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.
3. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

### **XVIII - Liquor Prohibition**

Passed by Congress December 18, 1917. Ratified January 16, 1919.  
Altered by Amendment XXI

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.
2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.
3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

### **XIX - Giving nationwide suffrage to women**

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

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
2. Congress shall have power to enforce this article by appropriate legislation.

### **XX - Terms of the President and Vice-President**

This Amendment altered Article 1 Section 4 Part 2 and Article 2 Section 1 Part 5  
Passed by Congress March 2, 1932. Ratified January 23, 1933

1. The terms of the President and the Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.
2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice-President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.
4. The Congress may by law provide for the case of the death of any of the persons from whom the House of representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.
5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article (October 1933).
6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission.

## **XXI - Repeal of Amendment XVIII**

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

1. The Eighteenth article of amendment to the Constitution of the United States is hereby repealed.
2. The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.
3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

## **XXII - Limiting presidential terms of office**

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

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



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

### **XXIII - Presidential vote for the District of Columbia**

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

1. The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:
2. A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.
3. The Congress shall have power to enforce this article by appropriate legislation.

### **XXIV - Barring poll tax in federal elections**

This Amendment altered Article 1 Section 2 Part 3

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

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

### **XXV - Presidential disability and succession**

This Amendment altered Article 2 Section 1 Part 5

Passed by Congress July 6, 1965. Ratified February 10, 1967.

1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.
2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take the office upon confirmation by a majority vote of both houses of Congress
3. Whenever the President transmits to the President Pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.
4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmits to the President

Pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

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

## **XXVI - Lowering the voting age to 18 years**

This Amendment altered Article 1 Section 9 Part 4

Passed by Congress March 23, 1971. Ratified June 30, 1971.

The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any state on account of age.

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

## **XXVII - Congressional Pay**

This Amendment altered Article 1 Section 3 Part 1 and Article 1 Section 3 Part 2

Passed by Congress September 25, 1789. Ratified May 7, 1992.

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

# Constitution Notes

There are a number of important points to know about the US Constitution. You should have clearly in mind the philosophy of man the writers had and then be able to explain the workings of the check and balance system that is the chief product of this philosophy. You should also have a broad understanding of what the three branches were designed to do. In addition to this, there were political decisions made at the Convention that had a significant effect on the government created and on future generations. The three major compromises that were made involved the issues of slavery, voting requirements and the representation of the large and small states in the legislative branch, or Congress.

## **Philosophy of Man:**

As I stated in the section on Origins, the primary idea that the writers of the Constitution had of humans is that we are primarily concerned with our own self-interest. They thought that no person could be trusted with power over another. Humans would use power to help themselves. Perhaps they would also help others, but they could never be trusted to do so. Therefore, the document they created had this explicit philosophy in mind. It is a system whereby each person and each part of the government would pursue their own selfish ends and in doing so serve the public good. The greed for power of one part of government would check the greed for power of another part, or, put somewhat differently, self-interest would be used to check self-interest.

The best source about the framers' intentions is contained in the Federalist Papers, which were written and published during the years 1787 and 1788 in several New York State newspapers to persuade New York voters to ratify the proposed constitution. The primary authors were Alexander Hamilton and James Madison with help from John Jay. Perhaps the most famous of these writings is Federalist 51. The most famous phrases in 51 are these: "Ambition must be made to counteract ambition... .It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the

government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

The phrase "a dependence on the people" refers to democracy. In other words, the best check on politicians or government is elections. In a democracy those who run the government must please the people or they will be removed. But the framers didn't believe this would be enough. Those in government could hide things from the average voter, if for no other reason that most of us have things to do other than checking up on what our elected politicians are doing. So the writers felt that "auxiliary precautions" were necessary. With this in mind they created the check and balance system.

## Checks and Balances

Remember that the organizing philosophy behind the check and balance system was that the self-interest of one part of the government would be used to check the self-interest of the other parts. The overall concern was that the government would become too powerful, that those who ran the government would take freedoms from the people. The check and balance system was specifically designed to address this concern.

The first part of this system is the separation of powers. The two major separations are those of **levels** and **branches**.

We have a **federal** system. This means that there is a division of powers between the national government (which we call the federal government) and the state governments. The people who wrote the Constitution did not want citizens to be ruled by one government, especially a national government that was far away from the people. So they gave the national government specific powers and left the rest to the state governments. They felt that both would serve as a check on the other. State governments could be dangerous in that they could be controlled by one group or type of people within that state (uneducated white males, perhaps). The minority in that state would find itself discriminated against. The national government might similarly be controlled by a group of states (the northern populous states, for instance). Governmental powers were separated into different levels to protect the interests of the many from the few and the few, very often, from the many. The federal and state governments were **designed** to conflict.

There is one major factor in the system that favors the federal government. When there is a dispute about which level of government should have control the argument is usually settled by federal courts.

The national (federal) government was further divided into three **branches**, each of which is selected by, and therefore represents, different people and interests. Also, the legislative branch, Congress, was further divided into the Senate and the House of Representatives.

Each branch is selected differently and therefore serves different masters. Great Britain and most other democracies have parliamentary systems where the Prime Minister is selected by the parliament. The Prime Minister is the representative of the majority party of parliament. The same people or party controls the parliament and Prime Minister, the two most powerful branches of government. This allows a great deal of power in the hands of the majority. However, it gives virtually no incentive for the legislative or the executive branches to check each other or investigate each other. Why investigate members of your own party? Why check your own majority? The positive thing about this structure of government, however, is that it can get things done. In the United States we often fight for years to get major laws passed. Health care is one example of many.

In the United States, the President and the two houses of Congress are elected separately. It is not very often that the same party dominates them all. Even when one party does control all three, they still often fight because they represent different groups of people.

There is one branch of government that is selected by the other two—the judiciary. Federal judges are nominated by the President and approved by the Senate. However, the judges have lifetime terms—once chosen they can only be removed by a laborious impeachment process. This gives them a great deal of independence and enables them to do many things—most importantly make decisions that are unpopular with the majority but protect individual or minority rights.

The second part of the check and balance system is that each branch of the federal government was given specific powers to protect itself and to check the other two branches. There's no need to go into all of these powers, but the major ones should be known.

The Executive branch protects itself from the Judiciary by nominating all judges and by enforcing or not enforcing decisions made by the courts. The courts ordered Richard Nixon to turn over the tapes that eventually brought down his presidency. Nixon could have simply destroyed the tapes. There was little the courts could have done to him. Ronald Reagan disliked many of the Supreme Court's decisions in the 1960's and 70's. When he became President he nominated judges who disagreed with many of these decisions and eventually overturned or modified many of them.

The major check the President has over the Congress is the veto that can only be overridden by a two-thirds majority in both houses. This is a powerful tool. Seldom can two-thirds of Congress agree on anything. To get them to vote to overturn a veto of a sitting president who can do them many favors is difficult to say the least.

Congress has the most powers to protect itself and check the other two branches. It can impeach and remove from office the President, Vice President and any federal judge. It can investigate any action by the President (Watergate, Iran-Contra, and Whitewater). It controls the budgets of the other two branches. The Senate must approve all judges and almost all presidential nominees to top executive positions, including cabinet positions (Secretary of

State, Defense, etc.). Finally, if all else fails, Congress can initiate amendments to the Constitution by a two-thirds margin in both houses.

The major power of the federal courts is called judicial review. This is the power to declare any action by the other two branches unconstitutional. This power was not explicitly stated in the constitution, but the courts have practiced it since the famous case of Marbury v. Madison. The federal courts, using the Fourteenth Amendment to the Constitution, have extended this power down to all levels of government. Today, the Supreme Court can tell any government institution or employee, at any level, that what they are doing is unconstitutional.

As a final note, the Constitution, by spreading power out to different levels and branches forced all to work together to get things done. There is little that any part of the government can do without the cooperation of other parts. (The possible exception to this is the war-making powers of the President.) The constitution forced **compromise**. In other words, our governmental system is forced to use **politics** in order to be effective.

## The Basic Structure

The basic structure of the government created by the original constitution had three separate branches of government that had distinct, but not completely separate, functions.

The Executive branch, headed by the President, was designed to execute the laws and policies set forth by the legislative branch. The structure of this branch is streamlined. It is designed to get things done quickly. The President chooses, with the consent of the Senate, the heads of all major departments. They report to him and he now has the power to fire any of them who are not doing what he wishes. Most importantly, the President is Commander and Chief of the United States' military. This gives the country an elected civilian who is in charge of the military. It is he who gives explicit orders. This enables the military to move quickly, but ensures that it will not control the government. The President appoints the top leaders in the military and has the power to remove them. General Douglas Mac Arthur found this out the hard way when President Harry Truman removed him from his position as head of the United States forces in the Korean War.

In many Latin American countries the elected presidents do not have the authority to dismiss the head of the military. This gives the military an independence that threatens democratic governments. In the United States this has never been a problem.

The legislative branch, or Congress, consisting of the U.S. Senate and House of Representatives, was given the most power by the Constitution. Its greatest power is that it has the authority to pass all laws. In the long run this is probably the greatest power of government. It has many other powers, including the powers to create taxes, authorize all federal spending, declare war, propose amendments to the Constitution and admit new states to the union.

The structure of Congress--two houses with many members, all independently elected--ensures that laws will be created in a slow, deliberative fashion and often with much noise and acrimony. It is a body that was created to represent many different people and interests. It is complex, often seemingly not controlled by its leadership. In public opinion polls it generally has the least respect of the three branches. Yet of the three branches Congress most closely resembles the people of the United States.

The Constitution has the least to say about the Judiciary. It created a Supreme Court, said that all federal judges would have a term of good behavior (life unless impeached and removed from office), and gave it powers to rule in cases of federal law and the Constitution. The federal courts, led by the Supreme Court, have two major functions. First, it is the interpreter of the Constitution. The federal courts have the final say regarding the meaning of the language in the Constitution. In other words the federal courts can determine whether or not the actions of the other two branches are constitutional—again this is called the power of judicial review (reviewing the constitutionality of laws or actions of the executive branch. Because of the Supreme Court's interpretation of the Fourteenth Amendment to the Constitution, federal courts can now rule on the constitutionality of almost any action of any government employee at any level of government.

Within this power is included the interpretation of laws passed by Congress. Laws are by necessity general rules in most cases. How they apply to individuals or specific organizations in particular circumstances is often interpreted by government employees (bureaucrats) and if those actions are questions they must be settled by the federal courts. For example, in the Clinton administration Congress passed the famous "Don't ask, Don't tell" legislation regarding gays in the military. This means that gays wouldn't be dismissed from the military as long as they didn't tell the military that they were gay and the military wouldn't ask them. Questions quickly arose as to what constituted "don't tell." Were emails sent to civilian lovers or friends using government computers "telling?" The courts had to decide cases like these. They have to interpret the intention of laws and then apply that to specific cases.

Secondarily federal courts are responsible for conducting fair trials that protect the rights of citizens and at the same time allow the government to prosecute those who violate federal laws.

It left the structure of the federal courts up to Congress. Congress has created a basic court structure of three levels: trial courts, appellate courts and the Supreme Court (District, Circuit, Supreme). Congress has also determined that there will be nine members on the Supreme Court. As mentioned before, all federal judges are nominated by the President and approved (or not) by the Senate.

## Compromises

There were a number of political compromises made at the Constitutional Convention of 1787. The three most important involved slavery, voting requirements, and state representation.

**Slavery:** The question of slavery was easily the most explosive issue at the Constitution. Many of the representatives of the northern states considered slavery to be an abomination. To them it was intolerable that the government that they were creating would allow human beings to be bought and sold as property. For the southern states, however, it was a vital part of their economy. **They made it very clear that they would not ratify any constitution that forbade slavery.** To a large extent the southern states triumphed. Slavery was essentially recognized as legitimate because slavery was not outlawed **and all states were bound to return escaped slaves.** The Fugitive Slave Clause (Article IV, Section 2, Paragraph 3) says this:

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

In a strange twist, the Constitution allowed for slaves to be counted as three-fifths a person when states counted their populations for purposes of taxation and representation. The southern states did not want slaves to be counted for taxation purposes, but did want them counted for purposes of representation in the House of Representatives. The northern states felt they should be counted for both, or neither. At the end this very strange compromise was reached.

The one victory by the northern states was that the Constitution allowed for the possibility of banning the importation of slaves from other countries after 1808. (It was outlawed after 1808.)

The writers of the Constitution left the issue of slavery to be decided by future generations because they could not resolve the issue themselves. They wanted to come up with a new form of government and they could not resolve their differences. So they did the best they could. They compromised.

This is really not the appropriate place for an in-depth discussion of the issue of slavery or racial discrimination. But it should be said that the United States began as a country deeply divided on the issue of race. This issue almost tore the country apart some seventy years later, and the effects of slavery still have not been totally eliminated.



**Voting Requirements:** The delegates at the Constitutional Convention were also deeply split over voting requirements. Some, led by Benjamin Franklin, wanted all free adult men to be able to vote. Others were afraid that the poor and uneducated would then take over the government. As I will discuss later, the majority at the constitution was afraid of a real democracy where decisions were made directly by all free men. They thought that this would be government by the ignorant and would eventually fail miserably. They wanted only property owners to be able to vote. **In the end they decided to not decide at all. They left the decision of voting requirements up to the states.** Most of the states at the time permitted only white males who owned land to vote. The battle to extend the franchise (right to vote) was long and bloody in the United States.

**Representation:** The final compromise had to do with state representation. In a true democracy every person is represented equally. This is exactly what the larger states wanted. At the constitutional convention they presented the Virginia Plan that would have represented the people in the states according to population. The New Jersey Plan said that each state should receive equal representation. The compromise in the end, called the Great Compromise or the Connecticut Compromise, determined that there should be two houses. The House of Representatives would be based on population and the states would be represented equally in the Senate.

This compromise was, to a great extent, a victory for the smaller states. The Constitution gave the Senate more power than the House of Representatives and then gave each states equal representation regardless of their population. In effect, the voters in North and South Dakota, with populations of less than a million are over twenty times better represented than the voters in California, which has a population of over twenty-four million people. This is clearly not very democratic. In fact, the Supreme Court has ruled that it is unconstitutional for the states to do what the Constitution does. The states cannot under-represent voters in either of the two houses in their state legislatures. To do so violates equal protection under the law as guaranteed by the Fourteenth Amendment. So, it is constitutional for the federal government but not for the states.

This undemocratic feature of the U.S. Constitution will probably never be changed since it would require a constitutional amendment that would have to be approved by three-quarters of the states. However, the writers of the constitution did the best they could. The small states simply would not have ratified the Constitution if they had not been given equal representation in the more powerful of the two houses.

## Federalism

Federalism is a governmental system with different **levels** that are supreme or largely sovereign or supreme in different areas. For example, in the U.S. system the national government is in charge of economic relations between or amongst states (interstate commerce). The state governments are in charge of economic relations within their boundaries (intrastate commerce). All countries have different levels of government with different powers at each level. A **federal** system exists in countries where the different levels have formal legal or constitutional protection and the lower levels cannot be easily abolished or changed by the national government.

Countries that allow the national government to control the regional, state or local governments are called unitary governments. Most of South America, and the majority of the rest of the countries in the world, are unitary systems. All the North American Countries (Canada, Mexico, USA) have federal systems.

The differences between the two systems can be profound. In unitary systems, for example, the major laws are the same throughout the country, the educational system is essentially the same and government programs dealing with health and welfare are identical in all parts of the country. In a federal system like the United States all of these things are somewhat different from state to state.

There are advantages to a unitary system. People are more likely to **know** the law if it is the same throughout the country and citizens are given more equal opportunity if the educational system is the identical in all parts of the nation. Likewise, there is more equality of treatment.

Penalties are the same for all crimes and benefits for government programs are equal. The drawbacks to a unitary system are great also. In a large country the average citizen has no real say in what laws or policies should be. In the United States, for example, with a population of over 300 million people there are about 120 million potential voters. How much say does one citizen have out of such a large number? Democracy becomes almost inconsequential to an individual in such a massive system.

If the power to make laws and set educational policies is at the state level the citizen has more say. If the power is located in cities, counties or local school boards the individual starts to exercise some reasonable control over the laws and institutions that govern him or her.

There are other advantages to a federal system. Citizens have more choice. A citizen from Texas who dislikes the drug laws of his state can move to California, which has much different laws. If people are unhappy with the educational system of Alabama they could move to another state that might be more to their liking. If the citizens of Chile or Austria don't like the laws or educational system in a part of their country they would have to leave their nation to find something different. In federal system citizens often choose to live near people who are similar to themselves. They can then create an atmosphere, a government, with laws that are pleasing to them. In a real sense this is democracy.

In the United States there has been a struggle from the moment of our creation between the state governments and the federal or national government. This conflict will not go away. It isn't supposed to. Conflict was built into the system as part of the check and balance system.

There are some basic facts that citizens of the United States should know in relation to the powers and the major taxes levied by each level of government. Below you will find a summary of the basics.

## **The major powers of the Federal Government**

1) Control of economic activity between and amongst states. This includes all types of electronic transfers as well as the movement of goods and services. Clearly airplanes, trucks and most trains come under federal regulations, although they also must obey the laws of the states where they operate or are located. This role has become much more important since internet purchases have become more common. Also, most economic commerce now crosses state lines.

2) Control of international relations. This includes national defense, diplomatic and economic relations with other countries. State governments cannot make treaties with other governments. The federal government, and normally the president, is in charge of our representation in the United Nations, the World Trade Organization, the International Monetary Fund, the World Bank, NATO and many other international organizations.

3) Control of money. The federal government controls the money supply by regulating most banks, setting important interest rates and printing money. The Department of Treasury prints money, but only under the instructions of the Federal Reserve, which monitors most financial institutions in this country.

4) Protection of Constitutional Rights. The federal government makes sure that state and local governments are protecting the constitutional rights of citizens. This was not part of the original powers of the federal government, but it has gradually assumed this power through rulings of the Supreme Court—particularly in the Court’s interpretation and application of the 14<sup>th</sup> Amendment.

Major taxes: Income Tax, Social Security, and Medicare

### **Major powers of State Governments**

1) Control of most criminal and civil laws. Law determining which drugs are illegal and what types of social behavior such as marriage laws (gay and other wise), divorce laws, gambling and child custody are examples. Some states for example now allow gay marriages; many now allow some kind of legalized gambling. More than ten states have legalized the “medicinal” use of marijuana. Nevada allows its counties to have prostitution if it desires. Most states now have the death penalty, but some do not.

2) Control of **intrastate** commerce and professions. States license professions like lawyers, accountants, and barbers. Lawyers are typically only licensed to practice in one state, so are teachers and doctors and many other professions. Also, most businesses must obtain state licenses to operate. Any business that is located physically within a state must obey the laws of that state and pay the taxes that the state requires.

3) Control of education. All states give some powers to local school boards. However, it will be the states that will determine basic curricula, teacher credentials and the structure of the schools statewide—some states have grades primary, secondary and high. Others, like Florida, have middle schools.

4) Control of local governments. States create and give powers to local governments like cities and counties and school boards. States determine specifically the powers of cities, counties, water districts, environmental districts and all other forms of local governments. States and cities have a unitary relationship, that is all the major laws and government programs are the same.

Major taxes: Income Tax, Sales taxes

### **Major powers of Local Governments**

1) Land use. By the use of zoning cities and counties can control how land is used. (Commercial, residential, transportation etc.). This is perhaps the greatest power of local

governments. They control the size of lots for all homes and the space available for commercial or manufacturing activity. Cities can become “bedroom communities” that have almost exclusively residential housing, or they can become job and industrial centers or any combination that they desire—within some limits set by the state governments.

2) Public Safety. Cities and counties control police, fire and emergency services. If one is arrested it will almost certainly be by city or county law enforcement officials. There are few state law enforcement personnel. Similarly fire and ambulance services are paid and controlled by cities and counties, not the state governments.

3) General Housekeeping functions. Cities and counties control building codes, garbage collection and disposal, most traffic laws, and other day-to-day functions.

Major tax: Property or real estate tax.

It should be noted that most of the powers of government are **shared** by all three levels. For example, while it is true that the state governments have most authority over education the federal government does step in to ensure that states do not discriminate against different ethnic groups or genders and schools do not favor one particular religion or religion over irreligion. The federal government also funds many educational programs like the No Child Left Behind program. In this program the federal government tells the local school districts that they have to test their students and has requirements in several areas, including teacher qualifications and student improvement on standardized tests. States and school districts that do not follow the federal requirements do not receive state funds. Local school districts are usually given power to determine the salaries of all personnel involved with education as well as determining how many schools will be built and when and where they will be built. Local school districts are also given some power over curriculum (what the students must learn). Thus, while the power to control public education is primarily a state power, there is a great deal of federal and local authority also.

An interesting example of how the federal government can step into what is considered a state power relates to the legal drinking age. In 1984 Congress passed a law stating that any state that had a drinking age requirement of less than 21 would lose 10% of all federal highway spending for their state. States that did not change their laws would lose tens of millions of dollars each year and billions over a longer period of time. In response to this virtually all the states changed their drinking age to 21. Thus, while the federal government does not have the power to determine the legal drinking age in states, it does have the power to push states into complying with its requirements.

Another important area of federal, state and local government sharing of power comes in the area of land use. Local governments can decide how land is used in their boundaries usually. But if the national or state governments wish to build a road or put in a facility, they normally will have the power to do so. State governments have the power to create state parks, take public land for state facilities and most importantly they have the power to regulate this power that they give local governments. For example, most states have set up water districts that

must approve local government zoning changes. (Zoning is the power to determine how any land can be used.) And again, the federal government owns huge tracks of land in most states, including more than half the land in some of the Western states. It determines mining, lumber, grazing, hunting and other activities within those boundaries.

Government in the USA is confusing. There are a lot of actors who are involved. This makes coordination difficult at times, but it means that there is a lot of room for people to become involved.

# Democracy

There is much to be said about democracy as it applies to the United States, its people and the Constitution. This section considers first how democracy was thought of by the writers of the Constitution. Secondly, the evolution of democracy in the United States is discussed. Finally, several contemporary philosophical and practical questions relating to democracy are explored.

## Democracy and the Founding Fathers

The word "democracy" was not a popular word at the U.S. Constitutional convention. At the time it meant rule by the masses, or direct governing by all adult males. James Madison (the chief architect of the Constitution) in Federalist 10 had this to say about democracy: "Such democracies...have ever been found incompatible with personal security, or the rights of property; and have in general been as short in their lives, as they have been violent in their deaths." In short, he was saying that this type of democracy, a direct democracy with citizens voting on all important issues, would be a disaster. The writers of the Constitution did not trust the average man to make wise political decisions. They thought that direct rule by the majority would be mob rule. In fact, one of the chief motivations behind the writing of the Constitution was the creation of a government that would be strong enough to put down popular uprisings by poor, uneducated citizens. Again, it should be noted here that the constitution left voting requirements up to the state governments. Only white males could vote in state and federal elections when the United States adopted the constitution.

What the writers of the Constitution created was a **republic**, a representative democracy. A republic allows voters to choose representatives who then make decisions for the government and hopefully for the people they represent. A republic was a practical necessity at the time. The means of communication was such that it was difficult for the average person to be aware of national issues. Also, most citizens lived in small towns or farms and voting was difficult. It made little sense to have a direct democracy in a nation so large and rural.

In truth, the writers had little desire to give citizens direct say in the national government. They only allowed eligible voters to choose members of the House of Representatives. They did not want the voters to choose the President. They thought the average man was little qualified to

choose such an important position. They chose instead to create an Electoral College to elect the President of the United States. Voters did not directly vote members of the Electoral College; they were chosen by the state legislatures. Nor did they trust the voters to elect U.S. Senators. They were also selected by the state legislatures. Finally, federal judges were to be nominated by the President and approved by the Senate. In short, the average voter had little direct influence on the government created by the original constitution.

### **Democracy Evolves**

Today Senators are directly elected as mandated by the 17th Amendment to the Constitution. The President also is essentially elected directly by the voters although the process still has the formality of the Electoral College. (There will be more on this later on in the course.) The selection process for federal judges is the same as created in the original constitution; however, since the President and the Senate are now elected, the judges are closer to the voters. The Constitution has been amended so that blacks (15th Amendment) women (19th) and anyone over the age of eighteen (26th) can now vote.

### **The Antagonism between Democracy and Capitalism**

As James Madison noted in the **Federalist** real democracy and property ownership often could not exist together comfortably. In fact, one of the reasons that many men in the original colonies wanted a new constitution was the great discomfort produced by Shay's Rebellion in Massachusetts. Shay's rebellion was led by propertyless men who protested that the state government was treating them unfairly. One of their demands was that the state issue paper money instead of just recognizing gold as official tender. (Imagine that!) There was a fear that propertyless men would take over control in some states and vote to take away the property or wealth of landowners. This is one of the reasons that the people who wrote the constitution gave so little power to voters. They thought that representatives would be more likely to hold wealth or property and therefore more likely to be protective of these assets. They felt that property ownership would be make citizens more politically responsible.

This antagonism exists today in the United States and in all democracies. Briefly, the major conflict is trying to create a political system whereby all citizens are politically equal alongside an economic system where there is great inequality. It is clear that in the United States some individuals and organizations use their wealth to buy political power. If they are successful, they have more political power than others. This has always been so in the United States. This seems undemocratic to many.

Arguably, money is becoming more important in national, state and local elections. Early in United States history U.S. Senators and Representatives could visit a large percentage of voters in their states and districts. They could present themselves and their ideas directly to the people. Today U.S. House members (representatives) have a constituency of about six hundred thousand people. States have much larger populations. Candidates must reach prospective voters by the media, especially television. This takes **money**. They must employ



media specialists, polling organizations, advertising agencies, speechwriters, legal and political consultants. They must purchase expensive newspaper space and buy time on radio, television and now increasingly on the Internet.

In order to get elected to the U.S House of Representatives a candidate will have to raise hundreds of thousands of dollars. Millions are now being spent in most House elections. Almost all Senate races are in the millions. Total campaign expenditures for the Democratic and Republican candidates for President in 1996 were in excess of eight hundred and fifty million dollars if primaries and indirect expenditures in the states are taken into account. In 2008 the expenses were over a billion dollars if one takes into account all money spent on the presidential campaign.

The chief means that individuals and organizations use to influence politicians at the national level today is through contributions to campaigns and to 527 groups (explained later). It is, of course, illegal to give money directly to politicians in the form of bribes. Campaign contributions are legal--usually. Clearly, those organizations and individuals with a lot of money use their monetary power to try to buy influence. Cynics sometimes state that the United States has the best government that money can buy. To the extent that those with wealth can buy power democracy is compromised. Capitalism, by its very nature, creates big winners and losers. The winners often use their money to make sure the political system allows them to keep winning.

If a free enterprise or capitalistic economic system can corrupt some elements of a democratic political system the opposite is also true. Capitalism as an economic system can be damaged by a government ruled by a majority. Capitalism works primarily by motivating individuals or groups by money and by free, open competition. Majority rule can be damaging to these incentives. If the majority is in control and given the choice of taxing themselves, or the minority who are wealthy, the choice seems obvious.

Depending upon your viewpoint, it might well seem fair. The U.S federal income tax code is somewhat progressive. This means that individuals who make more money pay a higher percentage of their income in taxes. If this is carried too far and people find that more and more of their income is going to the government, they eventually conclude that working is foolish. As a result, they stop working. If this happens the economy loses some of its most productive workers and the overall system deteriorates.

The same principle can be applied to inheritance taxes. Most countries tax estates of wealthy citizens for several reasons. One sound social and economic reason is that a person should succeed based on his or her own ability and hard work rather than that of a parent, grandparent or other relative. Indeed, this was perhaps one of the great lessons learned from studying medieval Europe where great wealth was handed down from generation to generation regardless of the ability or work of the inheritors.

However, this principle too can be carried too far. Parents often work harder in order to provide for their children and loved ones. If inheritance taxes are too high it hinders the incentive to

work. (It should be noted here that most estates can be left to a spouse with little or no inheritance taxes. Most farms and small businesses can be left without much to pay in taxes as well. Although many states have inheritance taxes, Florida has none.)

There are many other mistakes that governments can make to hinder a free-enterprise economic system, but the ones above are the major ones that directly apply to majority rule--at least in the opinion of this author.

## Campaign Reform

There have been many laws passed at the national level to control the influence of money on politics. One recent major piece of legislation, **the Federal Election Campaign Act**, was passed in 1974, after the Watergate scandal revealed how the Nixon administration sought and was given millions of dollars by individuals and organizations. (Some of this money was given in cash; much of it wasn't reported.) This law did several things. It required that all contributions to candidates be reported, provided federal funding for presidential campaigns, limited individual and organizational contributions to \$1,000 to a politician's campaign (this was later changed to \$2,000) and limited Political Action Committees to \$5,000 in spending per candidate in each election cycle. It also set up the **Federal Election Commission** to monitor campaign violations. It has turned out that this agency has not been very effective in the opinion of most informed observers.

But money for politics is like water: it finds a little hole, makes it bigger and then pours through. There were three major holes in the 1974 law and the Supreme Court created another by its ruling in *Buckley V. Valeo* which you will read below. First, while the Federal Election Campaign Act permitted Political Action Committees (PACs) to contribute only \$5,000 each to a candidate there was no limitation on the **number** of PACs that an organization could create as long as the members listed in the PACs are different. Major organizations (mostly businesses and unions) simply create as many PACs as they wish, put employee or union members' names in the PACs, and give money to candidates that way. A PAC is really only a paper construct that organizations use to funnel money to politicians. For example, a company like Lockheed Martin asks employees to contribute to a fund that is used to support politicians that favor defense or military spending. In turn Lockheed will create a number of PACs and place employee names and contributions in them. This will enable Lockheed to contribute money legally to politicians that favor more spending for defense projects.

Second, there is no limitation to money that an independent PAC or political organization can raise and spend and no limitation on the amount that organizations or individuals can contribute to these PACs. In the **Valeo** ruling (see below) and subsequent rulings the Court has in effect said that it is a violation of free speech to limit the amount of money that an individual or organization wishes to spend to promote a particular viewpoint. What has happened, however, is that organizations and individuals create a PAC or a fund and say it is for a particular viewpoint, but in reality it is in favor of or directly against one candidate. Currently these groups are now being called **527 Groups**. 527 is from the Internal Revenue

Service code which allows these contributions to be accepted without the group paying any federal taxes. 527 groups may receive unlimited contributions from individuals, corporations, unions or any source. Legally they are allowed to spend money to promote an issue, but not to promote a particular candidate for federal office. Generally what they do is tear down one candidate without recommending another directly. The most famous of these groups in 2004 was the group that called itself the **Swift Boat Veterans for Truth**. This group received funding from individuals sympathetic to the Republican Party. Its major purpose was to call into question John Kerry's (the Democratic nominee for President in 2004) war record.

Another excellent example of a 527 group was "Republicans for Clean Air." It spent \$2.5 million sponsoring a misleading television ad against Senator John McCain in the New England primaries in the spring of 2000. The money came from Sam and Charles Wyly, two millionaire Texas brothers (oil, real estate fortune) who had supported George W. Bush, McCain's opponent, for years.

PACs of this kind are too numerous to list here but amongst the best funded were those created by Tom Delay, the one-time Republican Majority Leader in the House. One of his committees called the **Republican Majority Issues Committee** has raised millions of dollars from corporations and wealthy individuals to help Republicans win control of the House of Representatives. Reports are that it spent in excess of 25 million dollars in the 2000 campaign to help Republicans retain control of the House. Of course the Conservative Coalition has a PAC, labor unions have these PACs, as do such non-profit organizations as the Sierra Club. 527 Groups give money to conservative and liberal causes and to both major political parties. In 2004 a majority of the money raised by these groups favored the Democrats at the federal level. Perhaps the best know is a group called **Moveon.org**. It has raised many millions of dollars from individuals and organizations that dislike George W. Bush and spent much of its funds on television ads bashing President Bush and the Republican Party.

Many political observers are troubled by the effects that these PACs have on the U.S. democratic system. Huge amounts of money are pouring into political campaigns and the concern is that money is buying elections. The 527 Groups have now become the biggest recipient for special interests in federal elections.

The third way money can be given is called **soft money**. This is primarily money given to state political parties with the understanding that the party will use the money to promote the politicians that the donating group selects. In the 1996 election many millions of dollars was contributed by individuals and organizations to political parties in different states with the understanding that the money would be used for the presidential campaigns. Although the Republicans usually have an edge in raising soft money from business groups and wealthy individuals, Bill Clinton has been the most successful president ever at raising such money for himself and for Democratic candidates.

In Florida, soft money is becoming dominant since the state passed a law in 1991 prohibiting organizations or individuals from contributing more than \$500 to any candidate's campaign. But wealthy individuals, businesses and organizations have been able to contribute as much

as they want to the Republican and Democratic parties at the state level. The parties then just spend it to benefit the candidates who special interests choose.

In March of 2002 Congress passed a law designed to close the soft money loophole. The law, which was signed by President Bush, had three major parts to it. First, it made all soft money contributions to the national parties illegal as of 2003. It also limited the soft money contributions to state parties to \$10,000 and prohibited the use of any state or local soft money to be used for federal elections.

The bill also increased the amount of hard money (cash or checks given to candidates' campaigns) to \$2,000 and tightened disclosure requirements, especially to supposedly unrelated "issue" campaigns that are designed to impact decisions by the federal government.

The most controversial part of the bill was the banning of the use of any money for so called "issue ads" by 527 groups for the last sixty days of a federal campaign and the last thirty days of a federal primary. In a ruling called the Citizens United v. [Federal Election Commission](#) a bitterly divided Supreme Court in January of 2010 overturned this portion of the law. This is a major issue because special interests have been able to spend unlimited funds in these campaigns. In reality, these ads, and therefore these well-financed organizations and individuals, directly favored or supported the position of certain candidates who were named in the advertisements. The Supreme Court ruling should allow a lot of money to be spent by special interest groups in federal and state and local elections. It is another tool that the well-financed can use to affect the U.S. political system.

This law represented a major effort to stop some of the influence of special interest money in federal elections. What long term effects it will have remain to be seen. As noted previously, money has a way of finding loopholes and then making them into rivers.

The Supreme Court in Buckley v. Valeo struck down part of the 1974 law that restricted how much a candidate could spend on his or her own campaign. In effect the Court said that restricting candidates' freedom to spend money on their own campaigns was violating their freedom of expression. A candidate can spend as much of his own money as he wishes. Ross Perot, for example, spent about 50 million of his own dollars in his bid to win the 1992 election. This clearly gives wealthy candidates a better chance of winning. (Although it wasn't enough to get Perot elected. In the television age it's difficult to get elected when you're short, have a crew cut, ears bigger than your hands, and a Texas twang.) The Valeo ruling also struck down limitations on political actions committees that are formed around issues (527's). This has created a major loophole for organizations that wish to give money to a particular candidate but are limited by current campaign reform legislation. They simply create issue groups or PACs that promote the candidate they wish to give money to. One of the most brazen examples of this was a PAC that called itself the "Presidential Victory Committee." In 1992, it raised and spent over 2 million dollars to help the unsuccessful bid to reelect George Bush Sr.

There is one constant reality that makes it difficult to pass laws controlling the influence of money. **The people who have the power to change the laws tend to get most of the money.** Why should incumbents (current office holders) change a system that keeps them in power? They have the advantage of being in position to pass laws that will affect many people and organizations. They have power **now** and this means that special interest groups give them money even if they have no opponents or their next election is years away. Challengers often have difficulty raising funds. They usually have no current power. It is no coincidence that in contemporary times more incumbents are being reelected. In the Congressional elections of 1998 over 98% of incumbents who sought reelection won. In general, they outspent their opponents about five to one and had a victory margin of over 40% in the voting. Since the Supreme Court has ruled it unconstitutional to limit the terms of members of the U.S. House or Senate, it will be very difficult to create other campaign reforms in the near future. The people who have power (incumbents) have very little motivation to change a system that tends to favor those in office.

## Rights of Citizens

Citizens of the United States have many legal rights. At the core of the political philosophy this country was founded on was the belief that humans have inalienable rights--rights that we possess because we are humans and that government cannot take away. In the Declaration of Independence Thomas Jefferson said it this way: "**We hold these truths to be self evident: that all men are created equal; that they are endowed by their Creator with [inherent and] inalienable rights...**" Jefferson and many others were unhappy that the Constitution did not have strict protections for individual rights. During the fight to ratify the Constitution the framers promised that the first order of business for the new government would be to pass amendments that would protect the individual rights of citizens from government. And this they did. Soon after, the states ratified the first ten amendments to the Constitution which are called the Bill of Rights.

Before going any further I would like to make clear two things. First, the protections provided by the Bill of Rights are designed to protect citizens from government not fellow citizens. For example, you are protected by the First Amendment from government telling you what to say. This does not apply to your employer. He or she can tell you what to say or not say to customers. Likewise, you are protected from unreasonable search and seizure from the government by the Fourth Amendment, but not from your parents or your employers. Indeed, your employer may require a search of your person, possessions and even your vehicle, if it is in their parking lot. Secondly, the Bill of Rights and other individual protections included in the Constitution applied only to the federal government originally. It was not until the passage of the 14th Amendment and its ratification in 1868 that these rights were legally binding on state or local governments in any real sense. Indeed, it wasn't until the activist Supreme Court in the 1950's and 60's that these rights were systematically applied to all governments at all levels in the United States.

Of all the protections that U.S. citizens have probably the most important ones are in the First Amendment. It says:

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

Put in simple terms, the First Amendment guarantees freedom of speech, and thought. Without freedom of expression there can be no real democracy. The opposite is also true; dictatorships or authoritarian governments always, without exception, put strict limits on freedom of speech.

You and I will never know what our government is doing unless others are free to tell us. This is why the First Amendment is so important. Without it government can control our minds. Elected politicians in the United States almost always say how important free speech is, but they are also often scalded by it and therefore often seek ways to suppress it. But the Supreme Court, unelected judges, are in charge of protecting freedom of expression and frequently have overturned laws passed by the majority that try to limit it.

There is no right in the Constitution that is absolute; however, freedom of expression, especially as it applies to politics, has been given a **preferred position**. This means that when other rights conflict with freedom of speech they will usually lose. Federal courts have traditionally given precedence to the First Amendment. There are many Supreme Court cases that are excellent examples of this. I have selected three that I believe very clearly demonstrate the Court's protection of free expression.

The first case is the famous **Barnette** (West Virginia State Board of Education V. Barnette) case where the state of West Virginia compelled all students to stand, salute the flag, and recite the Pledge of Allegiance at the beginning of the school day. This was one of the Jehovah's Witnesses cases. The members of this church did not want their children to salute the flag and say the pledge because they believed it violated Exodus, Chapter 20, verses 4 and 5, which says: ***'Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them.'*** Their belief was that the flag was an image and it should not be worshipped. Only God should be worshipped.

While Jehovah's Witnesses considered this to be in violation of religious freedom, the Court decided the case primarily as violation of speech. The most memorable quote from the decision was this from Justice Jackson: ***"To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."*** The other quote from Justice Jackson that is most remembered from this case was this one: ***"[I]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."***

In other words, how can we say we have a free country when we force people to say words they don't believe in? In a case that was very similar to this, Texas V. Johnson, the court threw out a Texas law that made burning the U.S. flag a criminal offense. A citizen of the United States has the right to burn a flag that he has purchased to express his political opinion. It is offensive to many, but freedom of expression means the right to say and do things that are offensive to the majority.

The second famous case is the *New York Times v. Sullivan*. Let me preface this by saying that freedom of speech does not go so far as to protect people who say or write falsities. They can

be sued for libel if it is written or slander if spoken. A key point, however, is that they can be sued only **after** it has been said or written, not before. Thus, government censorship is limited.

In the New York Times V. Sullivan, the Times printed an ad alleging that the arrest of Dr. Martin Luther King in Alabama was part of a plot by southern segregationists to harass and discredit Dr. King. Four black ministers, who were also named in the suit by L. B. Sullivan, a Montgomery City commissioner, sponsored the advertisement in the NY Times. There were clear factual errors in the ad. In this case the Supreme Court held that much freedom had to be given to political speech. A person can print or say something untrue about a politician or a person involved in political matters and they cannot be sued for libel unless they knew it was false when they said it or they said it with "reckless disregard" for the truth. The term the court used here was "**actual malice**." This means that a politician or a person significantly involved in public matters must prove not only that what was said or written was false (the burden of proof is on the plaintiff, or politician here) but also that the person who wrote it **knew** it was false when it was written.

A common citizen **does not** have to prove actual malice in libel or slander cases, but politicians do. Why did the court give politicians less protection than a common citizen? In the words of Justice Brennan: *"Any other conclusion would discourage newspapers from carrying 'editorial advertisements' of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities - who wish to exercise their freedom of speech even though they are not members of the press....The effect would be to shackle the First Amendment in its attempt to secure 'the widest possible dissemination of information from diverse and antagonistic sources.' "*

This case was important because it gave great freedom to the media in the United States to print stories about politicians. It also allowed common citizens more freedom to express their opinions in public, either orally or in writing. Without the Sullivan decision the news media (and Internet blogs) would be afraid to publicize many stories about public figures. The result would be that you and I would have less information about the people who are running our government or who are affecting it in a significant way.

Judge Edgerton in *Sweeny v. Patterson* said it this way: *"Cases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not criticize their governors. . . . The interest of the public here outweighs the interest of appellant or any other individual. The protection of the public requires not merely discussion, but information. Political conduct and views which some respectable people approve, and others condemn, are constantly imputed to Congressmen. Errors of fact, particularly in regard to a man's mental states and processes, are inevitable. . . . Whatever is added to the field of libel is taken from the field of free debate."*

The last case that I have selected to clarify First Amendment Rights is *Brandenburg v. Ohio*. In this case the defendant, Brandenburg, led a rally of the Ku Klux Klan in Hamilton County, Ohio. At that rally a wooden cross was burned and Brandenburg gave a speech containing the



following sentence. *"We're not a revengent organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken."*

The state of Ohio had passed a law making it illegal to advocate violence or to assemble with any group that had clear intentions of violating the law. The Supreme Court overturned Brandenburg's conviction and declared the law under which he had been convicted unconstitutional. The Court set a two-pronged test to evaluate speeches. Both had to apply for a speech to be unconstitutional. First, it had to be: *"directed at inciting or producing imminent lawless action"*, and secondly it had to be *"likely to incite or produce such action."* Brandenburg's speech met neither of the two criteria. It was not intended to incite **imminent** (immediate) lawless action, and since there were only a few fellow Ku Klux Klan members and the media around when the speech was given, it was not **likely** to produce violent or illegal acts at the time.

Brandenburg was not unusual for the Supreme Court. It had made many similar decisions before and has made them since. I chose it because the Court made its opinions very clear in this case and also because it involved the Klan, an organization that has carried out many violent acts in this country. It's tempting to put Klan members in jail. However, in a nation that follows the rule of law all citizens must be afforded the same rights. If we take away the rights of Klan members to give speeches that might possibly lead to future violent or illegal acts we take away the rights of all citizens to say something that a government official thinks is dangerous. Imagine giving local officials the power to jail anyone who says something in a speech that might possibly produce violence or illegality! Words can be dangerous, especially to those in power. The Supreme Court in its interpretation of the First Amendment has decided that it is more dangerous to prevent citizens from expressing their opinions.

There is much more to know about freedoms protected by the First Amendment, in particular we haven't looked into religious freedoms. Broadly, the Supreme Court has determined that the government must remain neutral in matters of religion. It should take no actions that either favor or disfavor a particular religion or religion in general. Prayers cannot be said by public officials in their capacities as government officials, but private individuals cannot be prevented from praying on public property. Religious symbols, such as the crucifix, cannot be displayed by government, but the government cannot prevent private individuals from carrying religious artifacts on public property. Government or school officials cannot say or recommend that prayer be said at public functions. But they cannot prevent a student or parent from praying once they start speaking at a school function. Government cannot fund private religious schools. It can, however, pay for the students' books in non-religious subjects, bus the children to these schools, allow parents to allocate money to private schools as part of a voucher program and pay for remedial programs for students with learning difficulties.

We will examine the Fourth, Fifth, Sixth and Eighth Amendments to the Constitution in the second part of this class. The Third and Seventh Amendment really have little relevance to rights being discussed here. The Second Amendment ( A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall

not be infringed). will be discussed only if you wish. Look at it and see if you wish to examine the right to bear arms.

## Civil Rights

The Fifth and Fourteenth Amendments to the Constitution have "due process" clauses that have been interpreted by the Court to mean that citizens must be treated the same under law. In addition to this, there is a clause in the Fourteenth Amendment that says that no state can "deny to any person within its jurisdiction the equal protection of the laws." Due process and equal protection of the law have been used to eliminate most government or **public** discrimination in the United States in areas of race, sex and religion. It should be noted that the Fifth Amendment was passed by the first Congress (1789) as one of the Bill of Rights. The Fourteenth Amendment was passed after the U.S. civil war and ratified in 1868. It wasn't until the landmark **Brown v. The Board of Education** that the Supreme Court held that segregation in public schools was in violation of the equal protection clause. Prior to Brown many southern states had set up separate public schools for black children and claimed that the facilities were equal. They did the same with other public facilities such as bathrooms and buses.

The key finding of the Brown case was that separate facilities were inherently in violation of equal protection because of the **psychological** effect it had on black children. In the words of Chief Justice Earl Warren, for a unanimous Supreme Court: **"To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."** It was remarkable that the Supreme Court used modern psychology to determine the effects of segregation.

The U. S. Congress has passed a number of laws that are designed to prevent **private** discrimination as well. These laws are generally called civil rights. Three major pieces of legislation were passed in the 1960's. In 1964 the Civil Rights Act prohibited discrimination in employment and in access to most private accommodations that citizens enjoy such as restaurants, hotels, stores, movie theaters and such. In 1965 the Voting Rights Act was passed that prohibited discrimination by states in voting requirements. The 1968 Civil Rights Act prohibited discrimination in the sale or rental of most housing. It should be noted that discrimination was prohibited for reasons of race, sex, ethnicity, or religion.

The result of this legislation and the change in attitudes in the United States that permitted their passage has been a reduction in discrimination in the private sector. This is not to say that discrimination no longer happens, but only that the incidence has been reduced.

One last aspect of the civil rights struggle that we will touch on here is affirmative action. The question that the United States Congress and the Supreme Court addressed starting in the early 1970's was what to do about generations of minorities, especially African Americans and females, who had not been afforded the same educational or employment opportunities? How were they to given an equal opportunity to succeed compared with white males? Women and ethnic minorities often could not compete equally with men because past discrimination prevented them from having a decent education or the training in management to compete for top positions. Essentially affirmative action programs required government to take action to recruit and train members of traditionally disadvantaged groups. This meant that government (and increasingly any firm with government contracts) had to actively **do something** to make sure that these groups had equal opportunities. Affirmative action programs often gave preference to these groups in order to provide them with opportunities to succeed. Large numbers of U.S. citizens, however, hated this preference and affirmative action programs became increasingly controversial. The Supreme Court started to disallow or declare unconstitutional some types of preferential treatment in the late 1970's. In the later part of the 90's it declared most affirmative action programs in violation of the due process clauses of the Fifth and Fourteenth Amendments and the equal protection clause of the Fourteenth.

The case that spelled out clearly the Court's opinion was the Adarand (**Adarand Constructors v. Pena**) case. In this case the Supreme Court declared broadly that it was unconstitutional to give preference to any group of people unless the preference made sense on the job or there had been specific discrimination against that person or group by the organization with the affirmative action program in place. In other words, giving preference to one group meant discrimination against others. Because of Adarand, affirmative action programs are beginning to disappear in the United States.

Congress, however, passed a civil rights law in 1991 that has put pressure on employers not to discriminate and indeed to go out of their way to hire and promote people of both genders and of different ethnicity. The law required that **employers** would have to prove that lopsided numbers of one ethnicity or gender in their workplace was **not** a result of discrimination. If an employee were to sue his or her employer and say that he or she was not promoted or was fired due to gender or race, the employer would have to prove that the reason for having so many whites or males in their job force was due to reasons other than discrimination. To clarify, in most suits the plaintiff (the one suing) must prove that the defendant did something to injure them. What this law did is require that the **defendant** (the employer) prove that there was no discrimination. This has placed many businesses on the defensive. In order to protect themselves from being sued they must go out of their way to make sure that they have a diversified workforce. They must do this, of course, without openly giving preference to anyone due to race, ethnicity, gender, religion and age. This has proved to be quite a headache for many businesses.

Another area of discrimination, according to Supreme Court rulings, was in the area of sexual orientation. The United States, like most other countries, has had laws and practices that discriminated against homosexuals or homosexual activity. The Supreme Court has

established a principle that states that any government law that discriminates, either directly or indirectly against a certain group of people “**must serve a legitimate state interest.**” That means that a law that discriminates must be based on effects that will have a reasonable chance of serving a public interest. For example, laws that discriminate because of age, such as those involving alcohol consumption, driving, ownership of firearms or voting have been upheld because the government has demonstrated a reasonable expectation that such laws protect the public interest.

There have been several Supreme Court rulings regarding sexual orientation and discrimination, but the most recent and probably the most important was [Lawrence et.al v. Texas](#). Texas had passed an anti-sodomy law that was enforced almost exclusively on homosexual or gay couples. Justice Anthony Kennedy, in his majority opinion stated the following.

*This case does not involve minors, persons who might be injured or coerced, those who might not easily refuse consent, or public conduct or prostitution. It does involve two adults who, with full and mutual consent, engaged in sexual practices common to a homosexual lifestyle. Petitioners' right to liberty under the Due Process Clause gives them the full right to engage in private conduct without government intervention. Casey, supra, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual's personal and private life.*

More recently federal courts have declared practices in the U.S. military that discriminated against homosexuals to be unconstitutional. A federal judge has also determined that the federal “Defense of Marriage Act” was unconstitutional because it discriminated against homosexual couples without demonstrating that doing so had a reasonable expectation of serving a legitimate state interest. At the end of 2011 seven states and the District of Columbia recognize same-sex marriages. Many others have laws that allow “civil unions” (gay couples have the same rights of married couples.) The federal government and many state and local governments now ban discrimination in employment based on sexual preference. However, the Supreme Court still has not passed a definitive ruling regarding discrimination against gays in the workplace.

The principle established by the Supreme Court bears repetition here. **Any government law or policy, at any level of government, which discriminates, either directly or indirectly, against a certain group of people must have a reasonable expectation of serving a “legitimate state interest” to be considered constitutional.**

# Ideology

The word "ideology" means a set or group of ideas or beliefs. When we refer to a "political ideology" we mean a set of ideas or beliefs about politics that have a consistency to them and are founded on more basic values and beliefs. At the beginning of this class you read about some of the basic values that the United States was founded on. Some people have called this the American ideology.

In most societies there is disagreement over many basic issues, sometimes the discord is so profound that it threatens to tear the country apart. Such is the case in Canada, Yugoslavia, Russia and many other countries. In the United States the differences in political beliefs are comparatively narrow. There is basic agreement on the form of government, the economic system and many political values. The largest rift or separation in public opinion is between liberals and conservatives. Below we will explore some of the different thoughts of these two groups; it should be remembered though, that a majority of U. S. citizens are not strongly ideological. That is, they are not very liberal or conservative. Perhaps the dominant political ideology is that of pragmatism, which is the belief that if something works, use it, regardless of its philosophical or ideological basis. In other words, most U. S. citizens are little interested in philosophical discussions. Their philosophy is that results are what matters, not ideology.

That said, there are many recognizable differences between liberals and conservatives. To find out how you place on the liberal-conservative spectrum take the test below.

## Ideology Test

Below you will find nine statements. On a separate sheet of paper write down numbers 1 through 9. On this sheet you will be recording your answers and eventually adding them up to get a score. Do not leave any number blank; it will skew your score.

Put down numbers corresponding to the following criteria.

1. Strongly Agree
2. Agree
3. Disagree
4. Strongly Disagree

If you strongly disagree with the first statement you will put down a four next to the 1 you have on your sheet of paper. If you strongly agree with the second statement you would put down a one next to the 2 you have on your sheet.

1. Abortions in the United States should be illegal in almost all circumstances.
2. Homosexuals should not be allowed to serve in the U.S. military.
3. Even though one might not agree with the president on all issues, he is still president of our country and deserves our respect.
4. In order to control crime in our country we need to increase penalties and put more criminals in jail.
5. The United States must continue to be the most powerful country in the world militarily.
6. Welfare expenditures need to be cut, especially at the federal level.
7. Organized prayer in public schools should be permitted as long as no one is forced to say them.
8. Marijuana, although not as bad as some other drugs, is still dangerous and should not be legalized.
9. U. S. businesses have too many rules and regulations placed on them by government.

Add up the numbers you have written down and refer to the end of this reading for results according to Tom Byrnes.

## **Conservatives**

The word "conservative" has a simple, direct significance. It means wishing to conserve things the way they are. In politics, conservatives are generally supportive of the status quo. Since politics and society are changing almost daily this means that conservatives are often unhappy with what has happened recently and prefer things to be the way they were in the recent and not-so-recent past. They generally feel that the U.S. political system has changed too much and wish to return to an earlier time when things were better.

Conservatives are likely to be supportive of traditional values and customs. In the United States conservatives usually emphasize the values of individualism and freedom mentioned in this course in the "Origins" section. This means that they admire the free enterprise system with its emphasis on private ownership, individual hard work and monetary rewards. They are often disdainful of welfare, believing that in the United States everyone has a chance to succeed and, with few exceptions; people should look out for themselves rather than expecting the government to take care of them.

Conservatives believe that individuals are responsible for their behavior. They think that punishment, or the fear of it, is the most successful way to discourage crime. If a person breaks a law he or she should be punished. Conservatives tend to believe that if the United States increases penalties for crime we will have a lower crime rate and that murderers deserve capital punishment.

Conservatives are often suspicious of government, particularly the federal government. They tend to see "big government" as the problem, rather than the solution. They subscribe to the philosophy of "laissez faire" or that government should keep its hands off the economy and allow the free enterprise system to operate with minimum government interference. Currently they often support the "devolution revolution." This means the national or federal government should give many of its powers back to the local and state governments. In particular, they think the states and localities better administer social welfare programs.

Conservatives often oppose what they call "environmental extremism." They believe the government, especially at the federal level, has often gone overboard protecting wildlife and ignored the impact of environmental regulations on property owners, businesses and jobs.

Conservatives also are likely to be very patriotic or nationalistic. They believe the United States is, without question, the best country in the world. They respect the flag and are likely to get very angry with people who defile it. For them the U. S. Constitution is a revered document. They are fully behind the men (and sometimes the women) of the U.S. military. They support military spending and generous veteran benefits. They often see communism as evil. (Ronald Reagan—a hero to most conservatives--spoke of the USSR as the "evil empire.")

Conservative views on U. S. foreign policy are a reflection of their domestic ideology. They are suspicious of foreign aid and international organizations, particularly the United Nations. They believe that the U.S. should participate in international organizations only to further the direct interests of the United States.

Conservatives believe that the United States should fiercely protect its economic and political interests abroad. Countries who step on the toes of the United States or its allies should know there is a price to pay. The United States military should be used as the major tool to protect Americans and the interests of their government.

Fairly recently a new brand of religious conservatism has entered the political sphere. Often referred to as the "**New Right**" or the "**Religious Right**," this group has pushed their religious agenda vigorously. Their defining issue is abortion. They favor a Constitutional Amendment opposing it. This is often their litmus test. Politicians who support their position on this issue will receive their money, time and energy in political campaigns.

The abortion issue was the principal reason for the creation of this group, but it has now embraced other issues. They view homosexual behavior as sinful. They believe strongly that sex should occur inside the institution of marriage only; their opposition to pornography is vehement. They would like to see Christian prayers and artifacts (crucifix) allowed back in

government facilities. They believe in what they call "family values." This author is not really sure what that term means except that they feel Bill Clinton's reported infidelities don't fit.

The Religious Right, or New Right has Pat Robertson as its spiritual head. In fact, he received their full support in his bid to become the Republican nominee for President in 1988. However, the most important organization pushing the agenda is called the **Christian Coalition**. A man named Ralph Reed founded this organization with the initial goal of electing Pat Robertson. It has changed over the years to one of the most powerful political organizations in the United States. It has over a million active members, raises hundreds of millions of dollars for political campaigns and provides hard-working and enthusiastic volunteers for many politicians who support their beliefs.

It is a **political** organization; very much like a political party except that it fields no candidates. It **endorses** candidates though, and distributes lists of worthy candidates to churches around the country. In the Orlando area two churches that enthusiastically support the Conservative Coalition are the First Baptist Church, located on Thirty-Third Street and Calvary Assembly located off I-4 near (or in?) Winter Park.

It should be noted that the Christian Coalition supports Republican candidates for office almost exclusively. If you would like a closer look at the national organization of the Christian Coalition go to their Internet site <http://www.cc.org/>. Amongst the more interesting information you will find there is a scorecard that ranks all members of Congress according to how they voted on measures that the Coalition supports. If you wish to get more specific details about our area and Florida's politicians visit the Florida Chapter of the Christian Coalition.

## Liberals

Early in the history of the United States liberalism stressed a protection of individual rights from government. Government was seen as dangerous to the rights and privileges of citizens and therefore liberals were generally opposed to a large, active government. In the twenty-first century the concern for individual rights has continued, but the view towards the federal government and its role in citizens' lives changed with the advent of the New Deal and Franklin Delano Roosevelt. Since that time liberals have viewed the federal government as a tool to bring about equality of opportunity, ensure basic food, housing and medical treatment for all



citizens. The stress on protection of individual rights especially in regards to freedoms of expression and privacy has remained.

Perhaps the single most important philosophy of contemporary liberalism is its emphasis on equality of opportunity. To further that end liberals constantly look to improve public education. They feel that an educational system that treats everyone alike and provides quality instruction goes a long way to providing equal opportunity for children of poor, disadvantaged parents. To this end, liberals are very supportive of remedial programs for students who have behavior, language or physical difficulties.

In the same vein, liberals support programs that provide free basic medical services to all, but especially economically disadvantaged children. They are generally in favor of social welfare programs that are designed to help the poor, the elderly and disadvantaged ethnic minorities.

Liberalism opposes discrimination in almost all forms (the rich are an exception possibly). Liberals were the champions of the civil rights programs that provided legal protection and access to public and private facilities for black Americans in the 1960's. In the nineties liberals support laws that punish businesses who discriminate against women, ethnic or religious minorities and other minority social groups, including homosexuals. Liberals are likely to believe that the rich will take care of themselves. The government needs to concentrate on protecting the poor from the wealthy who will try to exploit them and also from big business, which will try to force their workers to work hard for little pay and little protection from injury.

As much as conservatives distrust what they call "big government," liberals distrust big business. Liberals are likely to believe that businesses will pollute the environment, mistreat their workers and provide poor products if they can get away with it. To that end, liberals are usually very supportive of environmental protection laws, unions, tough worker safety laws, and stringent consumer protection laws.

Liberals stress the establishment clause in the First Amendment that has been used by the Supreme Court to restrict religious practices in public facilities, especially schools. Liberals believe that the government should stay out of religion or remain scrupulously neutral. Government institutions should not favor a particular religion or religion in general over irreligion. Religion should remain a private affair for individuals. Liberals, therefore, are in favor of not allowing prayers to be said by public officials or religious artifacts in schools or other public facilities. They have opposed successfully the teaching of creationism in public schools on the grounds that it is primarily a religious belief rather than a scientifically-supported theory.

Liberals are concerned about the influence that wealthy individuals and big business have on government. They are very much in favor of campaign reforms that provide for public funding of political campaigns and restrict the use of private monies to politicians and political causes. Liberals often believe that laws and justice in the United States favor wealthy individuals and organizations. To that end, liberals are usually in favor of smoothing out wealth extremes in the United States. They support progressive taxes that force the more wealthy to pay a higher

percentage of their income in taxes; and they especially favor taxing the estates of wealthy citizens so that their children don't automatically become billionaires.

Finally, contemporary liberalism sees the law enforcement community as often abusive of the rights of the weak and disadvantaged. Liberals support strict laws governing law enforcement officials in searches and seizures and upholding the Fifth Amendment's protections against self-incrimination. Liberals are especially supportive of the Fifth and Fourteenth Amendments' due process clauses and the equal protection under the law clause of the Fourteenth Amendment. These clauses have been used to protect women, ethnic minorities, homosexuals and others who are not traditional in their behavior or social characteristics. Liberals believe in supporting law enforcement, but want to make sure that it isn't seen as the only or primary way to combat crime.

Liberals stress community activism, a strong educational system and a government that provides opportunity for the poor as powerful weapons against crime. Community activism is seen as citizens and government working to provide a safe family environment for children, recreational activities for all ages, and anti-poverty programs that assist poor and near-poor families. The primary opportunity for the poor, according to liberals, is free or near-free, high quality education and vocational education for both children and adults. Also, affordable housing, available transportation systems and a decent minimum wage are seen as necessary to help people avoid crime and find employment that pays a living wage.

In summary, liberalism now often sees government in positive light. It believes that government should be used to protect the environment, the weak from the strong, to protect children, workers, women, homosexuals and people of different religious and political beliefs. Liberals see government as a creative mechanism that should be used to improve society. They believe that an inactive government favors the wealthy and those in power socially, economically and politically.

## A Note on Big Government

It is an oversimplification to say that liberals support a large, active government and conservatives want small government. In regards to business activities this is often, but not always, true. In general liberals favor tough anti-collusion and monopoly laws in addition to laws that force businesses to provide for worker safety and provide for strict penalties for businesses that discriminate against either workers or consumers.

Conservatives usually believe that business owners ought to be given maximum freedom to hire, fire and generally run their businesses as they see fit. However, conservatives are often very supportive of government programs that have favored U.S. business in areas such as tobacco, citrus and petroleum.

Conservatives, however, usually support a larger military, more prisons, more and tougher laws on pornography, illegal drugs and sexual encounters outside of marriage. Conservatives

are in favor of giving governmental agents increased power to search and question suspected criminals or, currently, those who are suspected of supporting terrorism.

Liberals want fewer laws restricting adult sexual behavior and often see the traditional drugs of alcohol and tobacco as the most dangerous drugs in the United States. They often favor giving individuals more freedom to choose to smoke marijuana.

Conservatives often favor more laws punishing homosexual behavior; liberals want fewer restrictions on homosexuals and their lifestyles.

### **Results of Ideology test:**

Score:

9-13 Very Conservative

14-18 Conservative

19-24 Moderate

25-31 Liberal

32-36 Very Liberal

The above test scores are not infallible. The test was made by Tom Byrnes based on his knowledge and experience. It applies to political issues only. You may be a liberal or conservative person in other areas of your life and score differently on this test.

# Political Parties

## Why Political Parties?

You may have heard people complaining about partisan politics and political parties in general. In fact, our founding fathers generally had a poor opinion of political parties and tried to create a system that would operate without them. Soon after the Constitution was put into action, however, they themselves soon became busy in creating political parties. All democratic governments have political parties. They have proven to be indispensable organizations for the institution of democracy. Countries that are newly democratic, like Russia and most Eastern European countries, have struggled, due in large part to their lack of strong, stable political parties.

The main thing that political parties do is to provide an organization that allows people with similar ideas and interests to affect government. When our country began, for example, there was a major disagreement amongst those who wanted a strong federal government (Federalists) and those who felt that the national or federal government was dangerous to the freedoms of individuals (Anti-Federalists or Democratic Republicans). They soon found that they needed money to advertise their ideas. They needed many people to inform the voters of the issues. They needed to recruit candidates for office who believed as they did. They needed a name that would indicate to the voters what the candidates believed in. And they needed an organization that helped their supporters within government work together to get what they wanted done. In short, they needed a political party.

You might conceptualize the need for a political party in this fashion. If you wanted to make your block safe from burglars you would get as many neighbors together as you could and

discuss things. If you wanted to make your sub-division safe you would have to have a larger meeting and probably choose a few people who would be responsible for getting in touch with the city and county law enforcement officials. If you wanted to do this for your city you would need a core of people who met fairly regularly to map out strategy and policies and inform the rest of the interested people as to what you were doing. If you wanted to do something at the state level you would have to find people to run for office, you would need to find money so that they could advertise their beliefs. You would need volunteers. You would need an **organization**. You would then discover that you need to either create a political organization or find a political party that would be willing to promote your ideas and interests. You might then find that some of the people who represent you are not the best people in the world. That some of them have sex outside of marriage and cheat on their taxes. But you find that you need to support them anyway because they are protecting and promoting your interests in government. You have entered the realm of party politics.

Political parties simplify things for voters. They make politics understandable. You might have to vote in the next election on twenty different offices. There will be at least forty people (two or more running for each position) that are competing. How are you going to know whom to vote for? Do you have enough time to get to know the personalities and political positions of all forty or so candidates? Twenty? Ten? How many local, state, or federal officials do you now know the names of and have some idea about their political beliefs? Embarrassing isn't it? However, if the candidates run as Democrats or Republicans, and you have a decent idea as to what these parties stand for, you actually can make a semi-informed vote.

Political parties do other things for democracies. They provide different choices for voters. They find and publicize corruption or poor behavior of the other parties. They recruit candidates for office and pay for those who don't have money to run for office. And they organize the legislative branches of government into understandable groups. Finally, they link the different branches of government together as they work to achieve the goals of their parties.

### **A note on political parties and the art of rationalization**

The first thing I want to mention here is that to a large extent political parties are aggregated self-interest groups. That is, they represent the self-interest, especially the economic self-interest, of the people who support them. You and I often judge things based on how they affect us. If they benefit us, we are usually in favor of them. If they inconvenience us or cost us money we often oppose them. As students, you probably favor the tax credits that allow you to get back all the money you spend on tuition at Valencia Community College. If you were poor you would probably see the benefit of lowering or eliminating taxes for the poor. If you were wealthy you might well believe that upper-income people shouldn't be taxed at a higher rate than anybody else. If you're female, tough sexual harassment laws are more likely to make sense to you. If you are of a minority ethnic group you would most likely see the benefits of laws that harshly punish businesses and organizations that discriminate against minorities.

Now if you are one of these people and someone asked your opinion on the subject you would likely give a rationalization, rather than simply say that it favored your self-interest. For the purposes here you should understand rationalization as an effort to give an explanation that puts the person using it in the best possible light. Rationalization is often subconscious; the person who uses it is often not aware that he is doing it.

As an example, what if someone asks you what you think of Clinton's proposal to get the federal government to pay for the tuition of most college students for their first two years of college? (This proposal passed, by the way, and the first \$1,500 that you spend on tuition will be refunded in your taxes if you claim it and if your income is not above a certain amount.) Would you simply say that it saves you money so you're for it, regardless of how much it costs other taxpayers? Or might you say that it will help out many who otherwise couldn't afford to go to college and help out the country in the long run by having better-educated, more productive citizens? This last answer is an example of a rationalization. It attempts to explain our behavior or beliefs in such a way as to make us look good to others and ourselves.

Rationalization is what you should expect to hear from Republicans and Democrats. If you ask most Republicans in the Senate why it is that they are opposing the latest campaign reform bill that closes loopholes on soft-money contributions what would you expect them to say? Would you expect them to say that the current law allows them to get a whole bunch of money from business organizations and wealthy individuals and therefore gives them an excellent chance to get re-elected? Would you expect Democrats to say that they didn't favor the reforms when they were in the majority, but now that they are receiving less of this money they want to limit it to better their chances of defeating Republicans?

To understand political beliefs look first to the self-interest of the person who espouses the belief. I recommend you do this to better understand the positions of the Democratic and Republican parties. As stated before, both parties tend to support the economic self-interest of the people who support them.

## **Republicans**

### **Ideology:**

Generally Republicans are conservative. Some are dead-center moderates and if they live in states or areas that are very liberal such as Massachusetts or Washington D.C. some might be moderately liberal. But the majority of Republicans are conservatives on most issues. This is not to say, however, that all conservatives are Republicans. Many conservatives have no party affiliation, some are Democrats and others might be members of smaller parties such as the Libertarians or the Reform Party.

There is a definite split in the Republican Party between the New Right or Religious Right and traditional conservatives. Often, as in Orange County, they feud amongst themselves. The Religious Right stresses the importance of moral issues, especially opposition to abortion, homosexuality and pornography. Traditional conservatives are more concerned with issues like less government regulation of business, lower taxes for businesses and the wealthy, less spending for welfare and social programs and more spending for the military. There are many traditional conservatives in the Republican Party who could care less about homosexuality, pornography or the abortion issue. Likewise, many in the Religious Right are left cold by economic issues. There are many, of course, who share the beliefs of both conservative wings.

In the presidential election of 2000 the differences were exemplified by the support given to Steve Forbes who personified traditional or business conservatives and Pat Buchanan, who personified the religious right. The eventual winner of the nomination, George W. Bush, was primarily representative of traditional conservatives, but he did espouse the beliefs of the religious right and received their support during the election campaign. In the election of 2008, John McCain was similarly a traditional conservative, but he also supported most of the beliefs of the Religious Right.

## **Occupations:**

Most of the occupations of people who are very likely to be Republicans are in the private sector, especially those occupations that are well paid. Many Republicans, perhaps even a majority, do not fit into the specific business occupations mentioned below. However, the people in the following occupations are **very** likely to support the Republican Party.

People in the financial sector are often Republican. This includes bankers (presidents, vice-presidents, loan officers,) insurance executives, stock brokers (especially if they **don't** live in New York City,) financial advisors and executives in accounting firms.

Individuals who own businesses are often Republican also. This includes owners of small, medium and large businesses and well as top management in large private corporations.

People involved in real estate tend to be Republicans also. Brokers, agents, real estate attorneys and again financial representatives in mortgage companies tend to be traditional conservatives and Republicans.

Military personnel usually support the Republican Party, if for no other reason than the Republican Party is more likely to spend more money on defense. In Florida, it was largely the absentee votes of military personnel who won the Senate seat for Connie Mack the first time he ran and for George W. Bush in his 2000 victory. Military or defense contractors and their employees (Lockeed Martin) are also likely to support the Republican Party.

In general, many high pay jobs in the private sector support the Republican Party. Some such occupations are: doctors (the medical kind) dentists, real estate brokers, corporate lawyers, and wealthy farmers.

### **Ethnic Groups:**

If you ask many Republicans what their ethnic group is they are likely to frown at you and say, "I'm white, of course." White, of course, is a color, not an ethnic group. Many Republicans are not really conscious of their ethnicity. They are likely to be descendants of people who settled in the United States many generations ago. If pressed they might tell you that they are part English and Scottish and perhaps a little German, Irish or French also. Most Republicans are of Western European decent (perhaps 75%) or more. And, of course, they **are** likely to be white, or at least very pale.

### **Religious Affiliations:**

Most Republicans are non-Catholic Christians, or Protestants. Outside of the South many Republicans are Presbyterians, Lutherans and Mormons. In particular, many of the Religious Right are born again or evangelical Christians. In the South, white Baptists are very likely to be Republicans. In Central Florida the First Baptist Church and Calvary Assembly are major churches solidly supportive of the Republican Party.

### **Geographic Areas:**

Republicans are concentrated in middle-class to very wealthy suburbs and also increasingly in rural areas, especially if the area is well off as in rural Ohio, Indiana, Illinois, New York, etc.

Recently the Republican Party has begun to dominate the South. Florida now has a majority of U.S. House members that are Republican and both houses of the state legislature are Republican also. In the fall of 1998, Jeb Bush, a Republican became the new governor of Florida in 1999. And in 2007, Charlie Crist, a Republican became the new governor.



# Democrats

## Ideology:

It is not correct to say that the Democratic Party is liberal. The party is more diverse in its ideology as compared to Republicans. The majority of Democrats fit into the moderately liberal category. Many are somewhat conservative or just moderate. The party does have a strong left or liberal wing to it. Elected Democrats or office holders are more liberal than the average Democratic voter. If you find out that someone is a Democrat do not assume that he or she is liberal.

## Occupations:

There are two large occupational areas that tend to be strongly Democratic. The first is organized labor. Members of the AFL-CIO are usually supportive of the Democratic Party. This is especially true of individual unions that are linked to industrial production such as automobile, steel, garment, and coal. Perhaps the largest source of funding for Democratic campaigns comes from labor unions.

The second occupational grouping that is strongly Democratic is that of urban government workers, especially if these workers are unionized or work in social welfare or education. Public school teachers at all levels are likely to be very supportive of the Democratic Party. Firefighters, unionized maintenance, postal, and refuse workers are often Democrats. This used to be true of most law enforcement personnel also, but the Republicans have made many converts there because of their support for stronger sentencing and more lenient search and seizure interpretations.

People who are involved in performing or "creative" professions are often liberal and therefore supportive of Democrats. Actors and actresses, writers, sculptors, painters, singers, journalists and intellectuals often hold non-conventional views and are more comfortable with the Democratic Party.

## Ethnic Groups:

Democrats often are hyphenated Americans. If you ask a Democrat what his or her ethnic group is the answer is often African-American or Jewish-American or Mexican-American or some other hyphen. What this means is that aside from African Americans and Native Americans, people who associate with the Democratic Party are likely to be from more recent immigrants.

The strongest allegiance that any ethnic group has with a political party is the link between African Americans and the Democratic Party. Depending upon the election and the occasion it isn't unusual for 90% of African Americans to vote Democratic.

Hispanic Americans, especially Puerto Ricans and Mexicans also vote heavily Democratic. The exception to this is often Cuban-Americans who are somewhat more likely to vote Republican. The Republican Party has been much more anti-Fidel Castro and anti-communism than the Democratic Party. Since many Cuban-Americans hate Fidel Castro and associate him with communism this helped tie them to the Republican party. Also, many Cuban-Americans came over to the United States because they were from wealthy Cuban families and suffered under Castro. Many Cubans have prospered in Florida and are often better off economically than other Hispanic groups. This also has pushed them towards the GOP.

Jewish Americans are also more likely to support the Democratic Party, as are Native Americans (often called Indians.)

Also, Irish Catholics have been more likely to be Democrats.

It should be noted here that although many ethnic minorities support the Democratic Party, the majority of Democrats are white, Anglo-Saxons.

### **A note on ethnic groups not mentioned:**

There are many other ethnic groups that have not been mentioned here. The ones I have mentioned are the ones that have clear preferences that have been established for many years. Others either do not have a strong preference or have escaped the attention of national political writers. If you know of any preference of a particular ethnic group please let me know.

### **Religious Affiliations:**

Democrats have many different religious beliefs. Since the Republican Party is strongly affiliated with Christianity this has pushed others towards the Democratic Party. I have already mentioned that ethnic Jews are often Democrats. This is also true of religious Jews. Unitarians are very often liberal Democrats. A potentially large group is believers in Islam or Moslems. There are a number of African Americans who consider themselves Moslems and they are likely to be Democrats as well. I have not seen any study that would indicate preferences of other Moslem groups. Very non-traditional religions like Taoists or perhaps Bhuddists tend to be universalistic and often liberal in many of their beliefs. This would push them towards the Democratic Party.

People who are agnostics or atheists are also likely to be very liberal and universalistic in thought and therefore turn away from the Republican Party because of its affiliation with the Christian right.

Finally, many Catholics and Protestants are Democrats also. As stated above, the Democratic Party is more mixed or heterogeneous in ethnicity and religion compared to the Republican Party. If you know someone is a Republican the probability is that person will be of some Christian denomination. Democrats have many different religious beliefs and non-beliefs.

## **Geographical Areas:**

The Democratic Party is largely urban. The older, larger central cities in the United States such as New York, Chicago, Los Angeles, Atlanta and others have a large plurality of registered Democrats. This is not to say that there aren't many Democrats in the suburbs and in rural areas, because there are. However, the strength of the Democratic Party lies in the cities of the United States.

## **Issues:**

From the above discussion you should be able to predict the position of the two parties on most issues. Below are a few examples of the positions they take and a brief explanation as to why they believe what they do.

**Taxes:** You and I are not necessarily opposed to taxes as much as we are opposed to paying them. Stated in another way, most of us dislike the taxes that we have to pay and are often in favor of taxes that we won't have to pay. This is true of Republicans and Democrats. Republicans dislike taxes that hit them hard. Since they are often wealthy they dislike inheritance taxes and the progressivity of the income tax (as a person's income goes up so does the percentage of the income they pay in tax.) They don't like capital gains taxes, that is, taxes on the sales of property, stocks or assets. They don't like property taxes since they are often business owners and businesses often pay very high property taxes. Also, Republicans are more likely to have more than one home and they might be expensive dwellings. Republicans don't like Social Security taxes very much since employers must match whatever employees pay. And, of course, they don't like corporate profits taxes or any other tax that affects businesses.

If you are saying to yourself that it seems that Republicans don't like many taxes, you are right. They like to speak of themselves as the low-tax, low-spending party. They often refer to the Democratic Party as the party of taxers and spenders.

Democrats dislike taxes on everyday items such as food, clothes, gasoline and most retail items. In other words, Democrats are most likely to oppose sales taxes because they tend to be regressive, that is, sales taxes affect poor and middle income people the most because they spend a larger percentage of their income on retail items. Upper-income taxpayers spend a larger portion of their income on services such as pest control, tax attorneys, dry cleaning and lawn maintenance. Services generally are not taxed; goods are.

## **Environmental Issues:**

Democrats are more likely to favor strict environmental laws and regulations for several reasons. First, Democrats are more likely to live in cities and therefore be exposed to all types of pollution. Secondly, Democrats are less likely to see themselves paying to implement the programs and regulations necessary to protect the environment. Republicans are more likely to own the businesses that will have to fill out the forms and install the equipment required by government. Also, many environmental programs may prevent them from developing land or offshore properties. Many landowners especially don't like government telling them what they can or cannot do with their property. Developers often don't appreciate the myriad of government regulations that government requires of them.

## **Social Welfare Programs:**

This is rather simple. Since many Democrats have low incomes or know family members or friends who are poor they are more likely to favor programs to help these people. The Democratic Party has created almost every social welfare program on the books, from social security and welfare to Medicaid, Medicare, and food stamps--and many others not mentioned. Republicans are much less likely to need these programs and initially opposed every one. Also, many of these programs go against their belief in individualism, or that each individual should take care of himself. At the current time Republicans don't necessarily want these programs eliminated as much as they would like to see them curtailed.

## **Civil Rights Programs:**

These programs were designed to eliminate discrimination primarily against African Americans and Hispanics but have expanded to protecting women and other groups. Most Republicans are white males; the one group that is not favored and often disadvantaged by these programs. Therefore, the Republican Party initially opposed the Civil Rights laws in the 1960's, but now gives them at least minimal support. The one program that the Republicans almost unanimously oppose is affirmative action, which we have mentioned before. Many Democrats have been favored by civil rights programs and therefore tend to support these programs enthusiastically.

## **Abortion:**

Of course this is the central issue for the Religious Right that is part of the Republican Party. In a general sense, therefore, one could say the Republican Party is more opposed to allowing women to have abortions than the Democratic Party. Indeed, a constitutional amendment banning abortion has been part of the Republican national platform adopted prior to the last few presidential elections. As noted before, however, the Republicans are far from being

unanimous in their views on this issue. Many business Republicans agree with abortions under some circumstances, such as rape, incest or to protect the life of the mother. In the South, however, the Religious Right has almost a veto on Republican candidates. Therefore, the vast majority of Republican office holders in the South are for severe restrictions on abortion. The Democratic Party is not unanimous either in their support of women's rights to terminate pregnancy; however, the party has been firmly pro-choice in national elections over the past thirty years.

### **Crime Reduction:**

Republicans, in their stress on individualism, feel that each person bears responsibility for his or her actions. They also believe that people will act in their own self-interest. They tend to advocate an increase in punishment for most types of crime, especially violent crime and crimes against property, as a way of lowering the crime rate. It should be noted that the one type of crime that they are not in favor of increasing penalties for is tax evasion. Again, I would mention self-interest here. The types of people who are most likely to commit violent crimes and crimes against property are young, poor and less-educated males. In other words, they are not likely to be Republicans.

Democrats are more likely to advocate government action to reduce the crime rate. In particular Democrats say that people who have decent jobs are much less likely to commit violent crime. Also, Democrats recommend programs that reduce poverty, provide more recreational, and communal activities. Again Democrats will stress that increasing educational opportunities will reduce crime. Again, Democrats are more likely to benefit from these programs even if they do not reduce crime. Liberal Democrats strongly recommend family planning and programs in schools designed to reduce unwanted pregnancies.

### **Other Issues:**

Briefly, Republicans are more likely to favor the death penalty, prayer (Christian) in public schools, more military spending, tougher laws on illegal drugs and pornography and laws that prohibit homosexuals in the military and as public school teachers.

Democrats are more likely to favor stricter laws on guns, police misbehavior, and discriminatory practices against minorities, women and gays. They tend to favor tougher campaign laws, especially as they apply to businesses and the wealthy. They are more likely to favor spending on public works like parks, playgrounds, schools and urban renewal.

## **Why Two Parties?**

If you are from the United States the question as to why we have only two major parties probably has never occurred to you. From the beginning of our Republic to the present day we have had only two major parties contend for power at the national level. Since 1860 those two

parties have been the Democrats and Republicans. Although a few small parties have presented serious candidates for national and state office from time to time they have all failed and gone into obscurity soon after. Presently, the Reform Party is fading away rapidly. We do have many political parties in the United States, but only two have a realistic chance of winning major elected positions in the vast majority of elections. (Jesse Ventura is an exception of course, but he has since abandoned the Reform Party.)

Most other democracies have three, four, five or more major parties. Why is our country so different? The major answer lies with our electoral system, or the way we elect politicians to office. We inherited our electoral system from the British while most other democracies have adopted a more modern system that was created in the late Eighteenth Century. The United States, the United Kingdom and most other countries that were at one time colonies of England have single-member districts and winner-take-all elections. But of the thirty-six major democracies with a high Freedom House human rights rating and a population over two million only two use this method exclusively to elect candidates on a national level-- the United States and Canada.

Single-member districts mean that only one person is elected to represent each district and the winning candidate must get the plurality (the most votes, not necessarily the majority) of the popular vote to win. In order for a candidate of a new party to win any seat he or she must get more votes than either the Democratic or Republican candidates. Since these two parties are usually well financed and organized, have a base of loyal voters and control the electoral laws this is difficult to do. At the national level it's analogous to starting a new automobile company and having to outsell GM and Ford the first year to stay in business. This is compounded by the Constitutional mandate requiring a candidate to receive a majority of the Electoral College votes in order to be elected president. What third party can hope to win the U. S. Presidency defeating the Republican and Democratic candidates?

In contrast, most of the European democracies have a system of multi-member districts and proportional representation. In this system there will be a number of candidates who represent the same district (multi-member) and voters will choose between parties, rather than individuals. A party that gets forty percent of the vote will get approximately the same percentage of the seats in that district. For example, in a district represented by five politicians a party that received forty percent of the vote it would get two seats. A party that got twenty percent would get one seat and so on. The effect of this system for smaller parties is enormous. They do not have to defeat the major parties to get started. They need only to get a small percentage of the vote to win some seats. If the major parties are fairly evenly divided these seats could signify the balance of power in Congress or a state legislature.

To help you conceptualize this let's use Florida's House of Representatives as an example. Presently there are 120 members elected by winner-take-all elections throughout the state. Of course all of them are either Democrats or Republicans. Do you know who represents you in the Florida House? Of course not, only the members themselves and a few family members know their names. (Joking, of course-- or at least sort of.) We could divide the state into twelve districts of approximately the same population and elect ten from each district. Each party

would publish a list of candidates, from one to ten, that would be seated if the party wins a certain percentage of the vote. Voters would go to the voting booth and simply vote for the party that they prefer. Small parties would spring up all over Florida almost certainly. Many countries have “green” parties that are dedicated to slowing growth, preserving the environment and spending more on education. Others have parties that represent particular ideologies such as the Libertarian Party in the USA which recommends, among other things, that government get out of all aspects of citizens’ private lives. In Florida and other states we might have a party that represents ethnic minorities, a “Rainbow” Party.

The advantages to multi-member districts with proportional representation are many. First, voter participation tends to go up for several reasons. Voters are more likely to find a party that really represents their views and actively recruits them. In the USA we are often left with voting for Twiddle Dee or Twiddle Dumb. Less is required of voters in PR (proportional representation) they need only to select a party; they don’t have to distinguish between unknown candidates whose programs are often similar to each other.

Secondly, our system over-represents majorities and under-represents minorities. PR provides a much better representation of the population. For example, today in Florida Republicans outnumber Democrats, at least as evidenced by recent elections. But the difference is small; the Republicans have narrow majorities in both the Florida House and Senate. The governor is a Republican as well. Currently the Republicans can get 100% of the bills they want passed into law even though they received less than 55% of the vote in the state--of course a majority of eligible voters in Florida **do not vote at all** in most elections. This writer, who is a liberal Democrat, is represented by a Republican in the Florida House, a Republican in the Florida Senate, a Republican in the U.S. House, a Republican governor, five Republicans in the Lake County School Board (there are no Democrats on the Board) and four out of five Lake County Commissioners. Twenty years ago the situation was much the same except that Democrats controlled almost all of these seats and Republicans had no one to represent them.

Who represents the people in these districts who are moderates or of the opposition party? Our system marginalizes minorities of many types; PR (proportional representation) includes them.

Our system is characterized by negative personal attacks as the candidates often attempt to win by besmirching the reputation of their opponents. In PR voters choose parties, not individuals for office. This usually means that campaigns are more concerned with issues rather than who’s the better person.

In PR politicians must vote for their party platforms or they are removed from the party. As a result voters know what they are getting. The party that they voted for will try to promote the issues that it stands for. In our system individual politicians frequently change their minds once in office or differ in important respects from what their party stands for locally or nationally. This means that voters must invest a great deal of time trying to find out the positions of every candidate running for office and then check to see if they really voted as they promised.

Finally, our system often encourages gerrymandering, that is, the political party with a majority at the state level creates legislative districts after each census that make it more likely that their candidates will win. If the Republicans are in office they create a few districts with huge Democratic majorities and then create many districts where registered Republicans outnumber Democrats slightly. When Democrats are in office and creating districts they try to do the same. The result is that even more of the population is represented by politicians who do not share their views on most issues. PR makes gerrymandering much more difficult, especially if the districts are represented by five or more politicians. If the Republicans have a majority in such a district, they will elect a majority of the representatives---but the minority parties will receive representation also.

The U.S. Constitution is silent about how representatives will be selected. It is up to the states to make that determination. Similarly in Florida, we could change the system quite easily, but it would take a constitutional amendment--something that is often done in this state. But the problems with changing the system are the same at both levels. As humans we tend to be creatures of habit and we have had this electoral system for over two hundred years. It would be a hard sell to many U.S. citizens. Secondly, the current system favors the two established parties who now control our government. They would be hurt, in most instances, by changing the system to allow more parties access. There is no reason to believe that they will voluntarily give up the monopoly of power that they have enjoyed for generations. If we are to change, in this author's opinion, it must begin here with us in academia exploring different electoral alternatives, educating ourselves to the advantages and disadvantages of different methods of selecting representatives.



## Polls, Programming and Campaigns

Suppose there was one day left before the next U.S. Presidential election and you had a chance to poll the electorate, which is composed of about 130 million potential voters. How many people would you have to poll in order to predict the results within plus or minus 3 points with an accuracy of 95%? In other words, if the poll said that say Barak Obama would get 47% of the vote, you would have a 95% chance of the poll being accurate within plus or minus three points. Take a moment here and write down a number. The question you need to answer is how many people would need to be polled?

(You will see the answer at the end of this chapter.)

Why are you conservative, or liberal or somewhere in between? Why do you favor the Democratic or Republican party or not have a strong preference? Take a moment and try to answer these questions.

### Political Socialization

If you started out your answers by saying, "because I believe..." you are, to a certain extent, begging the question. The central question is, **why** is it that you came to have these opinions? Note the wording I used here: "came to have." The implication is that these opinions "happened" to us, rather than us freely choosing them. Most scholars in the Social Sciences believe that humans "come to have" opinions because of experiences. The people we have known and the circumstances we have found ourselves in have planted most of the beliefs in our heads. This is not a pleasing thought to most of us. We would like to believe that our opinions are uniquely ours, that we have chosen them. But as we learned when we looked at polling, our political opinions are very predictable.

In the social sciences we call the process of programming that goes on "political socialization." It is the process by which you and I, and all humans, come to be indoctrinated into political beliefs. There are many different factors in this process and they can be grouped several ways. I have broken them down into three categories. The first area I call cultural influences, the second is unique personal experiences and the last general category is demographic characteristics. We will go into each of these in some detail, however, the primary thought is that most of our political opinions and beliefs have been created by our interaction with our particular culture, specific family members, encounters with friends, co-workers, lovers,

teachers, ministers etc. and our own self-interest. We wish to believe that we chose these beliefs and attitudes, but usually they have been inculcated into us by factors beyond our control.

**Cultural influences:** Cultural beliefs are passed on to us almost imperceptively; most of the people who live in a certain place during a certain time period share common beliefs. These are two of the most important factors in determining political and social beliefs—time and place. The other is the cultural group one was brought up in. These three factors account for most of our deepest beliefs. Let's consider each one separately, although it is clear that they work together in a synergistic manner.

Time Period: The time period that one lives in sets the parameters of many of our beliefs, especially when coupled with place. For example, if we were living in France three hundred years ago almost all of us would be Catholic. We would believe that women were inferior to men intellectually, that God had determined some people to be kings, others to be nobles and still others to be peons or workers. We would almost certainly believe that women should obey their husbands and spend their time raising children and taking care of the elderly and sick. We would believe that it was acceptable for men to get drunk from time to time. We would all be racists. We would think the superior race was the French race and the greatest country that God had ever created was France. We would hate the Germans and English the most, but we wouldn't trust anyone other than our own family—and perhaps the parish priest. We would think that some people were born with special rights given to them by God and that others, namely priests, bishops and popes were in special contact with God and could tell us what we should be doing with our lives.

We would hate all taxes.

Most of you who read these words have been born in the United States of America in the 20<sup>th</sup> Century. You believe in democracy. You believe that it is good to be different, that one must stand up for one's beliefs. You have probably been taught that the USA is the greatest country on earth. You believe that men and women should have equal opportunity. You believe that racism is bad, as is communism. You believe that the U.S. Constitution (notice that it must be in capital letters) is a great document. You believe that all humans have inalienable rights. You believe in majority rule, free speech and the basic equality of all humans.

In other words, you are a citizen of the United States of America living in the early part of the 21<sup>st</sup> Century. If you had been born in Russia at the same time you would have very different beliefs. You would think that democracy was a sham where the rich fooled the poor into believing they really had a say in politics. You would think the USA was a power-hungry nation made up of shallow, money-loving people. You wouldn't think that humans had any inalienable rights, but you would probably hate communism and believe that men and women should have equal rights.

Again, time and place are intrinsically linked. If we lived in the geographical area now called “California” some two hundred years ago we almost certainly would not have had any of the beliefs listed above as possessed by U.S. citizens. We would have been Mexicans!

Returning to the major point, we do not choose some of our most basic political beliefs. They are planted into our heads in much the same way that we are taught our language. Our views on honesty, work, sexual behavior, child-rearing, marriage and many other beliefs have been largely given to us by our time period and the place we live in.

Place: The place we were born and raised has particular significance. The country (nation-state) has enormous influence on our political opinions. Imagine the differences between a person brought up in Israel and one brought up in Pakistan, or the differences between Mexicans and Canadians. You and I did not choose the country where we were born and raised. Therefore we did not choose many of the beliefs that are common to our country. One becomes aware of the programming our country has instilled in us best by traveling to other countries and getting to know some of the people in those countries well. I have found, for example, that many Mexicans admire citizens of the USA but often view us as arrogant, materialistic and militarily aggressive. In turn, Mexicans are more likely to accept men having sex outside of marriage, expect almost all politicians to lie most of the time and think that divorce is a disgrace. If you or I had been born in Bolivia or Egypt our beliefs about men, women, children, teachers, doctors, mothers and fathers would be different than those we hold today. We would look at governments, religions, foods, love and war differently.

There are great differences in place within countries also. Imagine the difference in people who are born in rural Mississippi or Alabama as compared to someone born in New York City. A person born in the poor Hispanic neighborhoods of Los Angeles is going to have very different perspectives than the person raised in the wealthy suburbs of Chicago or Boston. Put simply, people in different places are very different. Place has great influence on one’s perspectives or opinions.

Group: We could have been born at the same time and be from the same place in the sense of country, city and even neighborhood. Yet if our sub-culture or group is different there will be substantial differences in what we believe and how we act.

Imagine children who are born today in Orlando, Florida in the same hospital. One child has parents who are Orthodox Jews, another’s parents are Puerto Rican Catholics and yet child’s parents are African Americans who are members of a revivalist Christian denomination. These children will associate with vastly different people. They will go to different places of worship; their grandparents and relatives will be very different. In short, these three babies will have much in common because they were born in the same place at the same time. But they will be raised by different people who will teach them very different morals and cultural practices. They are likely to be very different as adults because they are from diverse sub-cultures

### **Unique Personal Experiences:**

Our families have great influence on us. They have affected our views on almost all issues in some manner. Your particular family is different in many ways from other families—even within the same sub-culture. If you lived with your parents for a long time they affected your beliefs in significant ways. If your parents get along with each other, think alike and your relationship with them has been constant and strong then there is a high probability that you will have many of the same beliefs as they.

Your age is important. If you are eighteen, have a good relationship with your parents who are both very conservative politically, the probability is high that you also will be conservative. If your aunts and uncles and grandparents all share the beliefs of your parents the likelihood is even greater that you will share those beliefs. We are speaking of political beliefs here, but the same would be true of religious beliefs or other cultural beliefs. If members of your family had conflicting political beliefs or attitudes, then the beliefs that you have are less predictable. Still, the effects are there. The main reason you are not a Communist is probably that your parents and relatives aren't either.

As one grows older family influences often begin to fade and other personal experiences come into play. Significant others begin to affect our beliefs and perceptions. The term "significant others" is used here to mean other people you and I have come into contact with and who have had a significant effect on our lives. Sometimes coworkers are important to shaping our views; sometimes a minister, a priest or a teacher will have a strong effect. People we have close relationships with such as girlfriends or boyfriends, husbands or wives sometimes have profound effects on our beliefs. If the views of these significant others is different in a major way from those of our parents or family we often change our beliefs. If their views are largely the same, the probability is that our views will not change.

Our views on particular subjects are often affected by direct experiences. For instance, you may well have been very prejudiced against homosexuals until you met one or two at work or school. You may have liked them and started rethinking your ideas about homosexuality. If you have never met, heard about or seen a Mongolian in your life you will probably have no prejudices about Mongolians. Once you have met one you will have some kind of prejudice. If that person was a rude taxi driver, then...

If you have been sexually assaulted it will probably affect your views on punishment of sexual offenders.

If you experienced discrimination because of your religion, looks, nationality or race it might well affect your views on discrimination in general.

A person who has had a loved one murdered is likely to have strong beliefs about capital punishment.

### **Demographic Characteristics:**

Demographic or social characteristics can be divided into those which we have no control over and others which we have some influence over. For example, you and I have no control over our age, ethnic group, gender and genetic make-up. We probably have some influence over other demographics such as occupation, income and religion. For the purposes of this discussion I will concentrate on the characteristics that we do not control and how they influence our beliefs.

The central concept here is that these characteristics influence how others see us and treat us and in turn, how we see other people. Although it is possible to talk about each of these demographic characteristics separately, it makes more sense to think about them in combination, since that is how we find them in ourselves.

Let's create two people, Peter and Angelina. We will give them demographic characteristics that they have virtually no control over. Peter is seventy-years old, he does not know his ethnic group other than he is white and his ancestors came from Western Europe somewhere. Peter is obese although he does not eat any more than others his age. He was an overweight child who became an overweight teenager and adult. His parents were both obese also. Intellectually he is slow. He finished high school, but he had poor grades. Angelina is eighteen. She is a U.S. citizen, but her parents are illegal immigrants from Haiti. Angelina is slim, attractive and learns things easily. Both Peter and Angelina live in Orlando, Florida, USA. Using your imagination think how they might respond to these questions.

Do you believe that the drinking age should be 18?

Do you think that social security taxes should be increased to pay for more benefits for senior citizens?

Do you believe that state sales taxes should be increased to fund educational programs aimed at helping disadvantaged children?

Should federal expenditures be increased for Medicare (senior citizens) or Medicaid (poor people)?

Should companies who are found to discriminate because of race face severe criminal and civil punishments?

From your experience are females treated with less respect than males?

What is your opinion of Barak Obama? Martin Luther King?

Do you believe that there is a significant problem with sexual harassment in the workplace?

As you can imagine, their opinions would probably be very different.

Teenagers have experiences very different from senior citizens. Females and males are treated differently in every culture and therefore their views are not the same on many issues. People of different ethnic groups are likely to live with and associate with people like themselves and are seen differently and treated differently by society. People who are physically attractive are treated differently than those who are not. People who are very intelligent will have different opportunities than those who are slow. Therefore, their views will not be the same.

In the Social Sciences there is debate about how free we as humans are to choose our beliefs and values. Many believe that human freedom is simply a mirage, that all beliefs are created by the environment one lives in. **It is very likely that most of the viewpoints that you and I have were not consciously chosen.** They were placed into our heads by factors beyond our control.

The challenge that we all face is to strive to understand the factors that have pushed us to think and believe as we do and to attempt in some way to rise above these influences. It involves doubting our beliefs and actively using our imaginations and energy to arrive at truly chosen conclusions. This is a difficult task. And it is one that must be faced daily.

## Polls

If pollsters are careful in their selection process about 1,000 people will have to be polled in order to make a prediction of a national election. In other words, if Gallup wanted to predict what percentage of the popular vote would go to Barak Obama in the next presidential election they would poll about 1,000 people. If 47% of these people said that they would vote for Obama, then Gallup would predict that the same percentage of the general population would vote for Obama-- within a certain range (usually plus or minus 3pts) and at a certain confidence level (usually 95%.) What Gallup would say, more precisely, is that there is a 95% probability that the vote of the general population will be within 3pt of 47% for Barak Obama— had the vote been taken at the same time as the poll.

We will go more deeply into how this is done later, for now I would like you to think about the implications of this. What does it say about us if our votes are so predictable? If you think in percentage terms, about .001% or one-thousandth of one percent of the voters are asked their opinions and the pollsters predict what the other 99.999 % of us will do. If we were really

unpredictable would these polls work? Clearly not. But they do. And we know they do by comparing what they predicted and the actual results. The polls predicting the presidential elections have been generally correct for the last forty years. They work because if the pollsters ask someone who has about the same demographics as you or I (social characteristics like age, gender, ethnic group, religion, income) his or her opinion is very likely to be the same as ours. Although this is difficult for most of us to believe, our opinions are very predictable. This is one of the greatest lessons that the social sciences have to teach. **We humans have been programmed.**

If you and I are not aware of this programming it will be difficult to rise above it or be different than what we have been programmed to be.

Before we continue discussing the use of polls I would like you to understand how they are conducted, their terminology and reliability.

In order for a poll to be **valid** it must use the correct methodology. In fact, that is the definition of a valid poll--one that has used the correct methodology. There are many elements to the methodology such as asking exactly the same question in the same manner and answering or not answering questions the respondents have in the same way. The questions asked must be simple, that is, contain only one question, and be clear or unambiguous. However, by far the most important element of a valid poll is the manner in which the respondents or the people polled are selected. This process must be as **random** as possible. "Random" **means that every person in the population being studied has exactly the same chance of being selected.** In other words, the selection of the people to be polled must be totally accidental. The polling agency does not explicitly seek to have a certain percentage of females, senior citizens or Mexican Americans. If it correctly uses random selection the result will be a **representative sample**, that is, a sample of people whose demographics (social characteristics such as gender, age, income etc.) are similar to the population being studied. If these people are then asked their opinions of a product (Coke or Pepsi) or asked how they would vote if the election were held today, their opinions would be very similar to the entire population.

A valid poll will have a **confidence level** within a certain **margin of error**. Most commonly polls have a ninety-five percent reliability or confidence level within a range or margin of error of plus or minus three points. In other words, if the poll has the president's job approval rating at 57% this means that the polling agency is saying that there is a 95% probability that the entire adult population would have said the same as the people polled within a margin of error of plus or minus 3 points. The confidence level is not always 95% and the margin of error is not always plus or minus 3 points, however. One must pay attention to the numbers here. Some polls will have a confidence level of more or less than ninety-five percent, but usually not. More often the margin of error is different; it might be 3.5, 4, or in some cases even 5. A poll with a margin of error of plus or minus five points has a wide range of error. If it said, for example, that president's approval rating was 61% of the people polled; his popularity with the country could be as high as 66% or as low as 56%. The confidence level and margin of error of a poll are determined chiefly by the number of people polled and the randomness of the selection

process. It is impossible to have a completely random selection process and therefore the margin of error will vary from poll to poll, but even with a perfectly random selection there will be a margin of unpredictability in human beliefs and behavior. The same, however, is also true of predicting the behavior of monkeys.

I caution you again to be careful of numbers. You are critical thinkers. Just because a poll says that it has such and such a confidence level and margin of error doesn't mean that it does. It only means that it claims to have this. If the poll was done by a reputable polling agency like Gallup or Roper, the probability is that the poll was done well. But even they make mistakes. However, if you see a number of polls done by different agencies and they have similar numbers, the probability is high that they will be valid and therefore have a good chance of accurately measuring public opinion.

Permit me to spend a few minutes making things clear. The number of people being polled is not nearly important as how they were selected. The Orlando Sentinel, for example, often asks readers to call in to give their opinion on a given topic. If the reader dials one number a "yes" is recorded; if another number is dialed a "no" is recorded. The call cost fifty cents. Sometimes the Sentinel will get over ten thousand people to call in. If 80% of these people say that they agree with the Republican tax policies what is the probability that 80% of the adult population in the Central Florida area feel the same? In a national poll only about a thousand people are polled and the polling agency will claim a 95% confidence level with a margin of error of plus or minus three points. What would you suppose the margin of error and the confidence level would be with the Sentinel poll that had 80,000 respondents?

You guessed right if you said that you have no idea. These people were not selected randomly and therefore are not a representative sample. The total population might well feel very different or close to the same. There is no way of telling because the poll wasn't valid. Take a moment and see if you can find at least five factors that biased the selection process. You will find a description of possible factors at the end of this chapter.

One of the things that the social sciences do is to look at the factors that affect our behavior and beliefs and then try to predict, and possibly change the future.

By the way, we have been speaking here of voting, polling works for almost any kind of human behavior, from predicting who is watching which television show (the Neilson ratings) to predicting the success of a new deodorant (market research.) If you use your imagination you can imagine how powerful a tool like polling can be. It's like taking a snapshot of the mind of America, or of Orlando, Florida, if you like. You can find out what people want, what they think about a certain issue or person anytime you wish. The president of the United States has a polling agency working for him and capable of measuring public opinion at any time he wishes. The agency, by the way, is paid not by taxpayers, but by his political party. So the president doesn't need to guess what the people are thinking. He knows. So, also, do the leaders of the Democratic and Republican parties who employ polling agencies.



The two most respected polling organizations in the country are Roper and Gallup. Check out their web sites for polls and other information.

## **Political Campaigns: Polls and Madison Avenue**

Political campaigns for national office, and increasingly for state and local positions, are expensive affairs that rely upon the expertise of a broad array of specialists. Candidates must look good, appear at the right places, say the right things in the right way to many different groups of people and to the public at large. Earlier in this course I mentioned the need to raise money. Let me emphasize that again. Today, a candidate who is running for public office will need a lot of money. A candidate must purchase all of the things that I will mention below. They do not come cheaply.

What candidates need to have for political campaigns varies greatly; primarily it will depend upon what office one is seeking. If one is running for a position in a local school board one will need much less than if one is running for governor, senator or president. Since we are concerned primarily about the U.S. national government, however, there are certain things that virtually all of these campaigns will need. Below is a partial list of what will be necessary for a successful campaign for a U.S. House or Senate seat, or for a campaign for the presidency.

--A campaign manager. This will be the primary person in charge of directing and coordinating all of the things one needs to run a campaign. Generally all of the people (offices) who are mentioned below will report to this person. He or she will work with the candidate to determine the general strategy of the campaign and will be in charge of the day-to-day operations of the campaign.

--A media team. This will be discussed in more detail later, but this team will create the advertisements for the campaign and will advise the candidate on what to say to reporters, newscasters and other media people and sources.

--Political advisers. This group will tell the candidate who to talk to, what to say and where to go during the campaign. They will help the candidate devise the general campaign strategy as well as the different themes targeting different groups of voters.

--Speech writers. They will work closely with the political advisers to create speeches that are appropriate for the different groups that the candidate will be addressing. The speeches will need to be close to the candidate's actual values, but will make the values and beliefs of the candidate sound better.

--Research team. This team will need to find out what the opposition has done that the campaign should focus on. It will need to find information on all of the topics that the candidate should know something about. It will need to research the people, places and topics that the candidate will be addressing during the campaign.

--Polling Agency. This will be discussed in more depth later, but the campaign will need to hire a part of a reputable polling agency to do frequent polls during the campaign. The agency must be trusted to not release any results except to the campaign.

--Fund raising team. Normally there will be one person in charge of this team which is charged with raising the money the campaign will need. The fundraisers will have a great deal of influence on the schedule of the candidate, since the candidate will need to meet privately with individuals and organizations that will be able to provide money for the campaign. This function will be one of the most important parts of a political campaign, since all of the other functions can only operate well if they have the necessary funds.

--Policy consultants. Depending upon the campaign candidates will need experts to advise them on what policies they should support or oppose and why. The campaign may have economic advisers, foreign policy experts, as well as advisers on the environment, education and other areas.

Of course all of these people will need staff, equipment and a budget. Once again, money is going to be a primary concern for candidates.

## Polling

Political campaigns make frequent use of polls. Polls essentially take a snap shot of voters' viewpoints at a specific time period. What candidate doesn't want to know what voters are thinking? Broadly speaking a poll will be able to answer virtually any question that the candidate or politicians wants to know regarding potential voters opinions. It should be noted that polls are essentially still shots of a moving picture. They are extremely accurate, if done correctly, for the time period they are taken. Public opinion, however, changes—sometimes radically, but usually it changes slowly over time.

When they are starting the campaign often political candidates will ask the polling agency to find out what personal qualities people are looking for in a candidate and what are the issues that people are most concerned about. From this initial information, their own beliefs, and a few other factors candidates create their campaign **theme**. Almost every campaign has a major theme; it is the organizing thought of the campaign. It is often broken down to its essence in a few words or a slogan. For example, Bill Clinton's theme in the 1992 election against George Bush was simply that America needed a change. In the 1996 election the Clinton/Gore theme was "building a bridge to the Twenty-First Century." In 2008 Barak Obama's theme was "Change We Can Believe In" John McCain's was "Peace, Prosperity and Reform."

Polls are used for much more than this. When the polling agency takes the polls they obtain demographic information of the people being polled. They will find out the respondents' age, gender, political party affiliation, ethnicity and usually their income status. With this information the polling agency can create descriptive summaries of groups. For example, they can identify what African Americans, Hispanics, and Jewish Americans are looking for. They will focus on what groups that are very likely to vote are looking for. Middle-aged, middle-income and above men and women have a high voter turnout, as do senior citizens under the age of 80 or so. For each of these groups the candidate will prepare messages or design sub-themes that are specifically **targeted** at a particular group.

### **Madison Avenue or Creating the Right Image**

Madison Avenue in New York City is the street where most of the biggest and best advertising agencies in the United States have offices. It is job of the media consultants who work with the advertising agencies to create an image. One can be a rather unintelligent, uncaring, selfish person, but with the right image creators one can appear as brilliant, caring and loveable. One just needs enough money, a good media team with an advertising firm that knows its business. The advertising agency will view the candidate as a commodity that they need to sell to the voters. They will treat the campaign very much like something they do for companies that wish to sell us beer, detergent or computer products. They find out who their audience is, that is, who is most likely to buy their products, or in the case of politics, who are most likely to vote.

Through polling the campaigns will find out what different groups of voters are looking for. They will know what middle-aged white females are concerned about. They will find out what Hispanic males over thirty would like to see or not see. They will find out what African American females and males are most worried about or would like to see in a candidate. They will do this for many demographic groups.

They will then find out which magazine each groups reads, which television programs they watch and what radio programs they listen to and then they create something particular for them. This will not be guess work. They will have focus groups composed of people who are similar to the ones that they want to reach with the ad or message. They will get these people's responses to the ad and change it to make sure it is appealing to the demographic group the candidate is targeting. Cable television has expanded the ability of marketers to reach the public. Cable knows how many televisions are tuned into specific programs instantly. They can project with amazing accuracy how many viewers will see a specific advertisement and they can tell you the demographic composition of every radio, or television audience. The Internet is even more revealing. Information about individuals is available from many sites. This information is used by the advertising industry—in our case by the companies who are selling politicians or political messages.

You should know if you are looking at a computer it is often looking at you. So is your television.

Back to polling, once the campaign has started candidates use straw polls (polls that ask if you were to vote today who would you vote for) to determine how they are doing in general and in particular what their standing is with undecided voters. Here again one finds the marriage of sophisticated polling and Madison Avenue or the advertising industry. As compared to voters who have already made up their minds, undecided voters are usually younger, less interested in politics, and somewhat less educated. The pollsters find out what the typical undecided voter likes and dislikes about the rival candidates, what issues they are concerned about and then gives this information to the advertising people. Usually television commercials are then created that feature actors who look like the undecided voter discussing why they don't like the rival candidate and why they have become convinced that the chosen candidate is the one they will vote for. Again, this process is not accidental. Many different commercials are made and then shown to sample groups of people (focus groups) who have the same characteristics as the undecided voters. The commercials are changed, refined or thrown out based on the responses given by the test groups.

"Targeting" is a key word to understand in political campaigns. For example, the campaign of George Bush in 1988 against Michael Dukakis determined that there were few issues that Bush had championed that women favored. In fact, on most issues women tended to agree with the positions favored by Dukakis. What the Bush campaign decided to concentrate on was the perceived weakness of Dukakis on crime. It created the now infamous campaign commercials of Willy Horton, a convicted murderer and a black man, who raped a white woman and savagely beat her boyfriend while out on a prison release program in Massachusetts while Dukakis was governor there. This campaign ad ran in daytime television during the soap operas and in prime-time television programs that had a majority of female viewers.

In 1992, running against Bill Clinton, Bush found himself in a similar position. On most issues the positions he favored (increased military spending, reduced social welfare programs, eliminating affirmative action and passing a constitutional amendment banning abortion) women opposed. The strategy that the Bush campaign adopted was to show Bush as a family man. Ads showing him with his wife, children and grandchildren at barbecues and other family gatherings were broadcast in the same time slots on television. This time the strategy was simply to portray George Bush as a family man -- a husband, father, and grandfather-- someone who women could trust.

All of this, of course, costs **money**. This leads me to the beginning of the process. Unless a candidate has a well-known name, (Kennedy, Bush) that candidate will usually need a good deal of money to have a decent chance of winning. And if one doesn't have money personally one must find friends and supporters who do (Bill Clinton). Of course it helps to have all three (Jeb Bush).

The poll at the beginning of this reading was not valid because the selection process was biased or not random. For this poll to be valid it would have to randomly select adults from around the Central Florida

region. But the people who responded were hardly randomly selected. Many people were excluded. The first exclusion is that many people do not read the Orlando Sentinel. The next factor is that even those who read the Sentinel often don't read the editorial pages. Third, there are some people who read the editorial page and wanted to answer but chose not to because of the fifty-cent charge. Fourth, there are undoubtedly a large number of people who read about the call-in poll but were not really interested in the subject and therefore didn't call. Of course there are others who don't have phones readily available, who are ambivalent or ignorant about the topic and who are reading the Sentinel to improve their English skills. If you can think of any other obvious factors missed here please let me know.

# The U.S. Federal Courts

## The Federal System

The Federal Judiciary of the United States is the supreme interpreter of the U.S. Constitution, but the trials it conducts are usually only those where a federal offense has been committed. Well over ninety percent of trials occur at the state level. State courts, like state governments, are not constitutionally under the control of the federal courts or the federal government. There are 51 different justice systems in the United States, the federal system and one in each state. Each state has a great deal of ability to pass laws that are different than the Federal laws and different from each other. Every state has the ability to set up its own court system, and although they are usually similar to the federal system in their three-tier structure, usually they elect some or most of their judges.

The Supreme Court, however, has exercised control over constitutional matters and it has applied the Constitution and the protections in the Constitution to the states by the largely by its interpretation **14th Amendment** to the Constitution. The 14th Amendment was passed after the civil war; it is well to remember that until the end of the civil war the states had almost complete autonomy to pass whatever laws they liked and to create virtually whatever type of court structure they wanted. After the civil war and after the 14th Amendment the Supreme Court of the United States began to exercise control and started making rulings that forced the states to come into compliance with how the Supreme Court interpreted the Constitution. In reality, it wasn't until the 1950s and then into the 1960s and 1970s that the Supreme Court began to pass many rulings that declared laws and actions by state and local legislatures and officials to be unconstitutional.

The key part of the 14<sup>th</sup> Amendment that the Supreme Court has used to force states to adhere to the Court's interpretation of the Constitution is: *"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

The first major ruling requiring state adherence to protections provided citizens by the Fourth Amendment came in 1961 in the famous Mapp v. Ohio case. In the Mapp case the Supreme Court essentially declared the "due process" that states had to abide by would be determined by itself—the Supreme Court. It began to apply federal standards to criminal issues, such as

search and seizure (Mapp V. Ohio). Later came the Escobedo case that involved principally the 6th Amendment and then the Miranda case relating chiefly to 5th Amendment protections. (There have been many other important rulings, but these are perhaps the most important.) These three cases established the clear intent of the Supreme Court that states would now have to follow federal evidentiary procedures.

Again, while the states must stay within constitutional guidelines, they have wide latitude to pass laws that they wish. As I stated before in this text, states can pass laws that legalize the use of almost any drug they wish. State legislatures can pass laws that govern sexual behavior and permit, for example, same-sex marriages or marriages of multiple partners. Or, as in the case in Nevada, they can allow legal prostitution. (Nevada allows each county to make a decision as to whether or not it wants prostitution.) This principle applies to many other legal areas including civil law. (One private party sues another.) The states have wide latitude; they must, however, stay within the Constitution and they must protect the constitutional rights of all citizens **equally**—as established by the rulings of the Supreme Court.

There is a fairly wide variety in how states structure their court systems, but many are similar to Florida. For judges in the Supreme Court of Florida, the District (Appellate) and Circuit (Trial) courts a judicial nominating commission (there are different commissions for each level) sends three candidates to the governor. The governor selects one and that person then becomes a Supreme Court judge or an appellate or trial court judge. After a period of one year his or her name is put on the ballot for the voters to approve or disapprove. After that, every four years that judge's name is on the ballot and the citizens, by a majority vote, choose to keep or reject the judge.

At the county level in the State of Florida, judges must run for office in a nonpartisan election. (They run under their names, without mentioning their party affiliation.) Most states have somewhat similar systems to the state of Florida, but there are significant differences. We don't need to get into that here. Suffice it to note that states have wide powers to pass their own laws and set up their own judicial systems.

## **STRUCTURE OF THE FEDERAL COURT SYSTEM**

Describing the entire federal system would be very complicated because there are special courts set up for the military and special courts set up for immigration and patents and other areas. These special courts have been created by Congress and usually report to the appellate courts and then the Supreme Court. However, the basic structure of the federal court system is relatively simple. At the top is the Supreme Court. Underneath the Supreme Court are the circuit courts (appellate courts) and at the bottom are district courts, which are trial courts. Let's look at each one of these briefly.

### **U.S District Courts**

The U. S. District Courts are normally the only place where trials occur. There were 94 districts in 2007. With few exceptions the government must bring a defendant to trial within 100 days after the initial arrest. In a district or trial court there's one judge and, if the accused (defendant) wishes, there will be a jury. The judge rules on matters of legality and the jury determines guilt or innocence. All federal trials must have unanimous verdicts. In a jury of twelve persons this can be difficult at times. If the jury cannot reach unanimity (hung jury) a mistrial is declared and the government will then decide to have another trial if it wishes. If a person is found guilty he or she may appeal to the circuit court. If the verdict is not guilty then the process is over. Not guilty verdicts cannot be appealed.

### **U.S. Circuit Courts of Appeal**

If there's a guilty verdict and the defendant decides to appeal the case will go to a U.S Circuit Court of Appeals. There are twelve judicial circuits in the United States each containing eight or so district courts. Each circuit has from 6 to 28 permanent judges that hear appeals. The circuit courts are not under a constitutional pressure to rule within any given time period. This is where the judicial system slows down considerably. The circuit court will review the transcripts of the case and then decide whether or not to hear an appeal. If an appeal is granted, the lawyers who tried the original case will normally make oral arguments to a panel of three judges. No new evidence may be presented at this hearing. If two of the three judges believe that the verdict should be overturned then the case is sent back to the original court for a new trial. If the original verdict is upheld the defendant can choose to appeal the decision to the Supreme Court.

### **The U.S. Supreme Court**

There are nine members on the U.S. Supreme Court. If four of them decide that a case should be viewed they will issue a writ of certiorari. The entire Supreme Court will then read the transcripts of the original trial, listen to oral arguments of the opposing sides and then vote. Five justices are a majority and if they agree then the case is decided as they indicate.

In every case when the Supreme court makes a ruling they also issue opinions. The opinions explain the principles behind the ruling and are useful when lower courts are faced with similar cases.

Once the Supreme Court makes a ruling it in effect becomes law within the United States. The Supreme Court establishes **precedent** with their rulings. Lower courts are required to follow this ruling. Precedent follows the legal principle of stare decisis, which means literally "let the decision stand."

Precedent is important because it means that the Federal judges cannot make decisions based on whims. They are required to make decisions based on established principles or



precedent. Judges at the lower levels and the prosecutors and lawyers who represent citizens thereby know what the law is and act accordingly. Also, now lawyers, law enforcement officials and common citizens know what the law or Constitution means in similar circumstances.

All federal judges are nominated by the president and approved by the Senate. Clearly judges are chosen for political reasons as well as, hopefully, for competence. Normally all judicial nominees reflect the political philosophy of the president. It may not be exact, but generally it will be the same broad philosophy. If the Senate is of another political party there are often fights over the approval process. From 1995 to 2007, Republicans controlled the U.S. Senate. There were many fights over the confirmation of federal judges that Bill Clinton sent to them. The Republicans in the Judiciary Committee slowed down or turned down more federal judges than at any other time in U.S. history. Many of the Republicans insisted that the judicial nominees agree somewhat with their philosophy or else they are not confirmed. Prior to 1995, ideology was important but not nearly as important as it has been since that time. The Republicans forced the Clinton administration to withdraw the names of many judges and many are still in the pipeline to be determined by the judiciary committee. There have been slowdowns in the judicial process because not enough federal judges have been approved in the last several years. George W. Bush had much better luck his first six years in office, because Republicans controlled the Senate. He was able to get a new, conservative Chief Justice approved—John Roberts. Samuel Alito, another conservative, was nominated by Bush in 2006 and approved by the Senate that same year.

Please note that **all** federal judges must be approved, not just Supreme Court judges, but federal judges in all levels have to be approved by the Senate after the president nominates them. All federal judges serve for lifetime terms—until they voluntarily retire, die, or are impeached and removed.

## **The Major Roles of Federal Courts**

Before I discuss formally the roles that federal courts are asked to play I would like you to consider the following case:

### **ARIZONA v. HICKS, 480 U.S. 321 (1987)**

On April 18, 1984, a bullet was fired through the floor of respondent's apartment, striking and injuring a man in the apartment below. Police officers arrived and entered respondent's apartment to search for the shooter, for other victims, and for weapons. They found and seized three weapons, including a sawed-off rifle, and in the course of their search also discovered a stocking-cap mask.

One of the policemen, Officer Nelson, noticed two sets of expensive stereo components, which seemed out of place in the squalid and otherwise ill-appointed four-room apartment.

Suspecting that they were stolen, he read and recorded their serial numbers - moving some of the components, including a Bang and Olufsen turntable, in order to do so - which he then reported by phone to his headquarters. On being advised that the turntable had been taken in

an armed robbery, he seized it immediately. It was later determined that some of the other serial numbers matched those on other Stereo equipment taken in the same armed robbery, and a warrant [480 U.S. 321, 324] was obtained and executed to seize that equipment as well. Respondent was subsequently indicted for the robbery.

Question: Should the police have the right to seize the turntable and use it against the defendant, Mr. Hicks?

Write down what you would consider the positive benefits to the United States if the Supreme Court agreed with your opinion. Take another few minutes and write down some of the possible negative effects.

To take a look at what the Supreme Court decided look at the end of this chapter.

The most important task or role of federal courts is **judicial review** or the responsibility to determine the constitutionality of laws passed by Congress or any other legislative body in the United States and of actions of governmental bodies. Because of the 14th Amendment, laws passed by any governmental agency at any level of the United States are subject to the judicial review of federal courts. From the Congress of the United States to the mosquito control district who sets a policy in Osceola County, every governmental body is subject to this review. The same is true of any governmental official at any level. The Supreme Court ruled that President Clinton could not refuse to testify in the Paula Jones or Monica Lewinski cases. Without this ruling there almost certainly would not have been impeachment hearings. The same Supreme Court ruled that a county judge could not have a crucifix in his chambers and that football coaches in public schools should not lead their teams in prayer.

There are two broad objectives of the federal courts that relate to the criminal justice system. The first objective is to help prevent crime or protect citizens from criminal behavior and the second objective is to protect citizens from government itself.

Whenever one of the objectives is stressed too much the other one is sacrificed. If the courts stress protecting individuals from criminal behavior and allow a great deal of freedom to the police then citizens have less protection from law enforcement and from government. All citizens lose protection from illegal or unconstitutional behavior by law enforcement officials. In more simple terms harassment by police of common citizens is likely to increase. On the other hand, if the courts are very strict on the police in not accepting illegally obtained evidence, the result is that the police are less capable of catching criminals and prosecutors are less successful in prosecuting them. The result tends to be a higher crime rate.

There are costs involved in stressing either objective. The United States normally is known for protection of citizen rights and conversely we are also known to have a fairly high crime rate. There are many other factors involved in causing a high crime rate. However, when police are

given a great deal of freedom to search and wiretap and question, they are generally more successful at catching criminals. It is important to keep this in mind because the courts are often given conflicting objectives. **Any right or protection from government that is taken away from a criminal defendant is also taken away from the average citizen.** The United States prides itself on being a country ruled by law not by men. What this means is that all citizens have the same legal rights and are governed by the same laws. We do not allow ourselves to be at the mercy of individuals in government treating us differently or creating laws because they don't like us or we appear suspicious. If government officials can take away the rights of anyone of us because they don't like us or they think we are acting suspiciously then all of us can be treated this way.

The rule that judges use to determine that admissibility of evidence is called the **exclusionary rule**. Broadly, the exclusionary rule is a rule set by federal judges that excludes evidence in trials if government illegally obtained the evidence. Please note that the exclusionary rule is most often used to invalidate evidence that has been obtained in violation of the Fourth, Fifth and Sixth Amendments. Keep in mind that the exclusionary rule has the purpose of requiring the government to follow the law while it enforces the law. If police and others were routinely prosecuted or disciplined for violating citizens' rights then the exclusionary rule would not be necessary. Have you ever heard of a police officer being prosecuted for violating the rights of a criminal suspect? Since this rarely occurs, it seems to many that the exclusionary rule plays an important part in protecting the basic rights of U.S. citizens from government officials.

The exclusionary rule is the most controversial and the most important to average citizens. Evidence that was illegally obtained must be excluded in criminal trials. The Supreme Court made it clear as to why they will not accept evidence that has been collected by government using illegal means in the famous case of Mapp v. Ohio. Without this rule, ***"the assurance against unreasonable federal searches and seizures would be 'a form of words,' valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in the concept of ordered liberty."*** In this same ruling the Court said, ***"The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence."***

There are two exceptions to this that I would like you to know. One is called the **good faith** exception and the other is called the **inevitable discovery** exception.

The **good faith exception** essentially says that if the police have acted in good faith in obtaining evidence and another government official or agency outside of the police makes a mistake the evidence can still be used against the defendant. I would suggest that you look up the particular case United States v. Leon where the court clearly announced and explained this decision. In brief, the good faith exception came on a case where police searched a person's home based on a search warrant that was signed by a judge who had not correctly established

probable cause before he granted the warrant. The search warrant was therefore illegal, but the police who conducted the search and found the evidence did not know this. When they searched they found illegal drugs and large quantities of cash. They arrested the two people who had been selling the drugs and brought them to trial. In this case, the court held since the error was not by the police and the exclusionary rule was intended to control police behavior principally, that the evidence could be accepted since the police had acted in good faith.

The second exception is called the **inevitable discovery** exception. In this exception, police can use evidence if they can establish that the evidence would have been inevitably discovered during the course of a normal police investigation. Even though the evidence was taken illegally, if law enforcement officials can demonstrate that they would have found the evidence during a normal police investigation, then the evidence can still be used against an accused person. The actual case where this was decided clearly by the Supreme Court was *Nix v. Williams*. Read it if you wish to look at an interesting case.

[ARIZONA v. HICKS, 480 U.S. 321 \(1987\)](#) (What I have included here are excerpts from the majority opinion of the Supreme Court. Translation follows.)

*Officer Nelson's moving of the equipment, however, did constitute a "search" separate and apart from the search for [480 U.S. 321, 325] the shooter, victims, and weapons that was the lawful objective of his entry into the apartment. Merely inspecting those parts of the turntable that came into view during the latter search would not have constituted an independent search, because it would have produced no additional invasion of respondent's privacy interest. See Illinois v. Andreas, 463 U.S. 765, 771 (1983). But taking action, unrelated to the objectives of the authorized intrusion, which exposed to view concealed portions of the apartment or its contents, did produce a new invasion of respondent's privacy unjustified by the exigent circumstance that validated the entry. This is why, contrary to JUSTICE POWELL'S suggestion, post, at 333, the "distinction between 'looking' at a suspicious object in plain view and 'moving' it even a few inches" is much more than trivial for purposes of the Fourth Amendment. It matters not that the search uncovered nothing of any great personal value to respondent - serial numbers rather than (what might conceivably have been hidden behind or*

*under the equipment) letters or photographs. A search is a search, even if it happens to disclose nothing but the bottom of a turntable.*

*We turn, then, to application of the doctrine to the facts of this case. "It is well established that under certain circumstances the police may seize evidence in plain view without a warrant." Those circumstances include situations "[w]here the initial intrusion that brings the police within plain view of such [evidence] is supported . . . by one of the recognized exceptions to the warrant requirement," *ibid.*, such as the exigent-circumstances intrusion here. It would be absurd to say that an object could lawfully be seized and taken from the premises, but could not be moved for closer examination. It is clear, therefore, that the search here was valid if the "plain view" doctrine would have sustained a seizure of the equipment.*

*There is no doubt it would have done so if Officer Nelson had probable cause to believe that the equipment was stolen. The State has conceded, however, that he had only a "reasonable suspicion," by which it means something less than probable cause.*

*We now hold that probable cause is required. To say otherwise would be to cut the "plain view" doctrine loose from its theoretical and practical moorings. The theory of that doctrine consists of extending to nonpublic places such as the [480 U.S. 321, 327] home, where searches and seizures without a warrant are presumptively unreasonable, the police's longstanding authority to make warrantless seizures in public places of such objects as weapons and contraband. And the practical justification for that extension is the desirability of sparing police, whose viewing of the object in the course of a lawful search is as legitimate as it would have been in a public place, the inconvenience and the risk - to themselves or to preservation of the evidence - of going to obtain a warrant.. Dispensing with the need for a warrant is worlds apart from permitting a lesser standard of cause for the seizure than a warrant would require, i. e., the standard of probable cause. No reason is apparent why an object should routinely be seizable on lesser grounds, during an unrelated search and seizure, than would have been needed to obtain a warrant for that same object if it had been known to be on the premises.*

In very simple terms what the court determined was that moving the turntable constituted a search. In order to search a person's home police need a search warrant based on probable cause. The "in plain view" doctrine allows police to seize an item if they see it and have probable cause to believe that the item is stolen or illegal. The turntable was in plain view, but the police did not have probable cause to believe it stolen. Therefore they could not move it or take it. If the Court had ruled that the police had the right to search Hicks apartment for evidence unrelated to the reason they were there it would have given every law enforcement official in the country the right to move things around in a private residence if they have a reasonable suspicion that something illegal was around.

# Rights of Citizens in Criminal Procedures

Most of the rights that average citizens have in criminal matters are set forth in the Fourth, Fifth, Sixth and Eighth Amendments to the U.S. Constitution. These rights have been put into effect primarily by specific Supreme Court rulings that have restrained police and other government officials in their treatment of citizens. Permit me to emphasize again the importance of the Fourteenth Amendment. Prior to the systematic application of this amendment by the Supreme Court starting with the famous Mapp V. Ohio decision in 1954, state and local governments were not required to enforce the protections afforded citizens in the amendments below. Because of the Supreme Court's interpretation of the phrase in the amendment quoted below all public agencies and officials in this country are required to observe the protections provided citizens in the U.S. Constitution.

***“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”***

Understanding these rights in detail is a difficult task. Below you will find some of the basic rights that all U.S. citizens have in respect to police and other government officials.

## Fourth Amendment

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

The 4th Amendment (above) is one of the most basic protections that citizens have. There is no explicit protection to privacy in the U. S. Constitution. The 4<sup>th</sup> Amendment, however, implies that government must respect citizens' privacy against unreasonable government searches

into private matters. The key question here, of course, is what is unreasonable. I would like to explore the 4th Amendment in four separate areas.

**Homes:** If you live in a home that does not have wheels on it or is not powered by a motor as in a plane or a boat you have the greatest protection from government searches in that dwelling. Generally speaking, government may not search a home without a search warrant signed by a judge specifically stating what is being searched for and the time and place of the search. The courts have been very strict on this. They do require warrants.

Of course, this can be waived by consent. If the citizen allows a police officer into her home then that law enforcement official has the right to look around and if he sees anything that is illegal or that he might reasonably suspect to be illegal he has the right to seize that item and use it against her. Inside the house, if a police officer asks to go into a bedroom or into another room and consent is given, then he also has the right to go into that room and look around. If a police officer asks and the citizen gives him permission then it is a legal search. And very often this is exactly what law enforcement officials will do. They'll ask to come in and once they are there they'll ask to look around and if a citizen refuses the police will often exert pressure. They are doing their job. They are looking for illegal objects or perhaps wanted persons and their job is to protect citizens from criminal behavior. However, as a citizen you do not have to allow them into your home and if you have allowed them into your home they do not have the right to go into any other room in your home other than the one they are in. You can always ask them to leave; they cannot use this as a basis to get a search warrant. Again, a citizen has the most protection in his or her home; under most circumstances it's illegal to search a home without a search warrant.

**Businesses:** Generally the same rules apply in a place a business; that is, in order to search it law enforcement officials would need a search warrant signed by a judge, etc.... The difference with the workplace, however, is that police may enter as customers and look around, so they have access to the premises of most work places. More importantly, a large number of government institutions have the right to look into and do different types of inspections and in some cases searches of businesses if necessary. If you own a restaurant, for example, the health department of the city, the health department of the county, and even the health department of the state would have the right to come in and inspect the premises and they can look almost anywhere looking for bugs or dirt or possible fire hazards. They would have the right to search pretty much wherever they wanted. Almost any place of business can be searched for fire hazards by the fire department. Most places of business can be searched by the building department and again, any particular business can generally be searched by a governmental agency that has authority over it. If you happen to work in a daycare facility, for example, that can be searched and will be searched by the Division of Family Services and also by city and county agencies to see that you are in compliance with state, county, and city laws. So a place of business has an expectation of privacy and a reasonable expectation not to be searched, but it has less protection than a home.

**Body and personal effects:** In this area you have substantially less protection. If police have reason to stop and question a person they may pat said person down for weapons—this has

been allowed by the courts to protect the safety of law enforcement officials. And, if they detect a weapon in the process they may remove that weapon and charge this person with illegal possession-- if in fact it is illegal. Likewise, police can ask women to open their purses and they can take a look inside. Police may ask that person to open her purse so they can look inside for weapons. They cannot search the purse. They cannot put their own hands inside, but they have the right to ask individuals to open bags, handbags or purses in order to be sure that a weapon is not there that they might be harmed by.

Normally, no parts or effects of your body may be removed without a search warrant. The government cannot take a hair sample or a urine sample or a semen sample or a blood sample without consent or without a search warrant, under normal circumstances.

This does not apply to a **private** employer. If you work for a private company such as Disney or Sea World or Lockheed Martin or any number of hotels or motels they can require you to take a random blood test and if you refuse they can fire you. Generally speaking, government cannot do that to a citizen. There are many exceptions here--so many exceptions that some of the most common ones need to be mentioned.

The first obvious exception is a citizen who is driving an automobile or another vehicle. If there has been a serious accident and police have reason to suspect that there has been drug abuse, they can and will require a blood test and they will not need a search warrant in order to do so.

Also, if you work for the government and you are involved in an area that directly protects or is involved with public safety the government can require you to take random urine or blood tests. Police officers, bus drivers, anyone in the U.S. military, and anyone working for the U.S. Department of Transportation can be required to take random blood tests or random urine tests and can be dismissed or penalized for failing those tests. Also, if you are applying for a government job the government can require a test and can refuse to give you a job if you fail that test. They cannot prosecute you if you fail that test, but they can refuse to employ you. As many of you who are reading this are well aware, many businesses now require drug tests prior to employment.

The courts have given a wide authority to schools as well. The latest Supreme Court decision concerning students involved in extracurricular activities or school activities is that schools can require that these students take drug tests before they become involved in student activities and they can require students to take random drug tests while participating. This could be football or baseball or cheerleading or the debate team or any extracurricular activity.

In summary, citizens have substantially less protection from government intrusion into their bodies or personal effects as compared to a business and much less than one would have in a home.

**Vehicles:** Police officers may search an automobile based on probable cause **without a search warrant**. The courts have been very lenient in allowing the police to search. In the



state of Florida, if law enforcement officials find an illegal substance or a stolen piece of property, the police may seize the vehicle and not pay the owners. Citizens who are transporting drugs or are transporting stolen objects in most states, and especially in the state of Florida, are in real danger of being searched and face the possibility of losing their vehicles if they happen to be carrying something illegal. This is one reason that drug dealers often use rental cars to transport drugs across state lines. For this same reason, police are more likely to be suspicious of rented vehicles. (If you are driving a rental car on Interstate 95 I suggest that you observe all the traffic laws scrupulously.)

Probable cause in some form must still be present. Police cannot legally search an automobile because you happen to be black or young with jewelry or have a car with darkened windows. If you do have a car with darkened windows and you are young and you are an ethnic minority, studies show that you are much more likely to be searched. The Orlando Sentinel did some studies and found that a very large percentage of the vehicles that were stopped in Volusia County in the early 1990's were of minority group members. The Supreme Court case that is most frequently cited as the latest interpretation of probable cause is Illinois v. Gates.

### **Fifth Amendment**

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

The 5th Amendment has many parts to it. There are only two parts that I would like to emphasize. Number one and most important is the protection against self-incrimination in criminal cases. What this means is that as citizens you and I do not have to answer any questions concerning our activities if such an answer might incriminate us. This is true in a trial and it's also true on the street. Police can ask questions. Citizens usually do not have the responsibility of answering them. One could say reasonably that a citizen is not required to answer many questions that government and especially law enforcement officials ask. It is one of the most important protections that citizens have against government. Without the 5th Amendment citizens would be required to answer all questions that government officials asked. More to the point, if the courts had not decided to throw out evidence that was obtained in violation of the Fifth Amendment we would not have its protection.

This section of the 5th Amendment is absolutely basic to our system of justice. Because of the 5th Amendment and the English common law tradition government is forced to prove a citizen guilty rather than the citizen having to prove his or her innocence. Nowhere in our Constitution does it say that a person is innocent until proven guilty. But the 5th Amendment has this clause and the intent of this part of the Amendment is to protect citizens from government and particularly police harassment. It embodies the philosophy that it is not the responsibility of the citizen to prove his or her innocence, but rather the responsibility of government to prove a person guilty.

Countries who do not have this law or who do not enforce it almost always have frequent abuse of citizens by law enforcement. Mexico is a good example; Russia, Iraq and Iran are others. Japan has a conviction rate of around 99% in criminal trials—almost all convictions come because of confessions; the police can keep a citizen in jail in Japan for over 20 days without charging him.

Without the protection against forced self-incrimination police often force citizens to confess to crimes, using many different methods from browbeating to the famous water torture that some Mexican police and the U.S. CIA reportedly used with some terrorist suspects during George W. Bush's two terms in office. Sometimes the citizen is guilty to what he confessed, sometimes a person confesses to stop the torture. The explicit purpose of this part of the 5<sup>th</sup> Amendment is to avoid government torture of suspects.

The famous case that forced state and local government officials to observe this part of the Fifth Amendment was *Miranda v. Arizona*. In fact, this case links due process to the right against self-incrimination. Here are some very famous remarks by the Court:

Held:

1. The prosecution may not use statements, whether exculpatory or inculpatory, stemming from questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way, unless it demonstrates the use of procedural safeguards effective to secure the Fifth Amendment's privilege against self-incrimination. Pp. 444-491.

(a) The atmosphere and environment of incommunicado interrogation as it exists today is inherently intimidating and works to undermine the privilege against self-incrimination. Unless adequate preventive measures are taken to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice. Pp. 445-458.

(b) The privilege against self-incrimination, which has had a long and expansive historical development, is the essential mainstay of our adversary system and guarantees to the individual the "right to remain silent unless he chooses to speak in the unfettered exercise of his own will," during a period of custodial interrogation [384 U.S. 436, 437] as well as in the courts or during the course of other official investigations.

(d) In the absence of other effective measures the following procedures to safeguard the Fifth Amendment privilege must be observed: The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him. Pp. 467-473.

(e) If the individual indicates, prior to or during questioning, that he wishes to remain silent, the interrogation must cease; if he states that he wants an attorney, the questioning must cease until an attorney is present. Pp. 473-474.

The second clause in the 5th Amendment that is extremely important is the **due process** clause. The due process clause is also repeated in the 14th Amendment. Due process means that all government officials must treat citizens with the same formal procedures. Government must establish explicit procedures in dealing with all citizens and then must apply those procedures to all citizens equally. Due process was explicitly designed to avoid discrimination. Linked with the equal protection clause of the 14th Amendment it is the chief clause that has been used to protect African-Americans, women, young people, and others from laws that discriminate against them. It protects citizens from police behavior that treats them differently than anybody else. Due process also was the clause used by the Supreme Court in the Adarand case, which made most forms of affirmative action unconstitutional. The Court held that affirmative action did not treat all races equally.

## Sixth Amendment

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

The 6th Amendment has three sections it that I would like to discuss.

**Speedy Trial:** The first clause of the 6th Amendment says that all citizens enjoy the right to a speedy and public trial. A speedy trial has been interpreted by the federal courts to mean that a citizen must be brought to trial within 70 days of being indicted by a grand jury. The federal government has thirty days from the time of the arrest to bring the accused before a grand jury for indictment. So once the police make an arrest the government has 100 days to bring the

accused to trial. There are exceptions to this, but the state cannot argue that it hasn't had enough time. It can show, however, that it has made every effort to start the trial on time but something has occurred that prevented them from trying the case. In past years the government has been able to get trial postponements because the FBI lab was so far behind in testing DNA samples. The most common reason that trials do not begin in this time period, however, is when accused person or the defendant asks to postpone the trial in order to prepare their case.

All states do not have the same time periods for a speedy trial, but all are required to have set laws that require trials to occur in a reasonable time period. Most frequently states have a ninety-day period from the time of arrest to trial. This is one of the reasons that the police have not arrested the parents of Jon Benet Ramsey. If they arrest the parents they must formally charge them and then they must bring them to trial soon after.

Once they've been tried and found not guilty no matter what evidence is turned up later they cannot be retried--at least in that state. It is possible to try citizens for the same crime in different jurisdictions. Some of you may remember the Rodney King case where the officers who beat him were acquitted in a California state court but then convicted of violating his civil rights in a federal trial.

Police have to be very careful about when they make an arrest because once the arrest is made they have to go ahead and prosecute and they have to do it rather quickly.

**Public Trial, Impartial Jury:** The next provision of the 6th Amendment that's important is simply that citizens have the right to a public trial with an impartial jury. For **all** criminal offenses, in federal law, a citizen has the right to a trial by a jury of fellow citizens. Not of their peers, but a right to an impartial trial meaning a right to a trial by citizens who are not biased against the accused. According to recent rulings, all criminal cases at the federal level must have unanimous verdicts. Most states have followed this as well. In the state of Florida, if you've committed a criminal offense, you will normally be tried by a six-person jury that must be unanimous in its verdict – either guilty or not guilty. If a citizen is being tried for a capital offense such as murder, the state requires a twelve-person jury and a unanimous verdict. Almost all states require unanimous verdicts in criminal cases; they are required by the Supreme Court to have unanimous verdicts in all capital cases.

The state is required to prove beyond a reasonable doubt to a unanimous jury that somebody is guilty. This is not easy to do. One can cite the trials of O.J. Simpson and many others where many people feel that the evidence was overwhelming, however, the jury was not convinced. All they need is a reasonable doubt. Trial by jury is extremely important in protecting citizens from government. It is a statement of mistrust of government. Only one's fellow citizens can determine a person's guilt or innocence. Only fellow citizens can give permission to the government to put a person in jail or ultimately, to take his life.

**Right to Counsel:** Because of the **Escobedo** case the right of citizens to have an attorney present begins at the moment that questioning could reasonably elicit an incriminating

response. And because of the Miranda case a citizen must be advised of this right before questioning. Any time a citizen is being formally questioned or a police officer is asking him a question **and the citizen has been detained**, they must be advised of their right to an attorney, their right to remain silent, and other rights. Police do not have to read you your rights before an arrest if they do not plan to formally interrogate you immediately. They do not have to read a citizen the Miranda warning before asking leading questions. A citizen, remember, does not have the legal responsibility to answer most questions. Only when a citizen has been detained must he be read his rights before questioning.

Clearly, it makes sense to answer almost all questions that police officers ask. Usually it is foolish not to. However, one is not required by law to answer any question if the answer would be self-incriminating. There are few exceptions to this.

## **Eighth Amendment**

"Excessive bail shall not be required, no excessive fines imposed nor cruel and unusual punishments inflicted."

In normal circumstances citizens must have the opportunity of posting bail after being charged and the government may not impose cruel and unusual punishment. Of course what is "cruel and unusual punishment" is a matter of debate. The Court has decided that the death penalty is cruel and unusual punishment for the crime of rape for example. (Coker v. Georgia) It has also held that executing a person under the age of 16 is not acceptable under the Eighth Amendment.(Thompson v. Oklahoma) (It left open the possibility that a person who commits a crime when they were 15 and tried when he was 16 or older could receive the death penalty.)

In one of the most unusual decisions in modern times a deeply divided Supreme Court held in the Harmelin v. Michigan case that the punishment does not have to be proportionate to the crime and that cruel punishment can, in some cases, be acceptable if it is not considered unusual.

# Congress

Please note that the word "Congress" means the U.S. Senate and the U.S. House of Representatives together. Thus, both U.S. senators and U.S. House members are "congresspersons".

You might remember from the beginning of this text the basic things that Congress does. Most importantly Congress passes federal laws. In the long run this is probably the most important function of government. In areas where the federal government is supreme, such as the control of interstate commerce, the control of the money supply and crimes that are committed against federal officials and property or across state lines, Congress has the ultimate authority to draft laws. A law is essentially a determination of what is right and what is wrong. Congress was designed to have this power, but some of law-making power has been assumed by the Supreme Court and the president has some law-making powers by having a great deal of leeway in interpreting what laws mean in specific instances where either the Constitution or prior legislation is unclear.

The president must sign laws that Congress passes in order for them to go into effect. If he vetoes the law Congress may over-ride his veto by a two-thirds majority in each house. It is very difficult to get two-thirds of Congress to agree on anything, and even more difficult to convince members of the president's party to vote against the president. The veto is one of the most important parts of the check and balance system. It forces Congress to work with the president on most issues. It forces compromise. However, one must remember that the president cannot pass laws himself; only Congress has this power.

Closely related to this power is Congress' ability to control the budget, that is, the power to pass taxes and to spend money. The Constitution forbids Congress to lower the salary of the president or any federal judge while these officials are in office. However, **only the Congress** can increase salaries (including their own). The power to control the staffing of the other two branches is also controlled partly by Congress. Funding for the entire government of the United States must pass through Congress. Again, the president has the veto here so this is a shared power.

Another power that used to be very important is the power to declare war. Congress may do so by a majority vote of both houses. In the Twentieth Century, however, the presidency largely usurped this power by simply **making** war with other countries without consulting Congress. Congress has tried to get some of this power back by passing the **War Powers Resolution of 1973**, but this law has had very limited effect on the ability of the president to use the U.S. military as he sees fit.

Congress has an oversight function. It is supposed to monitor the executive branch especially to see that the laws it has passed are being carried out as they were intended and that the

budget it has approved is being spent as Congress intended. It has created an agency, The General Accountability Office (GAO) whose job is specifically to carry out this oversight function. The GAO often irritates the executive branch, because its job is essentially to check on it. It oversees the implementation of the U.S. budget and often makes predictions (especially of future federal deficits) that are not in line with what the president and his administration have made. The leadership of the GAO is accountable to the leaders of Congress; however, it is an agency that is supposed to be non-partisan, that is, it should not make findings based on politics. It should and usually does act independently of both political parties as well as the president.

Congress can also call members of the executive branch to appear before it to explain how they are spending money that Congress has appropriated and to see if they are acting within the scope of powers that they were given by Congress. In 2012, the House Intelligence Committee, with a Republican majority, called up several members of the Obama administration to explain the killing of the U.S. Ambassador in Bengasi, Libya. It was clear that the Republicans were looking to find fault with what the administration did and did not do to prevent what happened and in the subsequent reporting to Congress and to the public.

Because of the scandals involving Enron and WorldCom in 2002, Harvey Pitt, the head of the Securities and Exchange Commission, which is in charge of overlooking the companies in the U.S. stock markets, found himself confronted by several Congressional committees. In 2007 Alberto Gonzalez, George W. Bush's Attorney General, was called before the Democrat-controlled House and Senate Judiciary Committees and required to explain the firing of nine U.S. Attorneys in 2006. Other cabinet members and high-ranking executive officials are often called to appear before Senate or House committees. In 2007 and early 2008 the Bush White House and the Democratic-controlled Congress were frequently in conflict. Perhaps more than any other President in recent history the Bush administration refused to give Congress records and information that it requested. The elections of 2010 and 2012 left Republicans in control of the House of Representatives. It is expected that the Republicans in the House will be calling members of the Obama administration to appear before many of its committees.

Congress also has the power to initiate Constitutional amendments by a two-thirds vote, and over-ride presidential vetoes by the same margin. Since getting two-thirds of Congress to agree on anything controversial is very difficult, constitutional amendments and congressional over-rides of presidential vetoes are rare. In the eight years of the presidency of George W. Bush only three of his vetoes were overridden. In his first four years Barack Obama hasn't had any over-ridden.

Another power that Congress—more specifically the Senate-- possesses is that of approving most presidential nominees to top executive positions and all federal judges. About 4 thousand executive positions must be approved by the Senate in each two-year term. Although Supreme Court nominations are relatively rare, dozens of federal judges are approved each year. Most presidential nominees are routinely approved by the Senate. However, there are some nominees that come under close scrutiny—especially Cabinet level nominations and Supreme Court nominees. If the Senate is controlled by the same party as that of the president most of the nominees are approved with little difficulty. The Obama administration had some difficulty getting its nominees approved in 2010 and 2011 because the Republicans had enough votes

to filibuster. Any nominees that the Republicans really dislike will meet with the filibuster during the 2013-14 session.

A final power that should be mentioned is the power of impeachment. Congress can impeach and remove any federal judge, the president, vice president and arguably cabinet officials, although a cabinet official has never been actually impeached. In impeachment proceedings the House must impeach or indict by a majority vote and the Senate needs two-thirds to convict and remove from office.

Two U.S. presidents have been impeached, Andrew Johnson in 1868 and Bill Clinton in 1998, but neither was removed from office by the Senate. Andrew Johnson, the successor of Abraham Lincoln and a southerner, was impeached by the House of Representatives, however, the Senate failed by one vote to reach the two-thirds necessary to remove him. The vote to remove Bill Clinton in the U.S. Senate came nowhere close to the two-thirds majority.

The House Judiciary Committee had voted to impeach Richard Nixon before he resigned from office. Nixon certainly would have been impeached and very probably removed from office if he had not resigned his office.

The U.S. Constitution created a bicameral legislative branch—Congress. Each house was designed to serve specific and sometimes different functions. Below you will find a brief summary of the differences between the two houses of Congress.

## **The U.S. House of Representatives**

Basic information:

**Requirements:** A Representative must be at least 25 years of age, have been a citizen of the United States for seven years, and, when elected, be a resident of the state in which the Representative is chosen. Although it is a practical necessity, a Representative is not required by the Constitution to reside in the district that he or she represents.

**Number:** There are 435 members in the House. Each state must have at least one. Population determines the number of House seats in each state. Every decennial (ten years) the United States has a census. Two years after this census the U.S. House seats are reapportioned according to population shifts. Florida, for example, had 19 House seats from 1983 to 1992. From 1993 to 2002 Florida had 23 House seats. From 2003 to 2012 Florida had 25 seats in the House of Representatives. From 2012 to 2022 Florida will have 27 seats in the House.

In the 113<sup>th</sup> Congress (2013-2014) there will be 234 Republicans in the U.S. House and 201 Democrats. The numbers in the U.S. Senate are 53 Democrats, 45 Republicans and two independents (both of whom caucus and vote with the Democrats.)

**Salary:** In 2012, Senators and Representatives received \$174,000 per year. Certain positions receive more. The Majority and Minority Leaders in both the House and Senate and the President pro tempore of the Senate earned \$193,400. The Speaker of the House earned \$223,500. Under a 1989 law, members of Congress are entitled to an annual cost-of-living



increase equal to one-half a percentage point less than the president's recommended raise for federal workers. Some years Congress refuses to grant itself raises.

It should be understood that Congresspersons must maintain two residences, one in their home district and one near Washington D.C. The nation's capital and its suburbs are often expensive places to live.

Term: All are elected for a two-year term. There is no limit to the number of terms that a member of the U.S. House of Representatives can serve.

Major Purpose: The House was created **to be democratic**. It was the only part of the original government created by the Constitution that was directly elected. It was designed to be close to the people; to express the different wishes of majorities in districts throughout the country. At the beginning of this country House seats were not coveted because the House had little power and the salaries were relatively low. Today, however, U.S. Representatives and Senators are usually career politicians. Once they get elected they are difficult to remove because of many factors, not the least of which is the ability to raise money and the fact that Congressional districts are usually strongly Democratic or Republican due to gerrymandering. Usually over 90% of incumbents win re-election. In 2012 John Dingell of Michigan was the longest-serving Congressman. He started serving his district in 1955.

### **Special Powers:**

1) The House elects the President in the event that the Electoral College does not have a majority for any candidate. If the election goes to the House each state has one vote. This did not occur in the 20th Century and occurred only twice in the Nineteenth Century when it selected Thomas Jefferson and John Quincy Adams.

2) The House initiates or begins all revenue or tax bills. This special power was given to the House because the Founding Fathers felt that the people should have a direct say on the taxes they pay. This was one of the reasons that the colonies went to war with Great Britain—they felt they were being taxed and yet had no representation in the British parliament. “No taxation without representation” was one of the rally cries used by the colonists. However, this is not a major power because any tax bill must pass in the same form in both houses. Thus the Senate has, in reality, much the same powers as the House on tax legislation—but all tax bills must begin in the House.

3) The House can impeach, by a majority vote, the president, the vice president, any federal judge and possibly others in the executive branch. Please note that "impeach" essentially means to indict or hold over for trial. The actual trial and possible removal from office occurs only in the Senate.

For more information concerning the U.S. House of Representatives visit the official website: <http://www.house.gov/>

To find your Representative go here: <http://www.house.gov/representatives/find/>

# The United States Senate

## Basic Information

Requirements: A Senator must be at least 30 years of age, have been a citizen of the United States for nine years, and, when elected, be a resident of the state for which the Senator is chosen.

Number: There are 100 US Senators, two for each state.

Salary : They have the same salary as House members (\$174,000 in 2012).

Term: Each Senator has a six-year term. The terms in the Senate are varied or staggered so that every two years about one-third of the Senate seats are up for election. There is no limitation to the number of terms that a Senator can serve.

Major purpose: **The major purpose of the Senate is to represent States as political entities and to represent them equally.** Of course the word "states" includes the people of each state as well as the state government and all property and life forms in that state.

Special Powers:

It should be noted that the Senate's special powers are significant. These powers **make the Senate the more powerful** of the two houses of Congress. This was something that was demanded by the smaller states during the Constitutional Convention. They created two houses but they made sure that the Senate, where the small states have equal power, was the most powerful.

**1)** The Senate has the power to approve or disapprove of presidential nominees for federal positions. The most important positions that the Senate must approve are:

A) All federal judges.

B) All Cabinet positions (Secretaries of Defense, State, Attorney General etc.)

C) Most top executives to other major executive agencies such as the director of the FBI the director of the CIA, Home Security and many others.

D) All US ambassadors.

E) All military commissions.

The power to approve presidential nominees is a major power. In recent years the most publicity has centered on the approval of federal judges, especially Supreme Court judges. A major part of Republican support has come from pro-life groups. Democrats have typically been supported by a pro-choice constituency. During the last four years of the Clinton presidency Republicans controlled the Senate and refused to approve most of his nominees. In 2006, 2007 and early 2008 the Democrat-controlled Senate clashed often with Bush nominees. It flatly refused to approve his nominee, John Bolton, to be ambassador to the

United Nations. In the summer of 2009 the Senate approved Barak Obama's nominee, Sonia Sotomayor as a Supreme Court judge. All Democrats voted in favor of her nomination; all but nine Republicans voted against. In 2010 the Senate approved Elena Kagan to the Supreme Court by a largely party-line vote.

**2)** The Senate must approve all treaties with foreign governments by a two-thirds margin.

This was intended to be a major power by the Founding Fathers. The conflict between the northern and southern states was one of the reasons that this power was given to the Senate, where the southern states had power disproportionate to their population. At times the Senate has had excellent debate regarding potential treaties and in the past this power was significant. In late 2010 the Senate voted to approve the START treaty-- the latest nuclear arms treaty with Russia. This treaty will reduce the number of strategic (long-range) nuclear warheads held by both countries and will allow both countries to inspect any site in either country that may have these warheads.

However, the President has gotten around sending treaties to the Senate. The Constitution says that the Senate must approve all treaties, but it does not define what a treaty is. What has happened in reality is that if presidents don't feel they can get a two-thirds majority in the Senate they call it an "agreement." An "agreement" only needs a majority vote of each house of Congress to pass. If Congress (House and Senate) is controlled by the President's party, then the likelihood is that it will be called an "agreement" and passed by Congress.

Perhaps the two best-known examples of this are the Lend-Lease Agreement or Act in 1940 when U.S. President Franklin Roosevelt got Congress to agree to give aid to the British against Germany and NAFTA (North American Free Trade Agreement) which the first Bush Administration negotiated with Mexico and Canada and was passed by the Clinton administration.

**3.** The Senate tries and either acquits or convicts and removes from office all officials who have been impeached by the House. Conviction and removal from office requires a **two-thirds majority**. As mentioned previously, impeachment and convictions are rare. Only 13 federal judges have been impeached since the Constitution was passed and only seven were removed from office. Only two U.S. presidents have been impeached, but neither was convicted in the Senate.

For more information about the U.S. Senate visit the official website: <http://www.senate.gov/>

## Congressional Leadership

At the beginning of each session of Congress, which lasts two years, both parties in each house of Congress select their leaders. In the 113th Congress (2013-2014) the Democratic Party had a majority in the Senate (53 Democrats, 45 Republicans, 2 Independents). Therefore, the majority leader in the Senate, Harry Reid, from Nevada is a Democrat. Mitch McConnell, a Republican from Tennessee, is the minority leader, In the House, John Boehner is the Speaker. Eric Cantor from Virginia is the majority leader. Nancy Pelosi, a Democrat from California, is minority leader.

## Speaker of the House of Representatives

The single most powerful position in Congress is the Speaker of the House of Representatives. The majority party of the House chooses him or her. He is, in fact, currently the leader of the majority party in the House, but he has the title of Speaker. The person who has the title of majority leader in the House, Eric Cantor from Virginia, is the second in command of the Republican (majority) party. The de facto majority leader, **John Boehner** (pronounced Bayner), has the title of Speaker of the House of Representatives.

The Speaker of the House has some very special powers. He leads his party in creating rules of the House and he is the final interpreter of those rules. This means that he can have direct influence on any bill that goes before the full House. He can, within limits, determine **when** a bill will be voted on. The Majority Leader and the Majority Whips help the Speaker count the possible votes and assist her in trying to convince members of his party to vote for or against a particular bill. In 1997 Newt Gingrich tried to convince his colleagues to vote for fast track authorization that would allow the president to negotiate trade agreements with foreign countries. He waited for almost two months before he allowed the bill to come up for a vote. In the end the bill was voted down by a large majority of Democrats and some Republicans.

The Speaker controls (again within limits) the members of the majority party on the **Rules Committee** in the House. Almost all legislation that is passed in the House must go through this committee before it is voted on by the full House. The Rules Committee can allow a few, many or no amendments to bills on the floor. This gives the Speaker some direct influence on almost every bill in the House.

The Speaker appoints all members of the majority party to all **conference committees**.

Before a bill can become law it must pass both the House and the Senate in exactly the same form. Each house debates bills separately in their own standing committees. Very often a bill will pass both houses but be different in some parts. A conference committee will need to be created for each bill that is different in some way. Each house selects members to the conference committee and the delegation of each house has equal power. As in all formal committees of Congress, the majority party will have a majority of members on conference committees and therefore have a determining influence on the bill's final outcome.

The task of all conference committees is to reconcile the differences between the Senate and House versions of the bill. Once the conference committee has reconciled the bill it is then sent back to the House and Senate for a final vote. No amendments are permitted.

As you can see, the power that the Speaker has to appoint members of his party to conference committees is significant.

The Speaker also appoints all members of his party to all select or special committees and he is the chairperson of the committee that appoints all first-term House members to standing committees.

The Speaker of the House of Representatives is the most powerful person in the U.S. Congress—and therefore one of the most influential people in the world.

## **Majority and Minority Leaders**

The majority and minority leaders have members that assist them in their duties. The most important positions beneath the leaders are called "Whips". The Whips help the leaders in almost everything that they do. The term "whip" was derived from their function of trying to whip the members of their parties behind the party's goals or to keep them in line with the party's position on particular bills. Again, the House of Representatives has a majority leader, (in 2013-14 Eric Cantor of Virginia), but much of his authority is shared by the Speaker of the House, who is the true leader of the majority party in the House.

These congressional leaders are chiefly responsible for **setting the agenda** for their party each session and each year. The agenda is a set of priorities that the party would like to achieve. One of the most famous agendas was the **Contract with America** that the Republicans under Newt Gingrich created in 1994 that spelled out exactly what the Republican party would do if it became the majority party. The Republicans won a majority in 1994 and started to implement these policies when they assumed control of the House in 1995. In 1998

the Republican leadership in both houses was accused by many of not formulating a clear picture of what the Republican Party stood for. Many blamed Newt Gingrich for this failure that supposedly cost the Republican Party six seats in the House in the November elections. As a result, Gingrich had to give up his position and he subsequently resigned from the House.

Party leaders are the **chief spokespersons** for their parties. The majority and minority leaders represent their parties to the U.S. public. They are often invited on television programs to explain what their party is doing or thinking. The print media also frequently quotes them. They argue their party's views in negotiations within each house and with the President in important conferences.

The majority and minority leaders are the **day-to-day floor leaders** also. They devise strategies to pass or defeat specific bills on the floor of the House and Senate. They frequently huddle with members of their party to make last minute changes in tactics or to devise longer-term policies that will push their parties' agendas.

The majority and minority leaders are the chairpersons of the committees who determine which standing committees freshman Congresspersons will be assigned to. Since a congressperson cannot change standing committees once he or she is assigned, this is an important power.

There are other powers that these leaders have including having control of much pork and being in a position of collecting a great deal of campaign funds. These campaign funds can be used for their own campaigns or to help other members of their party.

### **Majority Leader in the U.S. Senate**

The power of the majority leader of the U.S. Senate (Harry Reid of Nevada 2013-14) depends on many things, including the party of the current president, the personal appeal of the majority leader himself or herself, the coherence or solidarity of party members (Republicans are usually more cohesive and vote together as a block) and very importantly, the number of seats that the majority party has. This is important because of the **filibuster**. The Senate allows every senator to speak as long as he or she wishes, as long as what is said is somehow related to the bill at hand. When finished the Senator has the right to recognize the next speaker. If senators from the minority party don't want to pass a given bill or approve a certain presidential nominee they continue to talk and to recognize members of their own party until the majority party pulls the bill or the person up for approval. This is called a **filibuster**. In order to break a filibuster the Senate must invoke cloture, which requires 3/5ths of Senators voting and present to stop debate. Since cloture votes are so important it normally requires 60 votes to stop debate or to invoke cloture.

The filibuster has long been used by the minority party in the Senate to stop legislation it dislikes. During the first six years of George W. Bush's presidency the Republicans controlled the House and the Senate and the Democrats used the filibuster as their only weapon to stop legislation that they disliked. 2009 has proved to be a remarkable year for the Senate. After the election Democrats held 58 seats and could count on the vote of Joe Lieberman, an

independent from Connecticut. The Senate election in Minnesota was not decided until July of 2009 when the supreme court of Minnesota declared Al Franken, a Democrat, the victor. That gave the Democrats the 60 votes they would need to invoke cloture on a Republican filibuster. Then, on August 25, 2009, Senator Edward Kennedy of Massachusetts (a Democrat) died, leaving the Senate with 59 possible Democratic votes to invoke cloture—one vote short of the necessary 60. In a special election Massachusetts elected Scott Brown, a Republican, effectively depriving the Democrats of the 60 votes necessary to stop a filibuster. In the years 2013 and 2014, the Democrats will only have 55 votes on most issues and will therefore not be able to stop filibusters by Republicans.

## **Standing Committees**

In order to work efficiently Congress has broken itself up into specialized units called standing committees. These committees are similar to different departments in an executive agency. They are called "standing" because they exist and work year round. They have large professional staffs, permanent office space and a great deal of equipment to assist them.

When a new Senator arrives to serve the first year of his or her term he or she is assigned to three standing committees. House members are assigned to one or two. They normally will serve on these committees and only these committees for the entire time they are in Congress. After serving on these committees for a few years they will begin to develop some expertise in the subject area of the committees.

This expertise allows Congress to view many different bills at the same time and to do so with a group of Congresspersons who are specialists in the subject matter of the bill.

There are 16 standing committees in the Senate and 19 in the House. Each of these committees has a number of subcommittees that are further specialized. It is in these committees and subcommittees that Congress does most of its work, including its major responsibility, making laws.

It is because of the standing committees, and their sub-committees, that Congress is so susceptible to influence by special interest groups. Special interest groups do not need to control Congress; they don't need to pay attention to the vast majority of what Congress does. If they can influence two standing committees (one in the House and one in the Senate) and then two subcommittees they can prevent legislation that is against their interests from passing. They can often get legislation passed that favors only them and is not in the public interest. The public needs to be concerned about every bill that goes through Congress, but the public interest is diluted or diffuse whereas special interests are focused, concentrated on the particular committees that have power over their interests. For example, the sugar industry is accused by many as being responsible for legislation that has made the price of sugar in the United States around twice the international price; the same is said for peanuts, honey and many other products. For the typical consumer these extra prices are minimal. How much time and money would you be willing to expend in order to save yourself \$1.50 a month on sugar or

50 cents for peanut butter? To the sugar and peanut interests this means hundreds of millions of dollars a year in profits. They are clearly willing to spend millions to keep laws in place that keep these prices high.

For individual voters and consumers it isn't worth the time and effort necessary to first become informed about these issues and secondly do something about them. This is the problem call **rational ignorance**. It is "rational" or sensible to not spend valuable time informing oneself about these issues, because even if the policies were changed each individual would benefit little and one would need to spend time not only becoming informed but also in trying to get the government to change these policies. In other words, from the consumer and average voter's point of view, why spend so much time and energy trying to change something that doesn't affect them that much anyway? From the point of view of special interests the opposite is true. A change in government policy will affect them greatly as individuals or groups. To protect hundreds of millions of dollars in profits the sugar, peanut, citrus and other agricultural interests will spend time finding out how to affect government and they will spend a great deal of money on campaign contributions and advertising campaigns. The same is true for other special interests like the petroleum, banking and restaurant businesses. And then there is the mother of all special interest groups—military contractors.

The connections between committee members and special interests are often very powerful. For example, a Congressperson from an agricultural district in Ohio or Indiana will often try to get on the Agriculture Committee in the House when they arrive the first time in Washington. Once on the committee they try to get on the Subcommittee on Livestock, Dairy, and Poultry Members. From this position he or she can influence legislation to help farmers in his or her district. When farmers and farming-related industries from these districts and around the nation see that their congressperson is helping them they begin to send them large campaign contributions. They set up offices, warehouses, distribution sites, and processing plants in his districts. After a while, every vote that he or she makes in favor of agriculture is creating more jobs in his district, pleasing more voters and getting him more campaign contributions. After some years, he will have so much money and support that he will be almost impossible to defeat in an election. The result of this process, however, is that the U.S. public ends up spending more for food products, or finds that more of their tax dollars go to buying such things as electric power lines, roads, fertilizers and farm equipment for farmers. The last estimate this author saw said that the U.S. government spends around thirty billion dollars a year supporting agriculture.

What works for agriculture works for other special interests as well. Almost every major economic interest in the country has obtained special favors from government. Ever wonder why the government for years decided that banks couldn't compete for customers by offering higher interest rates on savings accounts? Why is it that if you want to grow peanuts you have to obtain a license from the federal government? Why can't we import more citrus from Central America? Why did the oil industry have half of their profits exempted for years from corporate profits taxes? Why do waiters and waitresses receive less than half the minimum wage? Why



is it that the income that one makes selling a business is often taxed less than the wages of many workers?

All of the above has been achieved through legislation passed through Congress. It costs consumers and taxpayers billions of dollars a year.

## Pork

A term that you should understand is "pork." It is short for "pork barrel politics" which is a term that comes from the practice of southern politicians in earlier days sitting around a pork barrel in the old country store making deals to help their districts. The term also relates well with the phrase "bringing home the bacon."

**The best definition of pork is that it is something that a member of Congress would seek for his or her district but would not seek for any other district.** Pork is something special for a particular district or state. It could be something large like a federally funded road project, or small like a new Post Office branch.

Those of you in the Central Florida area might have wondered about I-4, the road that really made Central Florida accessible. The "I" stands for "Interstate." What two states does I-4 connect? Why did Orlando get a navy base when we are 100 miles from the nearest ocean? Why are so many military bases in the South?

Part of the answer to all of these questions is pork. Congresspersons in powerful committees are in position to bring home special federal favors to their districts. It is almost impossible to avoid seeking pork if you are a Congressperson. If you don't fight for it, other Congresspersons will and your district will get less from the federal government. And clearly, the more pork one brings home, the better chance one has of being reelected.

All standing committees in Congress have some pork to ladle out. There are four committees in Congress, however, which have huge potential for pork. The Appropriations Committees in the House and Senate must approve all the spending of the federal government. This will be about 3 trillion dollars a year in 2009. A lot of pork can be hidden in bills that have over a hundred different sections and thousands of different items. Bob Livingston, who was the ex-Speaker of the House, was the chairman of the House Appropriations Committee before he ran for the Speakers position. The last election he ran unopposed but received over a million dollars from special interest groups. He gave most of that money to Republicans who were in close fights for their seats. It clearly helped Livingston when he sought votes from Republicans.

The two other committees that have lots of pork to give out are the tax committees. In the House it is the **Ways and Means Committee** (they figure out ways and means to get money out of our pockets), and in the Senate it is the **Finance Committee**. These committees determine who pays how much-- and who doesn't pay. The U.S. tax code is thousands of pages long.

Much opportunity for pork.

The five committees that are usually considered the most powerful in Congress are the four mentioned above and the Rules Committee in the House.

# The Presidency

## Original Intent

The people who wrote the U.S. Constitution did **not** wish to create a powerful president. Their experiences with the kings and prime ministers of England taught them of the danger of giving the chief executive too much power. They were afraid that a strong president would overpower Congress, which they envisioned as the best representative of the nation. With that in mind, the founding fathers made sure that every major power given the president was closely checked by Congress.

The framers of the Constitution made the president the head of the military (commander and chief), but they gave the power to raise and fund the armed services and the power to declare war to Congress. They made the president the head of the executive branch, which is in charge of executing or enforcing all the laws of the land. But they required that the president get the Senate's approval of all top executive officials and they gave Congress the final power to create executive positions and to pass the budget of the government. They made the president the chief representative of the United States in foreign affairs, but they required that he have Senate approval of all treaties and of all U.S. ambassadors. They gave the president the power to veto all laws passed by Congress, but they allowed Congress to override his veto by two-thirds of both houses. Finally, they gave Congress the power to impeach and remove the president for "high crimes and misdemeanors."

In spite of the intentions of the framers, however, the U.S. presidency has greatly increased its power over the years. Today, the presidency is usually considered to be the most powerful branch. Several factors have contributed to this. First, the people now essentially elect the president. This means that the president and the vice president are the only nationally elected politicians in our government. This gives the president added power since he was chosen by tens of millions of voters while representatives in the U.S. House and Senate were only chosen by voters in their districts and states. Federal judges are not elected by voters. One of the reasons that the people who wrote the Constitution did not want (and therefore did not create) a popularly elected president is precisely because they thought it would make the president more powerful.

Second, the president, because of reasons listed below, now has the power to put the country into a state of war any time he wishes. Since the United States currently has the most powerful military in the world this means that the president can choose to intervene in almost any country he wishes.

Third, the president is in charge of foreign or international policy. When our country began the United States was a second-rate country internationally. Today the USA is the most powerful country in the world. Because foreign or international policy is more important than ever, the leader and chief maker of foreign policy is also more important. Institutions like the United Nations, the World Bank, the International Monetary Fund, NATO and the World Trade Organization have become influential in world affairs. The president controls the U.S. representatives to all of these institutions—they do his bidding.

Fourth, the President has the power to get news coverage and especially television coverage any time he wishes. Every major television network has a full-time crew covering the presidency. The public knows intimate details of his life and those of his wife, children relatives and even pets. Congress is now a very large institution with 535 members--too many for the average person to keep up with. The president is but one person who can make news any time he wishes by simply allowing a press conference. Leaders of Congress can call press conferences also, but not many people will watch them. This domination of the media usually allows the president to bring any issue he wants before the public.

Finally, when there is a national or international emergency of any type from a flood to a possible war the country (and indeed much of the world) has become accustomed to looking to the president for leadership. Congress is left to ratify or argue with what he decides. Almost never can Congress seize the initiative. This was clearly the case in 9-11 (2001). The country looked to President Bush for leadership. In the months following 9-11 President Bush's popularity soared, reaching an approval rating of 90%, the highest approval rating ever recorded by Gallup, two weeks after the bombings. His popularity with the public greatly increased the president's power since few in Congress, and even the U.S. media, were willing to challenge him. In 2009 the country found itself deep into a prolonged and severe recession. In 2012 Barak Obama was re-elected President. He will be expected to lead the country out of the recent economic difficulties

Thus, even though the framers of the U.S. Constitution wanted a presidency with very limited powers, we have ended up with the presidency becoming the most powerful branch of government.

It should be noted that the powers mentioned can also be the undoing of the president. Any mistake he makes is magnified by the media. George W. Bush, for example, went from an approval rating of ninety percent just after 9-11 to under 30 percent in late 2008. A president's approval rating does not affect his formal authority, but it does affect his power, that is, it affects his influence domestically with Congress and externally with the leaders of other countries.

## **The Electoral College**

A special note is necessary here to explain the Electoral College. The writers of the Constitution wanted the president to be elected separately from the other two branches to preserve his independence. For most of the time at the Constitutional Convention the framers had the president selected by Congress. In the end they decided to create a special electoral system to choose the president to preserve the system of checks and balances that they so greatly admired.

They did not want the president to be popularly elected because they thought that would give him too much power with the public, but there were other considerations as well. When the constitution was written there were no radios, or televisions and no national newspapers. The informed person would read a newspaper printed in his or her city that had limited national coverage. Most people lived in rural areas and didn't read any newspaper and thus were almost totally uninformed about national events. Trusting such a populace to elect a president seemed foolhardy to the framers. In reality, they did not have much trust in the average person in general. The writers of the Constitution didn't intend for the majority to be able to control the government directly. They thought that the majority of people could be easily led by emotional arguments. The structure of the original Electoral College fit in nicely with their idea of a republic or a representative democracy. The people would elect representatives to the state governments and then the state governments would choose electors to serve in the Electoral

College. This feature was abandoned by all states over time. Now the popular vote of a state will determine how the electoral votes are cast.

A backdrop to the formation of the Electoral College was the struggle between the small and large states at the Constitutional Convention. The smaller states had equal powers to the large states under the Articles of Confederation, the form of government the United States had after the Revolutionary War and prior to the Constitutional Convention. The smaller states wanted more say in selecting the president. The Electoral College has two key provisions that favor small states. First, if no person gets a majority of the electoral vote then the election of the President is to be determined by the House of Representatives **where each state has one vote**. The writers thought that often no candidate would receive a majority of the popular vote and thus the small states would have the same power as large states in selecting the president. Second, the number of U.S. Senators and U.S. House members representing that state determines each state's electoral vote. (The total today is 538 electoral votes--100 Senators, 435 House members and 3 votes accorded to the District of Columbia.) Since all states, small and large, have two senators this gives the small states a somewhat larger say in electing the president than their population merits. A direct election of the president by the popular vote would mean that the small states would lose power.

A key feature in the manner that states select their electors is the winner-take-all feature that all but two states (Nebraska and Maine) follow. The candidate who receives the plurality (the most) of the popular vote in a particular state will receive all of that state's electoral votes. It was precisely this feature that caused the spectacle in the presidential election of 2000 in Florida. Instead of allocating the twenty-five electoral votes that Florida possessed by giving each candidate the proportional number of votes, the state had to give all twenty-five to the candidate who received the most votes. In essence this disenfranchised almost fifty percent of the population who voted for the opposing candidate.

Three times in the Eighteenth Century the Electoral College vote produced a winner who had less of the popular vote than his opponent--John Quincy Adams in 1824; Rutherford B. Hayes in 1876; and Benjamin Harrison in 1888. In the election of 2000 Al Gore received more of the popular vote nationally, but lost in the Electoral College vote to George W. Bush.

There is also the possibility that an elector will vote for someone other than the person his state has directed him to vote for. This happened several times in the 20<sup>th</sup> century but it never affected the outcome of an election. Approximately 25 states allow their electors some freedom in voting in the Electoral College, although virtually all appoint the electors that the winning candidate has submitted to the state before the election. The electors, chosen by the candidate who won the state, virtually always vote for that candidate even though they limited freedom not to.

Frequently there have been Constitutional Amendments introduced to eliminate the Electoral College. In the opinion of most people it makes sense to change the election of the President to a direct election by the people. It would certainly be more democratic. But this is near impossible because it would require a Constitutional Amendment requiring three-quarters (38)

of the states for ratification. All of the small states would lose power and some of the large states such as Florida, Pennsylvania, Ohio and Illinois, where presidential elections are often close, are also favored by the current system because candidates must promise them special laws or other considerations in order to win their states. The U.S. House of Representatives passed a law just before the 2000 elections that gave the state of Florida billions of dollars to help restore the Everglades. Many believe that the law passed primarily because both the Democratic and Republican parties wanted to woo Florida voters. With such attention, why should the state change the system?

If you have further questions about the Electoral College please look at this excellent website: [U.S. Electoral College](#).

Before we proceed it should be noted that although there are many functions that the executive branch of government performs its chief responsibility is to execute or enforce the laws of the land. When we think of the federal government we generally think primarily of the executive branch headed by the president. It is the executive branch that does almost all the work of government. It is the military, the Internal Revenue Service, the Social Security Administration, the Post Office, the Federal Reserve, the U.S. Treasury and hundreds of other departments and agencies. In short, it is the executive branch that runs the day-to-day operations of the federal government of the United States. The president will have the opportunity of appointing about 4,000 people to the top levels of the executive branch--out of a total of over two million employees. He cannot hire or fire anyone other than those 4,000 employees. The top executives in the government are on the president's cabinet. All of the secretaries of the fourteen major departments of government (Secretaries of State, Defense, Agriculture, etc.) are included in it. It is the president, along with his cabinet, who determine the major policies of the executive branch.

## War Powers

There is one topic that I would like to go into more deeply here-- the evolution of the war powers from the time the Constitution was written until today.

When the Constitution was written it was generally intended that if the government of the United States was going to become involved in a major military action abroad that the Congress would have the power to decide. For this reason the Constitution gave Congress the power to declare war. The framers wanted a decision of this magnitude to be in the hands of the most democratic branch, the part of the federal government that was the closest to the people—who would have to fight any war.

The framers also intended that the president be in charge of conducting the war. For this reason they made the president the commander-and-chief of the U.S. armed forces. They did

not want committees of Congress to be debating military strategy. They thought that one person should be in charge of the military so that decisions could be made swiftly.

Thus, as in all major powers in the U.S. Constitution, a check and balance was created. Congress would decide and the president would execute, taking advantage of the expertise of both branches while separating powers.

At the present time this balance has been seriously eroded. The president now has the power to order the U.S. military to attack any country he wishes without permission of Congress, indeed without even consulting it. Over the last forty years the president has ordered the U.S. military to join a war in Vietnam, occupy the Dominican Republic, occupy and overthrow the governments in Grenada, Panama and Haiti--not to mention the military actions in Somalia, Bosnia and Yugoslavia. In none of these actions did the president ask permission of Congress--in fact there was little consultation in most cases.. In all the U.S. President has ordered U.S. troops into other countries at least 125 times without Congressional approval. Congress has declared war only five times: the war of 1812, the Mexican American War, the Spanish American War, and World Wars One and Two.

In the military action against Iraq in 2003 President George W. Bush received Congressional approval, with some reservations, to use the military. His administration stated publicly, however, that he was not constitutionally required to do so.

How has this great increase in war powers come to be?

The U.S. Constitution is a general guideline to government. It did not explain much of the specifics necessary to running the country. It left that up to the men and women who were in the government and to future generations. In particular, it did not explain the word "war," and it was silent on other military possibilities. They clearly wanted the president to be able to use the military to protect citizens in case of attack by another country. But they did not say this. Thus, they left much open to interpretation-- to be decided politically.

U.S. Presidents have used the military hundreds of time without Congressional approval. They simply do not call the military action a "war." They call it a "conflict" (Vietnam) a "police action" (Korea) some kind of "operation" or some other term. George H. Bush called the military action that overthrew the Panamanian government and the arrest of Manuel Noriega "Operation Just Cause," and the action against Iraq "Operation Desert Storm."

In this sense, a war is a war only if the president calls it one. Of course if he called it a war and he did not get a congressional declaration of war he would be acting unconstitutionally. And so, presidents simply do not use the word "war" and they are acting within their powers--or so they contend.

There are three reasons frequently cited for the shift of powers to the president.

The first reason is simply precedent. Since so many past presidents have used the military without consulting Congress it is assumed that the current president has these same powers. Abraham Lincoln called out the military and started using the armed forces in the U.S. civil war without asking permission of Congress. As stated before, this has been done many times since. In a sense this power is a-constitutional, that is, it is outside the constitution. It has been established by custom. Since Bill Clinton, George Bush and Ronald Reagan and Jimmy Carter and Gerald Ford and others all had this power and used it, Barak Obama now possesses the ability to invade Haiti or bomb Iraq or Afghanistan without consulting Congress.

The second and third reasons for the president having so much war-making power have to do with technology. When the Constitution was written Congress could meet, debate and vote in secret. There were eighty-five (26 Senators, 59 House members) persons in Congress. Even if there had been a spy listening to everything that Congress said, he would still have to travel great distances to inform his government and that government would take some time before it could do anything. Information in the early Seventeenth and late Eighteenth centuries traveled at the speed that a human could travel. (Excepting, of course, the blinking of a distant lantern—can't forget Paul Revere.) It then made sense to give the power to Congress to decide if the United States should become involved in a military conflict.

Today information travels at the speed of light. A possible adversary of the United States could tune into CNN to see what Congress was deciding. The thought of 535 Congresspersons attempting to keep a possible military action secret is ludicrous. This has given the president a decided advantage. He can make decisions quickly and secretly. If the United States wishes to have the element of surprise the decision to act almost has to be made by the president. In the summer of 1998 President Bill Clinton decided to bomb a village in Afghanistan and a chemical plant in the Sudan in retaliation for the bombing of two U.S. embassies in Africa. It seems obvious that this operation would have been compromised if word had gotten out that the United States was considering bombing these two locations. Clearly, Congress could have been consulted, but leaving the decision up to Congress might have produced delay and the timing of the attacks could have been thrown off.

Most of the military conflicts that the United States has been involved in did not require split-second decisions. Congress could have been, and probably should have been, consulted. However, one does not have to be very imaginative to understand that there might well be a time when the United States needs to launch a sudden attack in order to defend itself. It would be very difficult for Congress to make such a decision.

Military technology has also favored moving more power to the president. The speed, accuracy and distance that modern weapons can travel, coupled with their enormous explosive power require the ability to make decisions quickly. The United States, for example, could not afford to wait if it received information that North Korea was getting ready to use a nuclear weapon against a South Korean city. Similarly, if U.S. intelligence found out that Iran had a nuclear weapon and planned to give it to terrorists, quick action would be necessary.



It is because of the above considerations that Congress has not been able to reign in the war-making powers of presidents. The war in Vietnam, (or the "conflict" as Johnson and Nixon were forced to call it), was never declared by Congress. Presidents Kennedy, Johnson and Nixon used their authority to involve the U.S. military. The United States killed perhaps a half million people in Vietnam and suffered over 55,000 fatalities and more than twice that number of soldiers seriously wounded.

As a result of that war Congress passed the War Powers Resolution of 1973 over the veto of Richard Nixon. It attempted to spell out the conditions under which the president could use the military. It said that the president could use the military in foreign countries only in three circumstances. First, if Congress declared war. Second, if Congress expressly gave the President permission, and third in a military emergency where U.S. lives and property were threatened. When the military is deployed the president is required to notify Congress within 48 hours of the reason for the action and then the president has only sixty days (with an additional thirty days to withdraw troops) to conduct the operation if he does not have congressional permission.

Every president since Nixon has claimed the War Powers Resolution was unconstitutional. But they have not challenged it in the courts. If they had, the Supreme Court could side with Congress or spell out more clearly what powers the two branches really have. Neither of these two alternatives is in the interest of the president. So presidents at times carry out the requirements of the law and at other times have been able to ignore it completely. President George Bush Sr., for example, neither sought nor received permission to use the U.S. military in Somalia. He claimed that they were not really involved in a military action, so there was no need to observe the War Powers Resolution. Of course, he claimed that the act was unconstitutional in the first place.

And so the United States president has enormous powers in war making. It does not appear that Congress has either the ability or the will to change this state of affairs. One can only hope that the United States does not have a president who uses the military for his own personal purposes or who suffers a mental breakdown in office...

## **Differences between the Domestic Presidency and the Presidency of International Affairs**

In the Twenty-First Century the U.S. presidency is by far the most powerful of the three branches of government. There is, however, a marked difference in the powers that the presidency wields in domestic affairs and those he holds in international (sometimes called foreign) affairs. Congress is still close to the President's equal in domestic affairs. The president cannot get any bill passed without the permission of Congress. Congress must pass the president's entire budget. The president cannot reorganize any part of the executive branch without the permission of Congress. The Senate must approve most of the top

executives that the president nominates to run the executive branch. In short, Congress and the president can do little without each other's permission in domestic concerns.

The situation is very different in international affairs. The president has always directed the foreign policy of this country. Congress is usually placed in the position of having to approve of something that the president has already done. Great powers are given to the president in conducting international or foreign policy. The president is the commander and chief of the armed forces of the United States. At this point in history, the United States has become by far the most powerful country in the world militarily. The president has the ability to send troops or order bombs to be sent virtually anywhere on earth. Countries as far apart as Yugoslavia, China and the Sudan need to be concerned with what the president could do militarily. They don't concern themselves much with Congress.

Economically the USA is now by far the most influential single country in the world. It is the president who represents this country in economic affairs. Only he can negotiate treaties or agreements with other countries such as NAFTA, although usually Congress must ratify the agreement. The president appoints U.S. representatives to the three most powerful economic institutions in the world--the International Monetary Fund, the World Bank (By tradition, the USA nominates the head of the World Bank. In 2007, George W. Bush's first appointment, Paul Wolfowitz, was forced to resign amidst allegations of favoritism.) and the World Trade Organization. The U.S. Federal Reserve is possibly more powerful than all three of these however—and it is the president who nominates the chairperson of the Fed. It is the president who must determine if other countries are living up to the terms of the agreements that we have signed with them. If he determines that another country is violating the agreement it is he who will determine the U.S. response.

Finally, the United States has become the most powerful country on earth politically or diplomatically and it is the president who represents or chooses who represents the United States in these areas. The president represents the viewpoints of this country in all negotiations in international organizations such as the United Nations or NATO and in bilateral negotiations with other countries. It is the president who is the person who is expected to help create peace in the Middle East or prevent India from producing more nuclear weapons. It is the president who is asked to negotiate with China concerning Taiwan or the status of our political and military commitment to South Korea or Japan. Congress can only play the role of a spoiler or supporter in these areas. It cannot lead; only the president can.

The people who wrote the Constitution were afraid of a powerful president. They did not want him to dominate the war-making decision process. They thought they had created enough checks to control his power. By the end of the Twentieth Century the U.S. Presidency had shorn itself of many of the constitutional checks on its powers. Perhaps this was necessary; perhaps this is what the country needs. Very possibly, however, the presidency has taken too much power and the Constitution may well have been correct not to place so much power in the hands of one person. Much history remains to be written.

## The Cabinet

As mentioned previously, the executive branch of government is in charge of executing the laws of the land or actually running almost all of the functioning offices of the federal government. The heads of the major departments of government are called "Secretaries." The only exception to this is the head of the Department of Justice who is called the Attorney General. Today there are 15 people who are in charge of the major departments of government. Collectively, along with the vice president, these people form the Cabinet. Each person in the cabinet serves at the pleasure of the president.

In 2013 the Cabinet includes the Vice President and the Secretaries of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Labor, State, Transportation, Treasury, and Veterans Affairs, as well as the Attorney General.

It is beyond the scope of this book to detail the operations of each of these departments. However, it should be noted that the cabinet positions with the most power and prestige are the Department of State (directs the foreign or international policy of the United States), the Department of Defense (controls the U.S. military) and the Attorney General, who heads the Department of Justice.

For more detail regarding the Presidency here is the official website:

<http://www.whitehouse.gov/administration/cabinet>

# **Fiscal and Monetary Policy**

## **Fiscal Policy**

Most of you have heard the term "fiscal year." This refers to a budget year. The term "fiscal policy" means "budget policy;" it refers to the broad taxing and spending policies of the federal government.

In some businesses the fiscal year is the same as the calendar year. For the federal government, most state and local governments, and many businesses fiscal years do not conform to calendar years. The fiscal year of Valencia Community College, for example, begins July 1. On that date in 2009 Valencia started the 2010 fiscal year. The U.S. federal government begins its fiscal year on October 1.

As you already know, federal taxing and spending must be approved by Congress and signed into law by the president. Since the federal budget is so enormous (the federal government spends about one out of every five dollars spent in this country ) the effects on the economy are significant. For a student of U.S. government there are two broad topics concerning the budget that should be understood at least superficially. First is how fiscal policy can be used to push the economy toward a desired direction. That is, using fiscal policy to fight unemployment (recession) or high inflation. The second area to consider is what the government spends its money on and how it gets the money (taxes.) This second area is exceedingly complex because of the amount of money involved (the federal government will spend in excess of 3 trillion in

fiscal 2010 ) and the voluminous tax code of the United States. We will concentrate on understanding how fiscal policy can be broadly used to influence the economy.

**A capitalist or free market economy reinforces the direction it is headed in by its own momentum.** (The U.S. economy is mixed---part capitalist and part socialist.) If the economy has been expanding rapidly for a time, as it had been in the United States in the past several years, internal forces push it to continue to expand. Businesses experience good profits and expect those profits to continue, so they invest in expansion and increase their inventories. By doing this they employ more workers and/or pay the ones they have more money. When more people can find work and salaries increase, workers spend more money which increases business profits; business then continue investing and employing more workers. This same phenomenon happens with consumers. When the economy has been doing well for some time consumers tend to expect it to continue to be strong and they start buying many things, often on credit, thinking that their wages or profits will continue to expand. This, in turn, further increases business profits and the cycle goes on.

In recessions the opposite psychology takes hold. When business starts to get bad companies start laying off workers and/or paying the workers they have less money in overtime and other benefits. Businesses start cutting back on new orders and reducing their inventory. Workers then have less money to spend and thus consumption or buying falls. When this happens business gets worse and the cycle reinforces itself with more layoffs, less inventory and less spending on new construction. The major point here is that when the economy starts going in one direction, either positive or negative, businesses and consumers begin to **expect the trend to continue**. Thus it is these expectations, the psychological outlook of businesses and consumers, that reinforce or cause the economy to continue getting better, or in the case of 2008-2009, worse.

In the beginning of 2008 the USA entered a recessionary period. At first the slowdown was hardly noticeable. Then in September of 2008 several enormous financial institutions failed (led by the huge and highly-respected Lehman Brothers firm) and others suddenly seemed on the brink of failure. Real estate values collapsed and home owners and the financial institutions who had loaned them the money could not sell their homes. This had a snow ball effect. Suddenly there were a lot of people trying to sell homes, which further depressed their value and made it more difficult for home owners to sell their property. New home construction fell off dramatically and the construction industry started to collapse in many areas. Banks and other lending institutions began to call in loans and stopped much of their lending. The stock markets in the USA, Europe and much of Asia tanked, losing 25% of their value in a few weeks. The United States led the world into a financial crisis which soon led to deep recession. As unemployment increased less workers had jobs and those who still had employment started being careful with their spending. Retail stores began losing money. They laid off more workers. The construction industry went into a worse tailspin. The recession got worse quickly—not only in the USA, but throughout most of the world. Workers, who in better times had stretched their budgets purchasing new or better homes found themselves unable to pay their mortgages and when they tried to sell their homes to get out of debt they found there were few buyers.

In September of 2008 Congress and the Bush administration agreed to pass an extraordinary \$700 billion “rescue” or “bailout” package for the economy –targeting the mortgage industry which was teetering on disaster from the large number of home owners who were no longer able to pay their monthly bills. Perhaps the biggest step was the federal government’s takeover of the two financial giants called “Fannie Mae”(Federal National Mortgage Corporation) and “Freddie Mack” (Federal Home Loan Mortgage Corporation). The federal government loaned these institutions 200 billion dollars and took over the day-to-day running of their financial operations. This action along with the purchase of equity in many other financial institutions put the federal government into the position of directly running a significant part of the financial industry of the USA. This was a step away from capitalism and move toward government control and ownership of a larger portion of the United States. Many called this a move towards socialism. Whatever it is called, the U.S. federal government is now a much bigger player in the economy.

The one entity in the United States with the ability to spend almost unlimited funds is the federal government. It offers savings bonds or securities to institutions that are fearful of putting their money in banks or other investments (like the stock market). It can then spend that money quickly to stimulate the economy. When the federal government spends money it doesn’t have it must borrow the money. It can’t just print out more money. Countries that have allowed their governments to create more money to spend whenever they wish have found themselves in rip-roaring inflations.

In early 2009 in the USA. The Obama administration asked Congress for the authority to spend about a trillion dollars more than it would collect in taxes in fiscal 2009. Congress has authorized the spending and tax cuts. The hope is that when more jobs are created by federal spending and by taxpayers and companies spending the money saved in taxes this will begin the momentum towards economic recovery.

This is one of the roles of fiscal policy -- to counteract undesirable trends-- to push the economy out of recession and to slow it down if it becomes overheated and inflation occurs. If the economy is headed downward into a recession, (as it was in early 2009) fiscal policy is used to stimulate the economy. Taxes are lowered to give consumers and businesses more money to spend and government spending increases, directly creating jobs or putting money into people's pockets. In short, the government resorts to deficit spending or borrowing to stimulate the economy. This is how the United States got itself out of the Great Depression of the 1930's. It borrowed a great deal of money to spend on government programs and finally to finance World War II. It is hoped the same thing will happen with the economic stimulus passed in early 2009. Once the ball gets rolling, government should be able to cut back on the deficits.

Unfortunately, at times the government spends much more than it has even when the economy is doing well. Such was the case during the administrations of Ronald Reagan and George Bush when the national debt ballooned. The presidency of George W. Bush saw record deficits in its first seven years in office when the economy was doing well and when

most economists believed that the federal government should be saving money or at least not incurring large deficits. In early 2008 the economy was headed towards a recession. In response the Bush administration and Congress agreed upon a large tax cut --about 300 billion dollars. In a very unusual move Congress and the President agreed to send taxpayers rebate checks, \$600 for unmarried persons and \$1,200 for married couples--plus an additional \$300 per qualifying child. In 2009 the federal government will again lower taxes and spend more money in an attempt to get the economy moving.

Tax cuts are popular, especially in election years. Unfortunately, the President and Congress are not so eager to either increase taxes or reduce spending. Thus, the national debt is ballooning.

The huge deficits of the Reagan administration came back to haunt George H. Bush (the father). When the economy slipped into recession during his administration he was unable to spend more money or to lower taxes further because the budget was already so deeply in deficit. The weak economy, in turn, was a major reason that Bill Clinton was able to defeat Bush in the election of 1992.

In 2007 the economy of the United States showed slow growth with low inflation. Most economists recommended that the federal and local governments put some money away in savings that can be used to offset the next recession. However, many politicians, including the Bush administration, asked for more tax cuts, and there were few suggestions by Democrats or Republicans to cut spending. When money could be saved it wasn't. This came back to haunt the Republican Party in the election of 2008. The economy went into a recession and the Republicans received most of the blame.

When inflation is starting to get out of control due to excessive spending the government should restrain its spending and consider raising taxes to discourage consumers from spending. The Nixon administration attempted to do exactly that in fiscal 1968 and 1969 by reducing government spending. Unfortunately, the economy dipped into recession soon after and the government went quickly back to deficit spending. It is particularly difficult for politicians to recommend policies to cut inflation since it involves cutting government spending and/or increasing taxes. Neither of these policies is very popular politically. One can be in favor of increasing taxes or cutting government programs **generally**, but when it comes down to **specifically** increasing taxes on individuals or businesses, toes will be stepped on and there will be specific groups of people who will complain bitterly. The same is true of cutting government spending. Once one gets down to specifics, actual people are going to receive less money and they won't like it. These people vote, and will use whatever political clout they have to stop the spending cuts. Politically, the people who have the least political power, the poor, are often the ones who find the programs designed to help them are the ones being cut. In recent years there have been significant cutbacks in welfare spending by the federal government. Further cutbacks in Medicaid (medical insurance for the poor) and food stamps are being debated. Recommending a cutback in Social Security or Medicare, on the other hand, can be political suicide. There are simply too many middle-class citizens who benefit from them to make cuts politically feasible in most situations.

When the federal government spends more money than it collects it has a **deficit budget**. To finance the deficit the government sells **securities**, such as government savings bonds or treasury notes. The government obligates itself to pay much more than the money it receives in cash for these securities since it must pay interest to the holders. Thus, the deficit in one year may be 100 billion but the government will often pay back twice that amount after it has retired all the securities. (Remember that the government issues many ten and twenty-year bonds.) The federal government claimed surpluses in fiscal years 1998 and 1999. However, the national debt continued to increase because the surplus was in Social Security and other trust funds. The deficit for 2004 was a record 430 billion dollars (approximately). This added well over 700 billion to the national debt. In fiscal 2007 the deficit looked to be quite a bit smaller—the estimates were around 170 billion. In 2008, however, the deficit ballooned to over 600 billion dollars. The deficit in fiscal 2009 was about 1.6 trillion dollars.

The national debt is the total amount of money that the federal government will be required to pay in order to retire all existing securities. At the end of 2011 the national debt was over 14 trillion dollars or about 40 thousand dollars for every man, woman and child in the country. Almost a third of the national debt is actually owed by the federal government to the Social Security Administration. The S.S.A. buys government securities with the surpluses that it has every year.

Large U.S. financial institutions such as trust funds and banks own most privately owned U.S. savings bonds and securities. However, approximately 42% of privately owned U.S. securities are in the hands of foreign companies, governments and individuals.

There is a political problem with deficits that is difficult to overcome. The burden on the budget of paying back the money that the government borrows to finance the deficit **falls on future taxpayers**. Most of the money won't come due for five, ten or even thirty years afterwards. Politicians today won't have to suffer the consequences this election or even the election after that. They can vote for large tax cuts and increases in government spending and reap the benefits of the immediate positive effects these have on the economy and voters and they don't have to worry about the negative effects because they will occur in the future, after they have been reelected several times or are out of office. It's like taking out a large mortgage on a new home with the knowledge that you won't have to pay the mortgage—the future owners will, but why should you worry about them? Thus, it is very difficult politically to control deficits and therefore future taxpayers will have to bear the burden. And, of course, the future taxpayer is **you**.



## Monetary Policy

Monetary policy is controlled by the Federal Reserve System; which is usually just referred to as "the Fed." The Fed is the central bank of the United States. The bank summarizes its functions in these words; "the Fed serves as a banker's bank and as the government's bank, as a regulator of financial institutions and as the nation's money manager, performing a vast array of functions that affect the economy, the financial system, and ultimately, each of us."

The United States government decided some time ago (the Fed was created in 1913) that it wasn't wise for the president and Congress to control the money supply. As citizens we might well be comforted by the fact that politicians with short terms of office are not in control of the money supply of the United States. The Fed was set up as an independent agency that would be led by a Board of Governors, comprised of seven members who are nominated by the president and approved by the Senate. Each member of the B.O.G. has a fourteen-year term, one of which comes up for appointment every two years. The terms were so created as to allow the board to have a long-term perspective, not be dependent on a single U. S. president and have scheduled turnover to bring in new ideas yet still retain stability and experience.

The current chairman is Ben Bernanke, nominated by George W. Bush and sworn into office in 2006 for a term lasting until 2010: he was subsequently reappointed by Barak Obama to serve another four-year term. Bernanke succeeded Alan Greenspan, who served for more than 18 years under four U.S. Presidents. Mr. Bernanke is one of the most powerful men on earth. (If

you ask your economics professor, he is **the** most powerful person. But I wouldn't advise you to ask; economics professors are frequently not completely sane individuals.) :)

For the purposes of this class you need to know that the Fed is in charge of the money supply. It can increase it or decrease it as it wishes. The Fed describes monetary policy in these words: *"Monetary policy is a central bank's actions to influence the availability and cost of money and credit, as a means of helping to promote national economic goals."* In other words, the Fed manipulates interest rates and the money supply to push the economy in the direction it deems necessary. **It should be understood that the U.S. dollar is no longer backed by gold, silver or anything else other than the confidence that the dollar has worth and is supported by the government of the United States.** This is true of every other major currency in the world, such as the Euro (used by almost all Western European countries now), the British Pound and the Japanese Yen.

Monetary policy can be used in much the same way as fiscal policy. That is, it can be used to stimulate the economy in times of recession or slow growth, or it can be used to slow down the economy in order to reduce inflation. A major difference however, is that the Fed can act quickly, whereas the Congress and the President can take weeks, months and even sometimes years to enact fiscal policy. For example, when the stock markets in the USA lost almost 10% of their value in early 2008 because of fears of a U.S. recession the Fed lowered key interest rates immediately, thus steadying the markets.

When the Fed wishes to stimulate the economy it will lower interest rates to encourage consumers and businesses to borrow and spend more money. If inflation is a problem it will increase interest rates in order to slow down the economy and reduce prices. For inflation the Fed is frequently the only government organization that can act. Fiscal policy could be effective, but Congress and the president often don't have the courage to increase taxes or lower spending—and again they often take a long time to act. Since the members of the Board of Governors of the Fed are not popularly elected and have long terms of office they can make decisions that make long-term sense but are unpopular.

The Fed often has difficulty dealing with recessions, however. The chief culprit during recessions is often a negative psychological atmosphere. Even though the Fed lowers interest rates substantially, businesses and consumers often don't substantially increase borrowing and spending because they believe that business will be bad in the future and jobs may not be secure. This is exactly what happened in Japan in the later part of the 1990's. Interest rates on credit cards were around 2%, but still consumers did not significantly increase borrowing, choosing to live within their means because of an uncertain economic future. The same phenomenon occurred in the USA in late 2008 and into 2009. In response to the financial crises and the resulting deep recession the Fed drastically reduced interest rates and made more money available for loans. However, the psychology (fear) created by the recession caused consumers and businesses to borrow less. The lower interest rates helped in the sense that they probably made the financial crises less severe, but they did not lift the economy out of the recession.

Ideally, fiscal and monetary policies should support and reinforce each other. In times of recession fiscal policy should increase government spending and reduce taxes and monetary policy should produce lower interest rates. Indeed this is exactly what occurred in late 2008 and into 2009 when the Federal Reserve lowered interest rates and the federal government began to spend much more money than it collected in taxes.

When inflation is a problem the Fed should increase interest rates and fiscal policy should lower spending and increase taxes. Of course, when things are swimming along just fine, as they were in the United States at the end of the 20<sup>th</sup> century, the government should simply leave things as they were. Unfortunately those times are now history.

## **International or Foreign Policy**

International or foreign policy is an increasing concern to the United States. At one time this country was largely self-sufficient economically. Today, however, the United States is very dependent on other countries for the most basic necessities. We import a high percentage of every vital metal needed for industrial production. We import about half of the oil that we use to run our cars and fuel most of our power plants. There is no automobile or truck sold in the U.S.A. that does not have parts made in other countries. Virtually every machine that we use has parts that were made or assembled in other countries. Some things that we use daily are made almost exclusively in other countries. Televisions, VCRs, cameras, and watches are examples. Most of the clothes, shoes, and toys we have are no longer made in the USA.

In order to improve the air we breathe and the water we drink we must cooperate with other countries to control global pollution. If we wish to control crime, illegal immigration, and disease we must work with the world community.

Perhaps most importantly, if humans do not cooperate in the future we run the risk of self-extermination.

In the 1920's many in the United States believed that we should mind our own business and not become involved in the affairs of other countries--we should isolate ourselves. World War II cured almost all of us of this naive belief.

I would like to submit a simple concept to you. ***The world will not automatically sort itself out to our liking.*** If we in the United States and other countries wish to have peace, prosperity and life, we will have to make it happen. Terrorism will not just disappear because we want it to. This does not mean that we have to be involved in the affairs of all countries. We do not have to be the world's policeman, but we cannot afford to sit on the sidelines and let the world slide by. We are in a family of nations and we have responsibilities to help that family, if only to help ourselves. The United States must, therefore, be actively involved in world affairs. Where, when and the exact form of our involvement are questions that the nation must continually address.

As citizens you should know that the primary formulator of external policy is the president of the United States. Only he, or his representatives, have the power to negotiate economic and diplomatic affairs with other countries. As Commander and Chief of the armed services he can order the military to do what he wishes. (Congress has considerable powers to check him if a conflict lasts more than a few months.) Congress does have some powers at its disposal, of course. It must ratify all treaties and vote on other major agreements with other countries. Also, Congress must approve most spending policies of the president. The initiative, however, is always with the president.

There are many cabinet positions that are involved in the day-to-day running of external affairs. It is the U.S. Department of State, however, that is the primary department that is responsible for the conduct of foreign policy. The Secretary of State is in charge of conducting the foreign policy of the United States on a day-to-day basis. The Department of State defines its function in these words:

*"The Department of State is the lead U.S. foreign affairs agency. It promotes U.S. objectives and interests in shaping a freer, more secure, and more prosperous world through formulating, representing, and implementing the President's foreign policy. The Secretary of State, the ranking member of the Cabinet and fourth in line of presidential succession, is the President's principal adviser on foreign policy and the person chiefly responsible for U.S. representation abroad. "*

As a citizen and student of U.S. government you should be aware of the major international organizations that the United States is a member of and the role this country has in these institutions. Of the many that the USA is a member of, the most important to this country at the beginning of the Twenty-first Century is arguably the United Nations. Three specialized agencies of the United Nations are of special importance economically—The World Bank and its sister organization, the International Monetary Fund and the World Trade Organization. NATO also remains important.

Below I will give you a brief idea as to what each of these does, including how they serve the interests of the United States, and describe the role that this country plays in the organization. First, however, you should be aware of the North American Free Trade Agreement (NAFTA), the special trade agreement that the United States has entered into with Canada and Mexico.

## NAFTA

NAFTA is a free trade agreement involving Canada, Mexico and the United States. Compared with the European Union, the most extensive free trade bloc in the world, NAFTA is very limited. It is restricted to eliminating tariffs, quotas and other trade impediments amongst the three countries involved. It has no governing structure, although there are boards set up to settle disagreements. There is no common customs or tariff agreement for imported goods and services coming from outside the NAFTA countries. No monetary union is in the works and there is no movement to making education or training of professions similar as in the European Union. Most importantly, there is no free movement of citizens; people are not allowed to move to whichever country they wish. They must still go through formal immigration procedures.

It is a very powerful trade bloc, nonetheless, because of the economic and political influence of the United States. It involves about 400 million people with about the same total Gross Domestic Product as the European Union. It should be noted that NAFTA is in the **process** of becoming a free trade zone. It has not reached this goal entirely yet, as there are a number of industries that still receive protection such as citrus, lumber, and Mexican petroleum.

### **Possible Advantages to NAFTA and other Free Trade Zones**

Most agree that free trade agreements provide higher quality goods and services to consumers in all countries at lower prices.

This tends to be true for several reasons. First, competition increases. The elimination of tariffs, quotas, and other restrictions allow companies who were once prevented from doing business to compete on equal footing with national companies. Competition usually lowers prices and improves quality by itself. In the United States, for example, NAFTA seems to be helping keep the prices of textiles, shoes, lumber and some agricultural goods low.

Secondly, the cost of production for goods and services tend to decline as companies take advantage of the lower costs of labor, cheaper natural resources and easier access to quality services and specialized knowledge. Dell Computer Corporation based in Texas, for example, uses low-cost Mexican labor to assemble many of its monitors. U.S. software and computer companies are helping to make many more Mexican companies efficient.

The free movement of knowledge is especially important. Free trade allows companies to set up subsidiaries in other countries where they can simply use their existing technology. It also allows businesses to create arrangements where their company can sell its knowledge easily to other businesses. A U.S. pharmaceutical company can now sell and produce medicines in Mexico and Canada, allowing consumers in those countries to take advantage of the medical discoveries made by a U.S. company. This same pharmaceutical company may well negotiate

deals with Mexican or Canadian companies to market, package or distribute their products. A Canadian company that discovers a better engine for trucks can sell the engine or the knowledge to make the engine to companies in all three countries, thereby allowing a much larger number of people to take advantage of the discoveries and providing a greater incentive to creating discoveries in all countries.

Specialization is also increased in free trade zones. A larger market allows countries to spend their resources producing things that they do well, rather than inefficiently producing goods or services that other countries can provide at lower prices. In the NAFTA for example, it seems clear that in the foreseeable future Mexico will be home to many assembly industries that use low-cost labor. Automotive and computer parts are two that come to mind as well as textiles (clothing). Citrus and produce might also be more likely to be grown in Mexico where the land is cheaper and winter freezes don't interfere with growing seasons. Canadian and U.S. financial services and high-tech industries meanwhile are beginning to dominate some markets in Mexico. A country that specializes is much the same as a person who specializes. It becomes extremely efficient at what it does and therefore very productive. Productivity increases income.

Free trade zones also allow for economies of scale to take place. Canada might not have a large enough market to justify the creation of company that puts communications satellites into orbit around the earth to provide better Internet access. It might be able to do so if it can offer these services to consumers in Mexico and the United States. Similarly it may make sense to create a company that provides Internet access at \$15 a month unlimited use if the company can make a one dollar a month profit off each account--- if the customer base is over a million. Companies can get discounts if they buy in large quantities. These factors allow the costs of providing services or producing goods to come down, thus allowing for reductions in prices to consumers. This is one of the reasons for the success of Wal-Mart. It purchases large quantities of goods. The producers don't make much money per item sold to Wal-Mart, but because so many are sold the profit is good.

More competition, free movement of knowledge, increased specialization and economies of scale combine to make virtually all countries in free trade blocs more productive. The more productive a country is the more income it should produce for its citizens. Generally this does occur; national income goes up. As we will see below, however, this does not mean that employment will necessarily go up. In fact some countries in the free-trade pacts may see no increase in employment or even a reduction.

It's easy to see how jobs have been created in Mexico by NAFTA. Now and in the future Mexicans will be receiving better employment opportunities by the factories that have been created by U.S. and Canadian firms seeking low-cost labor. As the income of Mexican workers has increased their consumption of goods and services produced in the U.S. and Canada has increased as well. U.S. banks, insurance companies, stockbrokerage firms and others have seen increases in purchases from Mexican consumers. More computers with processors and software made in the USA and Canada are being sold to Mexico. This has increased employment in high-paying jobs in Canada and Mexico. Those who have received these new

jobs buy new homes; use more dry cleaning and home cleaning services. They frequent more restaurants and buy more services from local businesses. All of these activities create other jobs. The increases in some employment sectors, however, may be offset by decreases in other sectors. More on this later.

Another advantage for consumers is that there is often a greater variety of goods and services available in free trade blocs. Products like beer, detergent, clothing, and machine tools are often produced in all the countries after the free trade agreement they are often stocked in many stores. Products like satellite hook ups for televisions, computers and telephones are usually made more available. Internet service providers are now able to sell to larger markets and more consumers have opportunities to purchase or use these services.

A big advantage to Mexico is that it is a recipient of large amounts of capital investments made by the USA and Canada. U.S or Canadian businesses or investors create or invest in new buildings, technology, and sophisticated equipment. The flip side to this is the opportunity for investment and expansion that the U.S. and Canadian businesses now have.

There are other long-term political and social benefits to trade blocs. As economies become more intertwined the political reasons for close cooperation within the bloc increase. The three countries of North America understand that they have a stake in each other and are making greater efforts to get along. In that same vein, increased business contacts usually mean that people must learn the culture of their trading partners. Many must learn new languages and different business practices. In short, more people will come into contact with citizens of the other countries and will need to learn more about each other. This breeds increased understanding.

## **Possible Disadvantages to NAFTA and other Free Trade Blocs**

Possibly the greatest drawback to free-trade blocs is job and economic sector displacement. For many reasons, some industries will be shut down or forced to downsize because of increased competition from trading partners. These business sectors often employ large numbers of workers who find that their jobs no longer exist. This is an inevitable process in free-trade agreements. If some industries were not closed it would mean that there was little need for the agreement in the first place. The workers who lose their jobs are often without work for an extended period and when they do find work it may well be at a lower wage.

The closing of factories that were their lifeblood has devastated some communities. In the United States, for example, some automobile parts plants have moved to Mexico, as have many textile factories in the southern states. Soon the citrus industry in Florida will face

increased competition from Mexico and eventually from Central America. It may well have to sell many groves and shut down citrus processing plants. Many Mexican banks and insurance companies are now under pressure from northern financial institutions. Mexicans fear that large retail chains based in the USA will push many small family businesses out as they have done in the United States and Canada.

As stated above, this is an inevitable result of restructuring that occurs in free-trade pacts. This knowledge does not make it any easier for those who have lost their jobs or businesses, however.

It is unclear if free trade increases overall employment in member countries. Evidence of the effects of NAFTA has not shown an increase in overall Mexican employment—at least not clearly. The productivity of U.S. corn and wheat farmers have brought down prices for these commodities in Mexico and have put many small farmers either out of business or driven them close to it. Likewise, the creation of larger farms in Mexico with more and better machinery has left many unskilled workers without jobs. In general, less skilled, older and less mobile workers are likely to be hurt in the short run by free trade agreements. What happens to employment and wages in the long run is not easy to predict. In the short run there is real pain felt by some workers in all countries.

Another possible drawback to free trade agreements is that small businesses are often forced to close and workers, therefore, are more likely to be employed by huge conglomerations that have little contact with workers. Workers become “employment factors” and “personnel decisions” rather than individuals. Fewer people own their own businesses; more people work for others. In the United States, for example, most family-owned hardware stores, grocery and clothing stores, hotels and motels have been put out of business by large chains. Small business owners in restaurants, pharmacies, convenience stores, trucking and many other industries are slowly being put out of business. These large chains spread to the other countries in free-trade zones. More and more people are working for large chains—becoming small, rather unimportant parts of the “economic system.”

The other major possible drawback to NAFTA and other free-trade agreements is increased dependency. As countries become more specialized they become more dependent on their trading partners. This means that each country loses some control over its economy or sovereignty. Decisions by foreign businesses can greatly affect domestic economies. Many are made uncomfortable knowing that most of their food is now grown in other countries. A strike in automobile parts in Canada or Mexico can throw many thousands of U.S. workers out of work. If U.S. firms eventually supply most of the electrical power in northern Mexico what happens if there is a political rift between the two countries?

In 2008 and 2009 the economies of Canada and Mexico were dragged into recession by the economic downturn in the USA. In reality, neither of these countries was at fault for what happened to the U.S. economy. They could not, however, shield themselves effectively from the deep recession in the USA. Their economies had become too intertwined with that of the United States.



Weaker economies in trade blocs clearly have the most to gain...and to lose. They fear being swallowed by the more advanced countries. This is exactly what the Mexicans and Canadians fear about NAFTA. They fear that they will all eventually be working for U.S. businesses. They may well be richer, but they will lose control of their economic lives.

There are also environmental concerns raised by these agreements. NAFTA, in particular, has little in it to prevent Mexican businesses from pouring their effluents into the water or air. Thus, as more manufacturing industries shift to production in Mexico, pollution in North America might well increase. This has also put U.S. and Canadian firms at a disadvantage when competing with Mexican firms since companies will have to pay for pollution control in the former countries and perhaps not in Mexico. It will clearly put the lungs of most of the North American population more at risk.

### **Difficulties with Creating and Maintaining Free Trade Agreements**

In a perfect world the entire planet would be one big free trade zone. As we know, however, we don't live in a perfect world. In a broad sense countries were created to protect their inhabitants—usually from the inhabitants of other countries. Governments have spent hundreds of years creating laws that favor their citizens over those from other countries. Free trade agreements mean that much of that protection and favoritism must be eliminated. Favoring free trade is something that many people and their representatives favor in theory, but making it happen can be very difficult.

There are many areas where problems with free trade can occur, but some of the most frequent involve government policies in regards to worker compensation and protection, pollution controls, government purchasing and government subsidies.

The NAFTA countries have had difficulties with all of these. Mexico has not been very effective at enforcing pollution controls on manufacturing industries, for example. Nor has Mexico been very effective at requiring companies to institute worker safety measures and there has been little protection for workers trying to unionize. Employers in the USA must pay social security and Medicare taxes. They are required to pay for workers who get sick or are injured on the job (Workers Compensation). Mexican employers don't have the same requirements. This puts workers in the USA at a disadvantage. It makes it much cheaper to build, staff and maintain manufacturing operations in Mexico. Workers in the USA complain constantly about this. States like Michigan, Ohio and Pennsylvania have lost jobs and industry. Mexico has seen an increase in manufacturing employment, while the USA has seen a decrease.

On the other hand, agriculture in the USA is highly subsidized by our government. Farmers have been able to get loans at no interest from government. Power, phone lines and roads have been given to U.S. farmers at low or no cost to them. The U.S. government has set minimum prices for U.S. grown corn and wheat and cotton and other agricultural products. The

government will buy all that farmers will sell them at these prices. This has put Mexican farmers, particularly those who grow wheat and corn at a disadvantage. The effects of these policies (also U.S. farming concerns buying up many small farms in Mexico) have been a loss of some agricultural jobs in Mexico, a country where agriculture and related industries employ more workers than any other industry and most citizens still live in small agriculture-centered communities, while the USA has seen a small increase in its highly mechanized agricultural sector that is dominated by large farms.

The biggest purchaser of agricultural goods in the USA is the federal government. If it only purchases goods made in the USA how free is trade? If our federal, state and local governments only purchase Fords and GM cars how can imports compete equally? If state and local governments in all countries require that all government funds be placed in banks owned by their citizens and all their workers be insured by companies owned and operated primarily within their borders how can there be free trade?

Free trade also means that the movement of people and services will be less restricted. This makes it more difficult to control the movement of illegal substances amongst countries and more likely that infestation of insects and microbes and other things will occur.

In a general sense free trade agreements remove protections from citizens in all countries. These protections have been in place for sometimes hundreds of years—and some of them make a lot of sense. Convincing voters to do away with these protections is often not easy and in all likelihood not wise in all cases.

## The United Nations

The United Nations in its site called "The UN in Brief" defines itself in these words: **"The United Nations is an organization of sovereign nations not a world government. It provides the machinery to help find solutions to disputes or problems, and to deal with virtually any matter of concern to humanity."**

As stated above, the UN is involved in practically everything that concerns the international community. It provides short and long-term assistance in health matters through the World Health Organization. You will note, for example, that it was the WHO that was in charge of coordinating world policy concerning the SARS epidemic that started in early 2003. The UN provides agricultural advice, training and materials through the Food and Agricultural Organization. It facilitates world mail through the Universal Postal Union (UPU). It coordinates aid for the hungry and help to refugees through the World Food Programme and the Office of the United Nations High Commissioner for Refugees. It directly helps needy children through The United Nations Children's Fund (UNICEF).

The most important organ of the UN is the Security Council. Only it can authorize the use of military force or economic sanctions. Also the UNSC must give its approval to the selection of the Secretary General, new members of the United Nations and any change to the charter (constitution) of the UN. Of the fifteen members on the Security Council five are permanent members **who have absolute vetoes** on any important action of the UNSC. These five members are China, France, Russia, The United States, and The United Kingdom (Great Britain.)

The United States, therefore, has a great deal of power in the United Nations. Although the USA cannot do all it wishes in the UN the organization can do very little without U.S. approval. This country used the United Nations to support the military actions against North Korea when it invaded South Korea and against Iraq in 1991, including subsequent economic sanctions. The United States could not get approval for military actions in Kosovo because both Russia and China objected. In 2003 the Bush Administration could not get the Security Council to approve of military action against Iraq. France, Russia and China all threatened to veto a resolution to use force against Iraq. Because of this the USA forged an alliance with Great Britain and some other countries and initiated military action without UN approval. The negatives, from the point of the USA, were that most of the allies' military casualties were Americans and the USA was forced to pay for almost all the costs of military actions. It appears that the United States will now have to accept much of the costs of rebuilding Iraq and most of the anger of Moslems and Arabs who disagreed with the military action will be aimed at the USA.

In short, the United Nations is an organization that assists the United States in achieving a large number of foreign policy goals. Since the United Nations is actively involved in addressing virtually every major problem facing the world community it serves the long-term interests of the United States as a member of that community.

## **The World Bank**

The World Bank, is led by the International Bank of Reconstruction and Finance, but is, in reality, a group of five different financial institutions devoted largely to helping poor people and their countries to achieve sustainable economic development. The voting power that member countries have in the World Bank is determined by the relative amount that each country has deposited in the Bank. The United States has the most on deposit and thus has the most influence. As stated above, the USA traditionally has appointed the CEO of the World Bank.

Although there is some debate about this, it is probable that the World Bank is a significant factor in helping to reduce international poverty. It has experts who have very good ideas where money should be spent in poor countries to increase future productivity—things like roads, bridges, ports, schools, power plants, sanitary water sources, sound agricultural practices etc... It loans money to poor countries at low interest rates to enable them to start these projects. At times it will not charge any interest rate. It demands open books (transparency) on the part of the government taking out the loans, so the projects they fund usually get the money the Bank loans out.

The World Bank helps the USA in several ways. First, it tends to help countries that are friendly to the USA. Russia and China, for example, for years received no loans from the Bank, even though they needed the money badly. Today, Cuba and North Korea, do not receive Bank loans.

Secondly, like the IMF it puts conditions on loans to poor countries. These conditions, like opening their markets to foreign competition or privatizing parts of their economies, favor the U.S.A. and other powerful countries.

Thirdly, much of the money that that the Bank loans out comes back to Western countries like the USA since much of the money is used to purchase technical expertise or high-end technology or equipment made in developed countries. At times, the World Bank will loan money to poor countries so that these same countries can pay off loans to the banks of developed countries.

Finally, if the World Bank is successful in helping more countries get out of poverty it will help create a more stable and productive world--one with less terrorism and one good for business and life in general.

## **The International Monetary Fund**

The International Monetary Fund (from here on called the IMF) is one of the most powerful financial institutions in the world today. It was established at the end of World War II to help stabilize currency transactions amongst all countries of the world. The IMF describes what it does in these words (amongst others): ***"The IMF lends money to members having trouble meeting financial obligations to other members, but only on condition that they undertake economic reforms to eliminate these difficulties for their own good and that of the entire membership."***

Although the IMF tends to deny it, what it has the power to do is to force some countries to change their economic, and at times, their political policies in order to qualify for loans.

In order for business to be successful, individuals and companies need to be able to convert currencies easily and have the assurance that the value of different currencies will remain relatively stable. This, essentially, is the overall objective of the IMF--to keep the world's currencies stable so that people and organizations can do business.

Presently, no major currency is backed by gold, silver or any other precious metal. Each country can produce as much, or as little, of its currency as it chooses. Irresponsible or foolish governments have often printed great amounts of their currencies in order to meet popular

demands. The effect of this, however, is to devalue the currency in terms of other currencies. If money production continues, a particular currency can lose all of its value in foreign markets because banks and other institutions will refuse to accept it or to exchange it.

The currency of a given country is somewhat like a stock in a company. The value of a currency, like a stock, is determined largely by expectations. If a country has an honest and efficient government usually the value of its currency will remain stable or increase over time. When the international community begins to lose confidence in the government of a given country and the management of its money supply, the value of its currency tends to plummet. When this happens the country will find it difficult to buy things from other countries and its own economy begins to suffer.

This is exactly what happened to Mexico in 1994. It occurred to different degrees to Russia, Brazil, and a number of Asian countries at the turn of the century. For the USA and other countries this is very bad news. The many businesses that sell to these countries see a loss in profits, which causes them to lay off workers. Also, many U.S. businesses and individuals have investments in these countries and therefore they lose money when these countries do poorly economically.

The IMF has been the primary institution that has addressed the immediate problems. Along with the United States, the Western Democracies and the World Bank, it has rescued, or is now attempting to rescue many troubled economies—particularly in Africa and Asia at the beginning of the 21st Century. Its true power is forcing changes in the economic policies of financially ailing economies. When the IMF or the World Bank make out loans they do so **based on certain conditions (conditionality)**. These conditions force countries to be more honest and open and change economic policies to a more open market or Capitalistic approach.

The IMF has helped the United States bring stability to Mexico, stop the panic in Brazil (a major customer) and begin to reform the economies of many Asian countries that the USA does business with. In short, the IMF has helped improve monetary stability to the world economy. As stated before, stability is an absolute must for economic progress.

The International Monetary Fund has often been criticized, however, as being captive of Western capitalist countries and of forcing countries to adopt monetary and fiscal policies that have hurt some of the countries receiving loans from the IMF. There isn't space here to discuss this further, but the reader should note that there is considerable debate regarding the effectiveness of the IMF structural adjustment programs (conditionality) in many countries.

Voting power in the IMF depends upon the money that a country has deposited in the institution. The United States currently holds 18.5% of voting authority. The IMF does nothing major without the approval of the USA and its friends and allies in Western Europe and Japan. Usually the IMF recommends that borrowing countries open their economies to foreign (Western) investment. This increases U.S. influence in these countries' economies and, therefore, their political systems.

## The World Trade Organization

The WTO has become more powerful in recent years, because more countries have used it to resolve trade disputes. It is very different from the World Bank or the IMF, because it is not controlled by any one country, or even a group of powerful countries. Formally, every country is treated the same. In a sense this is one reason that it is gaining power. It makes decisions based on rational reasoning—that are, in turn, founded on international agreements.

The WTO is primarily an organization that was created to interpret and enforce international trade agreements that countries have entered into with other countries. At the heart of WTO are the complex economic agreements that most of the countries of the world have agreed to. The broad goal of these agreements is to promote free trade, which, in turn, should promote economic development worldwide.

The WTO devised an ingenious system to enforce agreements. If two or more countries have a dispute they must select three judges from non-involved members of the WTO (each member country provides a judge—150 judges in 2007) to resolve the dispute. The three judges make a ruling that is binding on the members. If one member refuses to go along with the ruling the other country is given the legal right to impose tariffs on the goods of the non-agreeing country. The tariffs are equal to the damage that the first country has suffered because of the violation of the trade agreement. Normally what the victorious countries do is put tariffs on politically powerful economic interests in the losing countries. These economic interests then put political pressure on the government of the losing country to abide by the holdings of the three-judge panel.

This dispute resolution process has had a major effect in furthering free trade. In almost every country particular economic interests (industries or businesses) are hurt by free trade and the competition that it brings. For example, the U.S. automobile industry and the steel industry have been severely hurt by foreign competition that was allowed by free trade agreements. These interests were often successful in destroying free trade. They used their political influence to continue protectionism. What the World Trade Organization dispute resolution does is create equally powerful domestic economic interests that want free trade. For example, the WTO held in 2003 that the United States had violated international free trade agreements by restricting the import of foreign-made steel. It allowed the European Union to impose over 2 billion dollars in tariffs on U.S. made goods imported to the EU. When the EU threatened to impose the tariffs on Florida citrus and U.S. beef the Bush administration paid attention. It did not want to irritate the Florida citrus industry in the year before Bush's reelection campaign. Similarly it did not want to anger farmers in key agricultural states in the Midwest. Clearly the representatives of Florida and Midwestern states in Congress did not want tariffs imposed either. The Bush administration and Congress decided to abide by the WTO's ruling. Free trade won.

The USA has won some cases that were sent to the WTO and lost others. Broadly, however, the WTO has brought consistency and predictability to world trade. It has helped to reduce trade barriers. Almost all businesses benefit from predictability and stability, and most, including those in the USA, benefit from the reduction of trade barriers.

The WTO is also an organization that provides a forum or a meeting place for countries to discuss and resolve their trade disputes. As such, it is a major player in improving the laws governing international commerce. It will be involved in all major trade agreements in the foreseeable future.

## **NATO**

NATO is short for the North Atlantic Treaty Organization. It was formed by the democracies of Western Europe plus Canada and the United States after World War II. It started as a military alliance designed to protect all of these nations from the Soviet Union. It was very successful in doing this. When the Soviet Union disintegrated at the beginning of the 1990's NATO did not go out of existence. Rather, it expanded to include several of the Eastern European countries such as Poland, Hungary and the Czech Republic.

NATO is clearly the most powerful military alliance in the world today. As such, it increases the military power and thus the political influence of the United States and the other member nations. The USA, Canada and the Western European democracies have been able to use it to create a peace (perhaps temporary) in Bosnia Herzegovina thus saving the lives of many thousands and preventing hundreds of thousands of refugees from flooding Western Europe. NATO has also been used to punish Yugoslavia for its repression of ethnic Albanians in Kosovo.

The military head of NATO has always been from the United States. It is clear that the USA has the most influence in NATO. While the USA does not control NATO it would be fair to say that it can take no major action without U.S. permission. This alliance has brought all of these

countries closer together and served to protect them from any type of foreign aggression. Although cooperation is far from complete, NATO countries share information, including intelligence with each other, thus increasing important military knowledge available to all.

The End